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This CDBG 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

By: _____
Georgeanne A. White, City Manager

Date: _____

CITY OF FRESNO
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
AGREEMENT

by and between

CITY OF FRESNO,
a municipal corporation

and

FRESNO QUALITY HOMEKEY,
a limited partnership

regarding

Fresno Quality Inn
6051 N. Thesta Street, Fresno, CA 93710
APN: 409-200-43

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	3
ARTICLE 1. DEFINITIONS	4
ARTICLE 2. TERMS OF THE CDBG LOAN	7
ARTICLE 3. REPRESENTATION AND WARRANTIES OF DEVELOPER.....	8
ARTICLE 4. UNIFORM ADMINISTRATIVE REQUIREMENTS	10
ARTICLE 5. OTHER CDBG PROGRAM REQUIREMENTS.....	11
ARTICLE 6. DISBURSEMENT OF CDBG FUNDS.....	14
ARTICLE 7. INSURANCE AND INDEMNITY AND BONDS	16
ARTICLE 8. DEFAULT AND REMEDIES	22
ARTICLE 9. GENERAL PROVISIONS	24

**COMMUNITY DEVELOPMENT BLOCK GRANT
AGREEMENT BETWEEN CITY OF FRESNO
AND
FRESNO QUALITY HOMEKEY, LP
A CALIFORNIA LIMITED PARTNERSHIP**

This Community Development Block Grant (CDBG) Agreement (Agreement) is entered this ____ day of November 2023, by and between the City of Fresno (CITY) and Fresno Quality Homekey, L.P., a California limited partnership (DEVELOPER).

RECITALS

WHEREAS, CITY has applied for and has been awarded funds from the United States Department of Housing and Urban Development (HUD) through the Community Development Block Grant Program (CDBG), listed under 14.218 in the Catalog of Federal Domestic Assistance; and

WHEREAS, to advance the supply of affordable rental housing within the city of Fresno, CITY desires, among other things, to encourage investment in the affordable rental housing market; and

WHEREAS, DEVELOPER desires to act as the owner/developer exercising effective project control, as to the acquisition and rehabilitation of rental residential property hereinafter referred to as the "Project", and shall preserve the residential property for occupancy by low-income households at affordable rents, as defined by the CDBG Program and this Agreement; and

WHEREAS, HUD regulations at 24 CFR Part 570.201(a) allow for the use of CDBG funds to acquire real property by a private nonprofit corporation; and

WHEREAS, CITY has an allocation of CDBG funds to award in accordance with applicable notices, regulations and guidance from HUD in the pursuit of encouraging the development of affordable rental housing; and

WHEREAS, to further its goal to increase the supply of Affordable Housing within the City of Fresno, the CITY desires to assist the DEVELOPER by providing a Four Million Two Hundred Fifty Thousand One Hundred Sixty-Four Dollars and 76/100 (\$4,250,164.76) CDBG Loan (Loan) to the Developer, at 2% interest for a period of fifty-five years for Eligible acquisition Costs, as identified in EXHIBIT "C" – Budget, to be secured by the underlying Property and the Affordable Housing covenants attached as EXHIBIT "D" – Exemplar Declaration of Restriction, and Note, Exemplar Notes attached as EXHIBIT "E" – Promissory Note loan and Exhibit F – Deed of Trust, upon the terms and conditions in this Agreement.

WHEREAS, the CITY has determined that it has ministerial authority to approve this Project, which is statutorily exempt from CEQA pursuant Article 18, Statutory Exemptions, Section 15268 of the State CEQA guidelines. Additionally, the DEVELOPER completed an environmental review of the Project pursuant to the National Environmental Policy Act (NEPA) guidelines and received Authorization to Use Grant Funds on September 25, 2023.

WHEREAS, the CITY has determined that this Agreement is in the best interest of, and will materially contribute to, the Housing Element of the Fresno General Plan. Further, the CITY has found that the acquisition and subsequent

construction/rehabilitation of affordable housing: (i) will have a positive influence in the neighborhood and surrounding environs, (ii) is in the vital and best interest of the CITY, and the health, safety, and welfare of CITY residents, (iii) complies with applicable federal, State, and local laws and requirements, (iv) will increase, improve, and preserve the community's supply of Low-Income Housing available at an affordable cost to Low-Income household, as defined hereunder, (v) planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of Low-Income Housing, and (vi) will comply with any and all owner participation rules and criteria applicable thereto.

WHEREAS, the CITY and DEVELOPER have determined that the acquisition constitutes routine programmatic/grantee lender activity utilizing available and allocated program/grantee funding, outside the reach of the California Constitution Article XXXIV and enabling legislation.

WHEREAS, the parties acknowledge and agree that the obligations and liabilities of the DEVELOPER hereunder shall be joint and several unless and except to any extent expressly provided otherwise.

WHEREAS, on July 14, 2021, the DEVELOPER's Principals reviewed and approved the development of the Project.

ARTICLE 1. DEFINITIONS

The following terms have the meaning and content set forth in this Article wherever used in this Agreement, attached exhibits or attachments that are incorporated into this Agreement by reference.

1.1 Acquisition means vesting of the Property (defined below) in fee title to the DEVELOPER for the subsequent rehabilitation of 58 Affordable Housing Units.

1.2 ADA means the Americans with Disabilities Act of 1990, as most recently amended.

1.3 Affirmative Marketing means a good faith effort to attract eligible persons of all racial, ethnic and gender groups, in the housing market area, to rent the Units proposed for rehabilitation on the eligible Property, as hereinafter defined.

1.4 Affordability Period means the minimum period of fifty-five years commencing from the date the CITY enters project completion information into HUD's Integrated Disbursement and Information System (IDIS), which date will be provided to the DEVELOPER by the CITY and added as an administrative amendment hereto; CITY agrees to enter project completion information into IDIS within thirty days of CITY's receipt thereof.

1.5 Affordable Housing or Affordable Housing Unit means the 58 units required to be occupied by Low-Income Households at affordable rents.

1.6 Budget means the Budget for the Acquisition and rehabilitation of the Project, as may be administratively amended upon the approval of the CITY's Housing and Community Development Division Manager provided any increase in CDBG Funds hereunder requires City Council Approval, attached hereto as EXHIBIT "C".

1.7 CFR means the Code of Federal Regulations.

1.8 Commencement of Rehabilitation means the time the DEVELOPER or the DEVELOPER's contractor begins substantial physical work on the Property, including, without limitation, delivery of materials and any work, beyond maintenance of the Property in its status quo condition, which shall take place in accordance with the Project Schedule.

1.9 Completion Date means the date the City issues a recorded Certificate of Completion for the Project.

1.10 Debt Service means payments made in a calendar year pursuant to the financing obtained for the acquisition and rehabilitation, operation and/or ownership of the Project, but excluding payments made pursuant to the Note.

1.11 Declaration of Restrictions means the Declaration of Restrictions in the form attached hereto as EXHIBIT "D", which contains the affordability covenants and requirements of this Agreement which shall run with the land and which the DEVELOPER shall record or cause to be recorded against the Property upon Acquisition.

1.12 Deed of Trust means that standard form Deed of Trust (including the security agreement) given by the DEVELOPER as Trustor, to the CITY as beneficiary, through escrow established by the DEVELOPER at its sole cost and expense with Old Republic Title Company, and recorded against the Property to ensure the Note, together with the Deed of Trust attached as EXHIBIT "F" and acceptable to the City Attorney, as well as any amendments to, modifications of and restatements of said Deed of Trust, which Deed of Trust shall be subordinated to Project lenders no lower than 3rd position per the Budget attached as EXHIBIT "C". The terms of any such Deed of Trust are hereby incorporated into this Agreement by this reference.

1.13 Eligible Costs means the CDBG eligible acquisition costs funded by the Loan, consistent with the Project Budget attached as EXHIBIT "C", and allowable under 24 C.F.R. 570.

1.14 Event of Default shall have the meaning assigned to such term under Section 8.1 hereunder.

1.15 CDBG Funds or Funds means the federal Community Development Block Grant Program monies consisting of the Loan, in an amount not to exceed the sum of Four Million Two Hundred Fifty Thousand One Hundred Sixty-Four Dollars and 76/100 (\$4,250,164.76) to be used for eligible property acquisition costs.

1.16 Funding Sources means the CITY's CDBG Funds, HOME-ARP funds, Homekey Program funds, and any other funds that may become available to the Project.

1.17 Hazardous Materials means any hazardous or toxic substances, materials, wastes, pollutants or contaminants which are defined, regulated or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants" or "toxic substances" under federal or state environmental and health safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating or occupying a housing project, to the extent and degree that such substances are stored, used and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.18 Household means one or more persons occupying the Units within the Project.

1.19 HUD means the United States Department of Housing and Urban Development.

1.20 Loan means the Project Loan of CDBG Funds, in the total amount of Four Million Two Hundred Fifty Thousand One Hundred Sixty-Four Dollars and 76/100 (\$4,250,164.76), as more specifically described in the Budget and in the Promissory Note attached as EXHIBIT "C" and "E", respectively. The Loan shall be payable in accordance with the terms of the Note, shall be secured by a deed of trust on each parcel constituting the Property, and shall be subject to the Deed of Trust attached as EXHIBIT "F".

1.21 Loan Documents are collectively this Agreement, the Note, Declaration of Restrictions, and Deed of Trust, all related documents/instruments as they may be amended, modified or restated from time to time along with all exhibits and attachments thereto, relative to the Loan.

1.22 Low-Income Household means families whose annual income does not exceed 80% of the median income for the Fresno, California area as determined by HUD, except as HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD finding that such variations are necessary.

1.23 Note means that certain assumable, CDBG Loan Note in a principal amount of Four Million Two Hundred Fifty Thousand One Hundred Sixty-Four dollars and 76/100 (\$4,250,164.76), given by the DEVELOPER as promissor, in favor of the CITY as promisee, evidencing the Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement, secured by the Deed of Trust as no worse than 3rd position lien upon the Property, naming the CITY as beneficiary and provided to the CITY, no later than the date of the Affordable Project funding hereunder, an exemplar of which is attached hereto as EXHIBIT "F", and incorporated herein, as well as any amendments to, modifications of and restatements of said Note consented to by the CITY.

1.24 Project means the acquisition and subsequent rehabilitation of the former Quality Inn motel into 58 affordable rental units and on- and off-site improvements and one on-site manager's unit for a total of 59 units.

1.25 Project Units or Affordable Housing Units means the acquisition and subsequent rehabilitation of 58 units to be affordable rental units.

1.26 Project Schedule means the schedule for commencement and completion of the Project included in EXHIBIT "B".

1.27 Property means the vacant property located at 6051 N. Thesta Street, Fresno, CA 93710 (APN: 409-200-43), specifically described in the Property Description attached to EXHIBIT "A" – Legal Property Description.

1.28 Senior Financing means the financing for the Project set forth on the Budget and Finance Plan which shall be senior to the Loan.

1.29 Senior Lender means one or more lenders providing Senior Financing for the subsequent rehabilitation of the Project.

1.30 Units means the 59 units to be rehabilitated on the Property of which 58 will be preserved as Affordable Housing and one will be a manager's unit.

ARTICLE 2. TERMS OF THE CDBG LOAN

2.1 Loan of CDBG Funds. The CITY agrees to provide a loan of CDBG Funds

to the DEVELOPER, in an amount not to exceed Four Million Two Hundred Fifty Thousand One Hundred Sixty-Four Dollars and 76/100 (\$4,250,164.76), all under the terms and condition provided in this Agreement. The CDBG Funds shall be used for payment of Eligible Costs for Acquisition.

2.2 Loan Documents. The DEVELOPER shall execute and deliver the Loan Documents, including the Note to the CITY, and notarized Deed of Trust to Old Republic Title Company for recordation against the Property, as provided for in this Agreement.

2.3 Term of Agreement. This Agreement is effective upon the date of execution and shall remain in force with respect to the Project for the duration of the Affordability Period unless earlier terminated as provided herein. After the 55-year Affordability Period, this Agreement will expire. It is understood and agreed upon, however, that if for any reason this Agreement should be terminated in whole or in part as provided hereunder, without default, the CITY agrees to record a Notice of Cancellation regarding this Agreement upon the written request of the DEVELOPER.

2.4 Loan Repayment and Maturity. The Loan will be due and payable in accordance with the Note and not later than the Maturity date provided in the Note.

2.5 Incorporation of Documents. The City Council approved Minutes of November 2, 2023, approving this Agreement, the Loan Documents, the Act and HUD regulations at 24 CRF 570 and all exhibits, attachments, documents and instruments referenced herein, as now in effect and as may be amended from time to time, constitute part of this Agreement and are incorporated herein by reference. All such documents have been provided to the parties herewith or have been otherwise provided to/procured by the parties and reviewed by each of them prior to execution hereof.

2.6 Covenants of DEVELOPER. The DEVELOPER for itself and its agents/assigns covenants and agrees to comply with all the terms and conditions of this Agreement and the requirements of 24 CFR 570.

2.7 Subordination. This Agreement, the Declaration of Restrictions and the Deed of Trust may be subordinated to certain approved financing (in each case, a "Senior Lender"), to no worse than 3rd position, based on the condition that all of the following conditions are satisfied: (a) all of the proceeds of the proposed Senior Loan, less any transaction costs, must be used to provide construction financing for the Project consistent with an approved financing plan; (b) the subordination agreement must provide the CITY with adequate rights to cure any defaults by the DEVELOPER including providing the CITY or its successor with copies of any notices of default; (c) upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement, inter-creditor agreements, standstill agreements, and/or other documents as may be reasonably requested by the Lender to evidence subordination to the Project financing, without the necessity of any further action or approval provided that such agreements contain written provisions that are no more onerous and which are consistent with the customary standard requirements imposed by the financing source(s), on subordinate cash flow obligations under their then existing senior financing policies, and further provided that the City Attorney approves such document(s) as to form.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

3.1 Existence and Qualification. The DEVELOPER, represents and warrants

to the CITY as of the date hereof, that the DEVELOPER is a duly organized California limited partnership in good standing with the State of California; the DEVELOPER has the requisite power, right, and legal authority to execute, deliver, and perform its obligations under the Agreement has taken all actions necessary to authorize the execution, delivery, performance, and observance of its obligations under this Agreement. This Agreement, when executed and delivered by the DEVELOPER enforceable against the DEVELOPER in accordance with its respective terms, except as such enforceability may be limited by: (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws of general applicability affecting the enforcement of creditors' rights generally, and (b) the application of general principles of equity without the joinder of any other party.

3.2 No Litigation Material to Financial Condition. The DEVELOPER represents and warrants to the CITY as of the date hereof that, except as disclosed to and approved by the CITY in writing, no litigation or administrative proceeding before any court or governmental body or agency is now pending, nor, to the best of the DEVELOPER's knowledge, is any such litigation or proceeding now threatened, or anticipated against the DEVELOPER that, if adversely determined, would have a material adverse effect on the financial condition, business, or assets of the DEVELOPER or on the operation of the Project.

3.3 No Conflict of Interest. The DEVELOPER represents and warrants to the CITY as of the date hereof that no officer, agent, or employee of the CITY directly or indirectly owns or controls any interest in the DEVELOPER, and no person, directly or indirectly owning or controlling any interest in the DEVELOPER, is an official, officer, agent, or employee of the CITY.

3.4 No Legal Bar. The DEVELOPER represents and warrants to the CITY, as of the date hereof that the execution, delivery, performance, or observance by the DEVELOPER of this Agreement will not, to the best of the DEVELOPER's knowledge, materially violate or contravene any provisions of: (a) any existing law or regulation, or any order of decree of any court, governmental authority, bureau, or agency; (b) governing documents and instruments of the DEVELOPER; or (c) any mortgage, indenture, security agreement, contract, undertaking, or other agreement or instrument to which the DEVELOPER is a party or that is binding on any of its properties or assets, the result of which would materially or substantially impair the DEVELOPER's ability to perform and discharge its obligations or its ability to complete the Project under this Agreement.

3.5 No Violation of Law. The DEVELOPER represents and warrants to the CITY as of the date hereof that, to the best of the DEVELOPER's knowledge, this Agreement and the operation of the Project as contemplated by the DEVELOPER, do not violate any existing federal, state or local laws or regulations.

3.6 No Litigation Material to Project. The DEVELOPER represents and warrants to the CITY as of the date hereof, except as disclosed to, and approved by the CITY in writing, there is no action, proceeding, or investigation now pending, or any basis therefor known or believed to exist by the DEVELOPER that questions the validity of this Agreement, or of any action to be taken under this Agreement, that would, if adversely determined, materially or substantially impair the DEVELOPER's ability to perform and observe its obligations under this Agreement, or that would either directly or indirectly have an adverse effect or impair the completion of the Project.

3.7 Assurance of Governmental Approvals and Licenses. The DEVELOPER represents and warrants to the CITY, as of the date hereof, that the DEVELOPER has obtained and, to the best of the DEVELOPER's knowledge, is in compliance with all federal, state, and local governmental reviews, consents, authorizations, approvals, and licenses presently required by law to be obtained by the DEVELOPER for the Project as of the date hereof.

ARTICLE 4. UNIFORM ADMINISTRATIVE REQUIREMENTS

The DEVELOPER, for itself and its development team it represents shall adhere to the following Uniform Administrative Requirements found in the U.S. federal regulations at 2 CFR Part 200, as provided in this Agreement and including the following:

4.1 Establish and maintain effective internal control over CDBG funds made available through this Agreement to provide reasonable assurance that the funds are administered in compliance with applicable federal statutes, regulations, and the terms and conditions of this Agreement. This includes evaluation and internal monitoring of the Project and prompt, appropriate action when instances of noncompliance are identified.

4.2 Follow a written procurement policy that allows for full and open competition that meets the minimum standards of the U.S. federal regulations at 2 CFR 200.317 through 200.326.

4.3 Take reasonable measures to safeguard protected personally identified information and other information the CITY designates as sensitive consistent with applicable federal, State, and local laws regarding privacy and obligations of confidentiality.

4.4 Use its best effort to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in the Agreement, the terms, "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business that is at least 51% owned and controlled by minority group members or women.

4.5 Prohibit the use of CDBG funds for personnel employed in the administration of the Project for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

4.6 Comply with the requirements of the Secretary of Labor in accordance the Davis-Bacon Act, as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other federal, state and local laws and regulations pertaining to the labor standards insofar as those acts apply to the performance of this Agreement.

4.7 Comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 C.F.R. Part 5 and maintain documentation that demonstrates compliance with hour and wage requirements of this part.

4.8 Warrant and Covenant that no CDBG funds provided, nor persons employed as a result of this Agreement shall be in any way or to any extent engaged in the conduct of political activities.

4.9 Maintain a financial management system that identifies all federal awards received and expended and the federal programs under which they were received, including: Catalog of Federal Domestic Assistance number, federal award identification number and year, name of the federal agency and name of the pass-through entity, if any.

4.10 Determine allowable costs in accordance with the terms and conditions of this Agreement and the federal cost principles published in the U.S. federal regulations at 2 CFR 200 subpart E, and maintain effective control over, and accountability for, all funds, property, and other assets to ensure all assets are safeguarded and they are used for the authorized use of this Agreement, and maintain accurate financial reporting on federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

4.11 Maintain written standards of conduct covering conflict of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the DEVELOPER. If the DEVELOPER has a parent, affiliate, or subsidiary organization, the standards of conduct must cover organizational conflict of interest to ensure the DEVELOPER is able to be impartial in conducting a procurement action involving a related organization. At a minimum, the standard of conduct shall include any person who is an employee, agent, consultant, officer, or elected official or appointed official of the DEVELOPER. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this Agreement, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those whom they have business or immediate family ties, during their tenure or for one year thereafter.

ARTICLE 5. OTHER CDBG PROGRAM REQUIREMENTS

5.1 Availability of CDBG Funds. The DEVELOPER understands and agrees that the availability of CDBG Funds is subject to the control of HUD, or other federal agencies, and should said Funds be encumbered, withdrawn or otherwise made unavailable to the CITY, whether earned by or promised to the DEVELOPER, and/or should the CITY in any fiscal year hereunder fail to allocate said Funds, the CITY shall not provide said CDBG Funds unless and until they are made available for payment to the CITY by HUD and the CITY receives and allocates said CDBG Funds. No other funds owned or controlled by the CITY shall be obligated under this Agreement.

5.2 Compliance with Agreement. The DEVELOPER warrants, covenants and agrees that upon any uncured default by the DEVELOPER within the meaning of Article 8.1 of this Agreement, the CITY may suspend or terminate this Agreement and all other agreements with the DEVELOPER without waiver or limitation of rights/remedies otherwise available to the CITY.

5.3 Construction Standards. The DEVELOPER shall construct the proposed Units under this Agreement in compliance with all applicable local codes, ordinances and zoning requirements in effect at the time of issuance of CITY building permits.

5.4 Covenants and Restrictions to Run with the Land. The CITY and the DEVELOPER expressly warrant, covenant and agree to ensure that the covenants and

restrictions set forth in this Agreement are recorded and will run with the land, provided, however, that, on expiration of this Agreement such covenants and restrictions shall expire, provided that such agreements contain written provisions that are no more onerous and which are consistent with the customary standard requirements imposed by the financing source(s), on subordinate cash flow obligations under their then existing senior financing policies, and further provided that City Attorney approves such document(s) as to form.

A. The CITY and the DEVELOPER hereby declare their understanding and intent that the covenants and restrictions set forth herein directly benefit the land (a) by enhancing and increasing the enjoyment and ownership of the proposed Project by a certain Very Low- and Low-Income Household, and (b) by making possible the obtaining of advantageous financing for acquisition and rehabilitation.

B. The DEVELOPER covenants and agrees with the CITY that after issuance of a recorded certification of completion for the Project until the expiration of the Affordability Period it shall cause 58 Units to be rented as Affordable Housing for Low-Income Households.

C. Without waiver or limitation, the CITY shall be entitled to injunctive or other equitable relief against any violation or attempted violation of any covenants and restrictions, and shall, in addition, be entitled to damages available under law or contract for any injuries or losses resulting from any violations thereof.

D. 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 covenants and restrictions. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the covenants and restrictions, as may be amended or supplemented from time to time, are accepted and ratified by such future owners, tenant or occupant, and all such covenants and restrictions shall be covenants running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such covenants and restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

E. The failure or delay at any time of the CITY or any other person entitled to enforce any such covenants or 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.

5.5 Displacement of Persons. The DEVELOPER covenants and agrees with the CITY that pursuant to 24 C.F.R 570.606, it will take all reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations and farms). The parties acknowledge and agree that the Property located at the former Quality Inn Motel at 6051 N. Thesta Street, Fresno, CA 93710, is currently occupied with one tenant. If and to the extent that the rehabilitation of the proposed Project results in the permanent or temporary displacement of residential tenants, the DEVELOPER shall comply with all applicable local, State, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. The DEVELOPER 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.

5.6 Lead-Based Paint. The DEVELOPER covenants and agrees with the CITY that it shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 C.F.R. Part 35, including the HUD 1012 Rule, and 24 C.F.R. 982.401(j), and any amendment thereto, and Environmental Protection Agency (EPA) Section 402 (c)(3) of the Toxic Substances Control Act (TSCA) to address lead-based hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities. Contractors performing renovations in lead-based paint units must be EPA-certified renovators. These requirements apply to all units and common areas of the Project. The DEVELOPER shall incorporate or cause incorporation of this provision in all contracts and subcontracts for work performed on the Project, which involve the application of paint. The DEVELOPER shall be responsible for all disclosure, inspection, testing, evaluation, and control and abatement activities.

5.7 Other Laws and Regulations. The DEVELOPER covenants and agrees with the CITY that, in addition to complying with the federal laws and regulations already cited in this Agreement, the DEVELOPER has reviewed, and shall comply with and require all its contractors and subcontractors on the Project to comply with, all other federal laws and regulations that apply to the CDBG Program, including, without limitation:

A. Requirements of 24 C.F.R. 58.6 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128).

B. The DEVELOPER does not intend to use any financing that is secured by a mortgage insured by HUD in connection with the Project as part of its land acquisition costs of the Project.

C. The Project is not located in a tract identified by the Federal Emergency Management Agency as having special flood requirements.

D. Equal Opportunity requirements as described in Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107.

E. The provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

F. The provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

G. Section 109 of the Housing and Community Development Act of 1974 requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibition against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to program or activities receiving federal financial assistance under Title I programs.

H. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR 135.

I. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at par 35, subparts, A, B, J, K and R of this part apply.

J. Exclusion of Debarred and Suspended Contractor requirements as described in 2 CFR Part 180.

K. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for CDBG benefits, including financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities made available with CDBG. Benefits do not include relocation services and payments to which persons displaced are entitled by law (24 CFR 570.613).

L. A building or facility designed, constructed, or altered with CDBG funds governed by this Agreement that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR Part 40 for residential structures, and appendix A to 41 CFR Part 101-19. subpart 101-19.6, for general type buildings).

M. The Americans with Disabilities Act 942 U.S.C. 12131; 47 U.S.C 155, 201, 2085 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

N. DEVELOPER is advised that providing false, fictitious or misleading information with respect to CDBG funds may result in criminal, civil or administrative prosecution under 18 U.S.C. § 1001, 18 U.S.C. § 1343, 31 U.S.C. § 3729, 31 U.S.C. § 3801 or another applicable statute. DEVELOPER shall promptly refer to City and HUD's Office of the Inspector General any credible evidence that a principal, employee, agent, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving CDBG funds. DEVELOPER shall ensure that contractual language in third party contracts enforces these provisions.

O. DEVELOPER will provide access to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. DEVELOPER will retain all required records for three years after final payments are made and all other pending matters are closed.

DEVELOPER will provide suitable access to the project site at all reasonable times during construction to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives. Contractor shall also meet all reporting requirements to allow City to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282).

P. The DEVELOPER shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority

firms, women's business enterprises, and labor surplus area firms described in Executive Orders 11625, 12432 and 12138, and 2 CFR part 200:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- v. Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

Q. DEVELOPER must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

R. DEVELOPER will comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation (42 U.S.C. 6201).

S. The DEVELOPER certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Further, the contractor agrees to disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

T. The DEVELOPER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

U. The DEVELOPER understands and agrees that, if the Project is terminated before completion, either voluntarily or otherwise, such constitutes an

ineligible activity, and the CITY will not be required to provide any further CDBG Program assistance funding to the Affordable Housing Units.

V. Violence Against Women Act (VAWA), 24 CFR 92.359 and 24 CFR 92.504(c)(3)(v)(F), including but not limited to notice requirements, obligations under emergency transfer plan, bifurcation of lease requirements, imposition of requirements for the duration of the HOME period of affordability, and inclusion of VAWA lease addendum requirements.

W. Broadband infrastructure requirements for new housing and rehabilitation projects as set forth in 24 CFR 92.251.

5.8 Records and Reports. Until the Certificate of Completion is issued by the CITY, the DEVELOPER shall submit to the CITY, in a form acceptable to the CITY, a quarterly report summarizing progress to the date on the Project. Upon issuance of the Certificate of Completion, the DEVELOPER shall submit to the CITY, in the form acceptable to the CITY, annual reports summarizing compliance with property standards, tenant income, and rent restrictions.

The CITY shall monitor and evaluate the DEVELOPER's performance under the Agreement to determine compliance with this Agreement and CDBG requirements. The DEVELOPER shall cooperate with the CITY and any federal auditor authorized by the CITY and shall make available all information, documents, and records reasonably requested and shall provide the CITY the reasonable right of access to both records and personnel during normal business hours for the purpose of assuring compliance with this Agreement and evaluating performance hereunder. The rights of access in this section are limited to the required retention period but last as long as the records are retained.

ARTICLE 6. DISBURSEMENT OF CDBG FUNDS

Without waiver of limitation, the parties agree as follows, regarding CDBG Funds:

6.1 Loan Commitments and Financing Plan. The DEVELOPER shall submit its most current Finance Plan for the Project to the CITY within the time frame provided in the Project Schedule. So long as the Finance Plan is consistent with the Budget, the CITY shall accept the Finance Plan. If the Finance Plan is not consistent with the Budget, then within thirty days after receiving the Finance Plan, the CITY, through its Planning and Development Department, Community Development Division, will review the Finance Plan and deliver notice to the DEVELOPER either approving or disapproving the Finance Plan in its reasonable discretion. If the CITY disapproves the Finance Plan, it will specify the reason for the disapproval and ask the DEVELOPER to provide any additional information the CITY may need to approve the Finance Plan. The failure of the CITY to send notice within such 30-day time period shall be deemed an approval of the Finance Plan.

6.2 Finance Plan Content. The Finance Plan shall contain all Project pre-rehabilitation and post-rehabilitation, and permanent loans or letters of intent from one or more qualified public/private lenders or funding sources in sufficient amounts, combined with any other DEVELOPER financing, for the DEVELOPER to complete rehabilitation of the Project. The total amount of liens to be recorded against the Property as presented in the Finance Plan shall not exceed the DEVELOPER's estimated rehabilitation Budget.

6.3 Use of CDBG Funds. The DEVELOPER warrants, covenants and agrees that it shall request CDBG Funds only for reimbursement of Eligible Costs for Acquisition incurred as identified in the attached Budget, attached hereto as EXHIBIT "C". The CITY's obligations

shall in no event exceed the CDBG Funds amount specified in this Agreement.

A. If any CDBG Funds shall be determined to have been requested and/or used by the DEVELOPER for costs other than for Eligible Costs, and subject to the notice and cure provisions of Section 8.1 hereunder, an equal amount from nonpublic funds shall become immediately due and payable by the DEVELOPER to the CITY; provided, however, that the DEVELOPER shall, subject to its full cooperation with the CITY, be entitled to participate in any opportunity to remedy, contest, or appeal such determination.

B. In the event CDBG Funds are requested to reimburse Acquisition costs which subsequently lose eligibility as Eligible Costs, the DEVELOPER shall immediately return such CDBG Funds to the CITY.

C. The CITY will disburse CDBG Funds, only to the DEVELOPER through proper invoicing, for Eligible Costs for Acquisition as provided in this Article 5.

6.4 Conditions Precedent to Disbursement. The CITY shall not be obligated to make or authorize any disbursements of CDBG Funds unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 8, nor any act, failure, omission or condition that with the passage of time or the giving of notice or both would constitute an Event of Default.

B. The DEVELOPER has received and delivered to the CITY firm commitments of, or Agreements for, sufficient funds to finance the Project.

C. The CITY has approved the requested reimbursement of Acquisition costs.

D. The DEVELOPER has obtained insurance coverage and delivered to the City evidence of insurance as required in Article 7.

E. The DEVELOPER is current with its compliance of reporting requirements set forth in this Agreement.

F. The DEVELOPER has provided the CITY with a written request for CDBG Funds (provided by the CITY), for reimbursement of Eligible Costs, and detailing such Eligible Costs applicable to the request.

G. The CITY has received certification required by Section 6.6 of this Agreement.

H. The CITY has received, and continues to have the right to disburse, CDBG Funds.

6.5 Requests for Reimbursement of CDBG Funds. The DEVELOPER shall request that the CITY reimburse funds for Eligible Costs for Acquisition using the CITY's Request for Disbursement of Funds form. The DEVELOPER shall only request a maximum of Four Million Two Hundred Fifty Thousand One Hundred Sixty-Four Dollars and 76/100 (\$4,250,164.76) in CDBG Program assistance. All requests should provide in detail such Eligible Costs applicable to the request. All requests for CDBG Funds disbursement shall be accompanied with the Certification required by Section 5.6 of this Agreement.

6.6 DEVELOPER Certification. The DEVELOPER shall submit to the CITY a written certification that, as of the date of the Request for Reimbursement (Certification):

A. The representations and warranties contained in or incorporated by reference in this Agreement continue to be true, complete and accurate in material respects.

B. The DEVELOPER has carried out all of its obligations and is in compliance with all the obligations or covenants specified in this Agreement, to the extent that such obligations or covenants are required to have been carried out or are applicable at the time of the request for the Reimbursement;

C. The DEVELOPER has not committed or suffered an act, event, occurrence, or circumstance that constitutes an Event of Default or that with the passage of time or giving of notice or both would constitute an Event of Default; and

D. The Disbursement requested will be used solely for reimbursement of Eligible Costs identified in this Agreement and must be supported by the itemized obligations that have been properly incurred, expended and are properly chargeable in connection with Acquisition of the property and subsequent rehabilitation of the Project.

6.7 Disbursement of Funds. The disbursement of CDBG Funds shall occur within the normal course of CITY business after the CITY receives the Certification and to the extent of annually allocated and available CDBG Funds.

ARTICLE 7. INSURANCE AND INDEMNITY AND BONDS

Without waiver of limitation, the parties agree as follows regarding DEVELOPER Insurance and Indemnity Obligations:

7.1 Insurance and Indemnity Requirements

(a) Throughout the life of the CDBG Agreement, the DEVELOPER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the CDBG Agreement or any extension, the DEVELOPER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to the developer shall be withheld until notice is received by the CITY 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. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate the CDBG Agreement. No action taken by the CITY pursuant to this section shall in any way relieve the developer of its responsibilities under the CDBG Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by the DEVELOPER shall not be deemed to release or diminish the liability of the developer, including, without limitation, liability under the indemnity provisions of the CDBG Agreement. The duty to indemnify the CITY 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 the DEVELOPER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the DEVELOPER, vendors, suppliers, invitees, contractors, sub-contractors, consultants, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than the following:

\$2,000,000 per occurrence for bodily injury and property damage

\$2,000,000 per occurrence for personal and advertising injury

\$4,000,000 aggregate for products and completed operations

\$4,000,000 general aggregate applying separately to work performed under the Agreement

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYEE LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 diseased each employee.

(v) BUILDERS RISK (Course of Construction) insurance, obtained by the DEVELOPER or subcontractor in an amount equal to the completion value of the Project with no coinsurance penalty provisions. (Only required if the project includes new construction of a building; or renovation of, or addition to, an existing building.)

(vi) CONTRACTOR POLLUTION with coverage for bodily injury, property damage or pollution clean-up costs that could result from pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

\$1,000,000 per occurrence

\$2,000,000 general aggregate per annual policy period

In the event the work involves any lead-based, mold or asbestos environmental hazard, either the Automobile Liability insurance policy or the Pollution Liability insurance policy shall

be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by the DEVELOPER pursuant to the SLFRF Agreement.

In the event the work involves any lead-based environmental hazard (e.g., lead-based paint), the DEVELOPER's Pollution Liability insurance policy shall be endorsed to include coverage for lead-based environmental hazards. In the event the DEVELOPER involves any asbestos environmental hazard (e.g., asbestos remediation), the DEVELOPER's Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event the SLFRF Agreement involves any mold environmental hazard (e.g., mold remediation), the Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and "microbial matter including mold" within the definition of "Pollution" under the policy.

UMBRELLA OR EXCESS INSURANCE

In the event DEVELOPER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

DEVELOPER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and DEVELOPER shall also be responsible for payment of any self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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 thirty (30) calendar day written notice has been given to the CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, the DEVELOPER shall furnish the CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the CITY, the DEVELOPER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

The General Liability, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.

The General Liability, Automobile Liability and Pollution Liability insurance policies shall name the CITY, its officers, officials, agents, employees, and volunteers as an additional insured for ongoing and completed operations. All such policies of insurance shall be endorsed so the DEVELOPER's insurance shall be primary and no contribution shall be required of the CITY.

The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents, and volunteers.

If the DEVELOPER maintains higher limits of liability than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits of liability maintained by the DEVELOPER.

The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the

CITY as loss payee.

All insurance policies required including the Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City, its officers, officials, agents, employees, and volunteers.

The DEVELOPER shall furnish the 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 before work commences. Upon request of the CITY, the DEVELOPER shall immediately furnish the 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.

In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Agreement and the final acceptance by the CITY of the work or materials to be performed or supplied thereunder, the DEVELOPER shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the DEVELOPER or his/her insurance company from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of this Agreement.

SUBCONTRACTORS

If DEVELOPER subcontracts any or all of the services to be performed under this Agreement, DEVELOPER shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the CITY to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, DEVELOPER will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

7.2 Indemnity

To the furthest extent allowed by law, including California Civil Code section 2782, DEVELOPER shall indemnify, defend and hold harmless CITY and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract. DEVELOPER'S obligations as set forth in this section shall apply regardless of whether CITY or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, DEVELOPER, whenever there is any causal connection between the DEVELOPER's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, DEVELOPER expressly agrees to undertake

a duty to defend CITY and any of its officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader than the duty to indemnify. The duty to defend as herein agreed to by DEVELOPER expressly includes all costs of litigation, attorney's fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to DEVELOPER as reasonably determined by CITY.

Upon the tender by CITY to DEVELOPER, DEVELOPER shall be bound and obligated to assume the defense of CITY and any of its officers, officials, employees, agents, or volunteers, including the a duty to settle and otherwise pursue settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from CITY or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by DEVELOPER that if CITY tenders a defense of a claim on behalf of CITY or any of its officers, officials, employees, agents, or volunteers and DEVELOPER fails, refuses or neglects to assume the defense thereof, CITY and its officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and DEVELOPER shall be bound and obligated to reimburse CITY and its officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Contract. In addition, such obligations remain in force regardless of whether CITY provided approval for, or did not review or object to, any insurance DEVELOPER may have procured in accordance with the insurance requirements set forth in this Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by CITY, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

If DEVELOPER should subcontract all or any portion of the work to be performed under this Contract, DEVELOPER shall require each subcontractor to Indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms as set forth above.

7.3 Property Insurance

The DEVELOPER shall maintain in full force and effect, throughout the remaining life of this Agreement, a policy(ies) of property insurance acceptable to the CITY, covering the Project premises, with limits reflective of the value of the Project premises upon issuance of the Certificate of Completion or substantial completion of the project referenced in this agreement, including fire and Extended Comprehensive Exposure (ECE) coverage in an amount, form, substance, and quality as acceptable to the CITY's Risk Manager. The CITY shall be added by endorsement as a loss payee thereon.

7.4 Bond Obligations

The DEVELOPER or its General Contractor shall obtain, pay for and deliver good and sufficient payment and performance bonds along with a Primary Obligee, Co-Obligee or Multiple Obligee Rider in a form acceptable to the CITY from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California and Treasury-listed, in a form satisfactory to the CITY and naming the CITY as Obligee.

A. The "Faithful Performance Bond" shall be at least equal to one 100 % of the DEVELOPER's estimated construction costs as reflected in the DEVELOPER's pro forma budget, to the guarantee faithful performance of the Project, within the time prescribed, in a manner satisfactory to the CITY, consistent with this Agreement, and that all material and workmanship will be free from original or developed defects.

B. The "Payment Bond" shall be at least equal to 100 % of construction costs approved by the CITY to satisfy claims of material supplies and of mechanics and laborers employed for this Project. The bond shall be maintained by the DEVELOPER in full force and effect until the Project is completed and until all claims for materials and labor are paid and as required by the applicable provisions of Chapter 7, Title 15, Part 4, Division 3 of the California Civil Code.

C. The "Material and Labor Bond" shall be at least equal to 100% of the DEVELOPER's estimated construction costs as reflected in the DEVELOPER's pro forma budget, to satisfy claims of material supplies and of mechanics and laborers employed for this Project. The bond shall be maintained by the DEVELOPER in full force and effect until the Project is completed, and until all claims for materials and labor are paid, released, or time barred, and shall otherwise comply with any applicable provision of the California Code.

D. In lieu of the bonds required above, the CITY, in its sole discretion, may accept from the DEVELOPER an Irrevocable Standby Letter of Credit issued with the CITY named as the sole beneficiary in the amounts(s) of the bonds required above. The Standby Letter of Credit is to be issued by a bank, and in the form acceptable to the CITY. This Irrevocable Standby Letter of Credit shall be maintained by the DEVELOPER in full force and effect until the CITY is provided with a recorded Notice of Completion for the construction of the Project and shall be subject to and governed by the laws of the State of California.

ARTICLE 8. DEFAULT AND REMEDIES

8.1 Events of Default. The parties agree that each of the following shall constitute an Event of Default by the DEVELOPER for purposes of this Agreement after the cure period in Section 8.2 has expired without a cure:

A. The DEVELOPER's use of CDBG Funds for costs other than Eligible Costs or other uses not permitted by the terms of this Agreement;

B. The DEVELOPER's failure to obtain and maintain the insurance coverage required under this Agreement;

C. Except as otherwise provided in this Agreement, the failure of the DEVELOPER to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) the DEVELOPER's material deviation in the Project as identified in this Agreement,

without the CITY's prior written consent; (2) the DEVELOPER's use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) the DEVELOPER's failure to commence or complete the Project, as specified in this Agreement; (4) cessation of the Project for a period of more than fifteen consecutive days; (5) any material adverse change in the condition of the DEVELOPER or its development team, or the Project that gives the CITY reasonable cause to believe that the Project cannot be completed by the scheduled completion date according to the terms of this Agreement; (6) the DEVELOPER's failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY's request; (7) the DEVELOPER's failure to comply with any federal, state or local laws or applicable CITY restrictions governing the Project, including but not limited to provisions of this Agreement pertaining to equal employment opportunity, nondiscrimination and lead-based paint;

D. Any representation, warranty, or certificate given or furnished by or on behalf of the DEVELOPER shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that the DEVELOPER concealed or failed to disclose a material fact to the CITY, provided, however, that if any representation, warranty, or certification that proves to be materially false is due merely to the DEVELOPER's inadvertence, the DEVELOPER shall have a thirty day opportunity after written notice thereof to cause such representation, warranty, or certification to be true and complete in every respect;

E. The DEVELOPER shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within ninety (90) days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within ninety (90) days;

F. The DEVELOPER's failure, inability or admission in writing of its inability to pay its debts as they become due or the DEVELOPER assignment for the benefit of creditors;

G. A receiver, trustee, or liquidator shall be appointed for the DEVELOPER or any substantial part of the DEVELOPER's assets or properties, and not be removed within ten (10) days;

H. The DEVELOPER's breach of any other material condition, covenant, warranty, promise or representation contained in this Agreement not otherwise identified within this Section.

I. Any substantial or continuous breach by the DEVELOPER of any material obligation owed by the DEVELOPER imposed by any other agreement with respect to the financing, of the Project, whether or not the CITY is a party to such agreement after expiration of all notice and cure periods contained within such document.

8.2 Notice of Default and Opportunity to Cure. The CITY shall give written notice to the DEVELOPER of any Event of Default by specifying: (1) the nature of the event or deficiency giving rise to the default; (2) the action required to cure the deficiency, if any action to cure is possible, and (3) a date, which shall not be less than the lesser of any time period provided in this Agreement, any time period provided for in the notice, or thirty calendar days from the date of the notice, by which such deficiency must be cured, provided that if the specified deficiency or default cannot reasonably be cured within the specified time, with the CITY's written consent, the DEVELOPER shall have an additional reasonable period to cure so long as it commences cure within the specified time and thereafter diligently pursues the cure in good faith. The CITY acknowledges and agrees that the DEVELOPER shall have the right to cure any defaults hereunder and that notice, and cure rights hereunder shall extend to any and all partners of the DEVELOPER that are previously identified in writing delivered to the CITY in the manner provided in this Agreement.

8.3 Remedies Upon an Event of Default. Upon the happening of an Event of Default and a failure to cure said Event of Default within the time specified, the CITY's obligation to disburse CDBG Funds shall terminate. The CITY may also at its option and without notice institute any action, suit, or other proceeding in law, in equity or otherwise, which it shall deem necessary or proper for the protection of its interests and may without limitation proceed with any or all of the following remedies in any order or combination that the CITY may choose in its sole discretion:

- A. Terminate this Agreement immediately upon written notice;
- B. Bring an action in equitable relief: (1) seeking specific performance of the terms and conditions of this Agreement, and/or (2) enjoining, abating or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
- C. Pursue any other remedy allowed by law or in equity or under this Agreement; and

ARTICLE 9. GENERAL PROVISIONS.

Without waiver of limitation, the parties agree that the following general provisions shall apply in the performance hereof:

9.1 Amendments. No modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by the parties hereto. The CITY recognizes that other Project funders and equity investors may require revisions to the Loan Documents to be consistent with their funding and investing requirements. The CITY agrees to reasonably consider and negotiate as to any reasonable amendments to this Agreement to address such requirements, subject to any necessary City Council approval and approval as to form by the City Attorney.

9.2 Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party will be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

9.3 Binding on All Successors and Assigns. Unless otherwise expressly provided in this Agreement, all the terms and provisions of this Agreement shall be binding

on and inure to the benefit of the parties hereto, and their respective heirs, successors, assigns, and legal representatives.

9.4 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. The execution of this Agreement by any party hereto will not become effective until counterparts hereof have been executed by all parties hereto.

9.5 Disclaimer of Relationship. Nothing contained in this Agreement, nor any act of the CITY or of the DEVELOPER, or of any other person, shall in and by itself be deemed or construed by any person to create any relationship of third-party beneficiary, or of principal and agent, of limited or general partnership, or of joint venture.

9.6 Discretionary Governmental Actions. Certain planning, land use, zoning and other permits and public actions required in connection with the Project including, without limitation, the approval of this Agreement, the environmental review and analysis under NEPA or any other statute, and other transactions contemplated by this Agreement are discretionary government actions. Nothing in this Agreement obligates the CITY or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. The CITY cannot take action with respect to such matters before completing the environmental assessment of the Project under NEPA and any other applicable statutes. The CITY cannot and does not commit in advance that it will give final approval to any matter. The CITY shall not be liable, in contract, law or equity, to the DEVELOPER or any of its executors, administrators, transferees, successors-in-interest or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

9.7 Effective Date. This Agreement shall be effective upon the date first above written, upon the CITY and the DEVELOPER's complete execution following City Council approval.

9.8 Entire Agreement. This Agreement represents the entire and integrated agreement of the parties. This Agreement supersedes all prior negotiations, representations or agreements, either written or oral.

9.9 Exhibits. Each exhibit and attachment referenced in this Agreement is, by reference, incorporated into and made a part of this Agreement.

9.10 Expenses Incurred Upon Event of Default. The DEVELOPER shall reimburse the CITY for all reasonable expenses and costs of collection and enforcement, including reasonable attorney's fees, incurred by the CITY as a result of one or more Events of Default by the DEVELOPER under this Agreement.

9.11 Governing Law and Venue. Except to the extent preempted by applicable federal law, the laws of the State of California shall govern all aspects of this Agreement, including execution, interpretation, performance, and enforcement. Venue for filing any action to enforce or interpret this Agreement will be Fresno, California.

9.12 Headings. The headings of the articles, sections, and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

9.13 Interpretation. This Agreement in its final form is the result of the combined efforts of the parties. Any ambiguity will not be construed in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

9.14 No Assignment or Succession. The DEVELOPER shall not sell, transfer, assign or otherwise dispose of all or a material part of any interest it might hold in the Property without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed.

9.15 No Third-Party Beneficiary. No contractor, subcontractor, mechanic, materialman, laborer, vendor, or other person hired or retained by the DEVELOPER shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, but each such person shall be deemed to have agreed: (a) that they shall look to the DEVELOPER as their sole source of recovery if not paid, and (b) except as otherwise agreed to by the CITY and any such person in writing, they may not enter any claim or bring any such action against the CITY under any circumstances. Except as provided by law, or as otherwise agreed to in writing between the CITY and such person, each such person shall be deemed to have waived in writing all right to seek redress from the CITY under any circumstances whatsoever.

9.16 No Waiver. Neither failure nor delay on the part of the CITY in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by the DEVELOPER therefrom shall be effective unless the same shall be in writing, signed on behalf of the CITY by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the DEVELOPER in any case shall entitle the DEVELOPER to any other or further notices or demands in similar or other circumstances or constitute a waiver of any of the CITY's right to take other or further action in any circumstances without notice or demand.

9.17 Nonreliance. The DEVELOPER hereby acknowledges having obtained such independent legal or other advice as it has deemed necessary and declares that in no manner has it relied on the CITY, its agents, employees or attorneys in entering into this Agreement.

9.18 Notice. Any notice to be given to either party under the terms of this Agreement shall be given by certified United States 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.

If to the CITY: City of Fresno
Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721-3605

If to DEVELOPER: Fresno Quality Homekey, LP
Attn: Up Holdings California, LLC
7370 N. Lincoln Avenue, Suite A
Lincolnwood, IL 600712

9.19 Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement will control.

9.20 Recording of Documents. The DEVELOPER agrees to cooperate with the CITY and execute any documents required, promptly upon the CITY's request, and to promptly effectuate the recordation of this Agreement, the Declaration of Restrictions, the Deed of Trust, and any other documents/instruments that the CITY requires to be recorded, in the Official Records of Fresno County, California, consistent with this Agreement.

9.21 Remedies Cumulative. All powers and remedies given by this Agreement shall be cumulative and in addition to those otherwise provided by law.

9.22 Severability. The invalidity, illegality, or un-enforceability of any one or more of the provisions of this Agreement shall not affect the validity, legality, or enforceability of the remaining provisions hereof or thereof.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement in Fresno, California, the day and year first above written.

CITY OF FRESNO,
A California municipal corporation


Fresno Quality Homekey,
a Limited Partnership

By: _____
Name: Georgeanne A. White
Title: City Manager
(Attach notary certificate of acknowledgment)

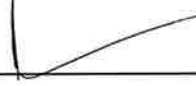
By: UP Fresno Quality, LLC, a California
Limited Liability Company,
Its: Co-General Partner

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: UP Holdings, LLC, an Illinois limited
liability company registered to do
business in the State of California as
Up Holdings California, LLC

By: 
Name: Tracy N. Parvanian
Title: Supervising Deputy City Attorney

Its: Sole Member

By: 
Name: Cullen J. Davis

Title: Manager

(Attach notary certificate of acknowledgment)

Date: 11/14/2023

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Name: _____
Title: Deputy

Attachments:

- EXHIBIT A: LEGAL PROPERTY DESCRIPTION
- EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE
- EXHIBIT C: PROJECT BUDGET
- EXHIBIT D: EXEMPLAR DECLARATION OF RESTRICTIONS
- EXHIBIT E: EXEMPLAR PROMISSORY NOTE
- EXHIBIT F: EXEMPLAR DEED OF TRUST

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel "B" of Parcel Map No. 89-25, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 50 Pages 43 and 44 of Plats, Fresno County Records.

APN 409-200-43

EXHIBIT "B"
PROJECT DESCRIPTION AND SCHEDULE

I. PROJECT DESCRIPTION

The Fresno Quality Homekey Project consists of the rehabilitation of the former Quality Inn Motel located at 6051 N. Thesta Street, Fresno, CA 93710 (APN: 409-200-43), and includes on/off-site improvements. The existing motel units will be converted into 58 studio apartment units available to Qualifying Populations as identified in HUD Notice CPD-21-10, issued on September 13, 2021, and one unit reserved for on-site manager unit for a total of 59 units. Nine units will be ADA accessible.

CDBG funds will be made available to the DEVELOPER by the CITY for payment of eligible costs of property acquisition in the amount not to exceed Four Million Two Hundred Fifty Thousand One Hundred Sixty-Four Dollars and 76/100 (\$4,250,164.76).

II. PROJECT SCHEDULE

A. Project Property Acquisition: February 28, 2024

B. Commencement of Rehabilitation: March 1, 2024

C. Rent Up Completion: January 31, 2025

EXHIBIT "C" **PROJECT BUDGET**

FRESNO QUALITY HOMEKEY PROJECT BUDGET					
		Total Development Costs	Residential Total	Funding Sources	
				HOME-ARP	CDBG
Acquisition Costs:		\$ 6,600,000	\$ 6,600,000	\$ 1,749,835	\$ 4,250,165
Purchase Price		\$ -	\$ -		
Closing, Title & Recording Costs		\$ 15,000	\$ 15,000	\$ 15,000	
SUBTOTAL		\$ 6,615,000	\$ 6,615,000	\$ 1,749,835	\$ 4,250,165
Construction					
Basic Construction Contract		\$ 9,957,708	\$ 9,957,708		\$ 9,957,708
Bond Premium		\$ 87,646	\$ 87,646		\$ 87,646
Infrastructure Improvements		\$ -	\$ -		
Hazardous Abate. & Monitoring		\$ 66,480	\$ 66,480		\$ 66,480
Construction Contingency (%)		\$ 1,174,982	\$ 1,174,982		\$ 1,174,982
SUBTOTAL		\$ 11,286,816	\$ 11,286,816	\$ -	\$ -
Development					
Appraisal		\$ 7,500	\$ 7,500		\$ 7,500
Architect/Engineer		\$ 554,359	\$ 554,359		\$ 554,359
Environmental Assessment		\$ 15,000	\$ 15,000		\$ 15,000
Boundary & Topographic Survey		\$ 30,000	\$ 30,000		\$ 30,000
Legal		\$ 63,000	\$ 63,000		\$ 63,000
Developer Fee		\$ 1,084,500	\$ 1,084,500		\$ 1,084,500
Supportive Services Contract		\$ 10,000	\$ 10,000		\$ 10,000
Other Consultants: Labor Compliance		\$ 32,400	\$ 32,400		\$ 32,400
Other: Welfare Exemption		\$ 250,000	\$ 250,000		\$ 250,000
SUBTOTAL		\$ 2,046,759	\$ 2,046,759	\$ -	\$ -
Other Development					
Real Estate Tax		\$ 69,300	\$ 69,300		\$ 69,300
Insurance		\$ 263,000	\$ 263,000		\$ 263,000
Relocation		\$ 400,000	\$ 400,000		\$ 400,000
Bidding Costs		\$ -	\$ -		
Permits, Fees & Hookups		\$ 112,323	\$ 112,323		\$ 112,323
Impact/Mitigation Fees		\$ 750,000	\$ 750,000		\$ 750,000
Development Period Utilities		\$ 193,000	\$ 193,000		\$ 193,000
Accounting/Audit		\$ 30,000	\$ 30,000		\$ 30,000
Marketing/Leasing Expenses		\$ 175,000	\$ 175,000		\$ 175,000
Carrying Costs at Rent Up: Furnishings		\$ 300,000	\$ 300,000		\$ 300,000
Operating Reserves		\$ 179,302	\$ 179,302		\$ 179,302
Replacement Reserves:		\$ 29,500	\$ 29,500		\$ 29,500
SUBTOTAL		\$ 2,501,425	\$ 2,501,425	\$ -	\$ -
Total Development Costs		\$ 22,450,000	\$ 22,450,000	\$ 1,749,835	\$ 16,450,000
					\$ 4,250,165

EXHIBIT "D"
EXEMPLAR DECLARATION OF RESTRICTIONS

Recorded at the Request of
and When Recorded Return to:

City of Fresno
Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721-3605

(SPACE ABOVE THIS LINE FOR
RECORDER'S USE ONLY)

*The document is exempt from the payment of a recording fee in accordance with Government Code
Sections 6103 and 27383.*

APN: APN: 409-200-43

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (Declaration) is executed as of this ____ day of November 2023, by Fresno Quality Homekey, LP, a California limited partnership (DECLARANT), in favor of the CITY OF FRESNO, a California municipal corporation (CITY).

WHEREAS, the DECLARANT is the owner of the real estate in the county of Fresno, California, located at 6051 N. Thesta Street, Fresno, CA 93710, (APN: 409-200-43), which is more particularly described in EXHIBIT "A" – Property Description, attached hereto and made a part hereof, including the improvements thereon (Property); and

WHEREAS, pursuant to a certain City of Fresno Community Development Block Grant Agreement dated November __, 2023, incorporated herein by reference (CDBG Agreement) and instruments referenced therein, DECLARANT agrees to utilize, the CITY agrees to provide, certain CDBG funds from the United States Department of Housing and Urban Development (HUD), to DECLARANT and DECLARANT agrees to rehabilitate the former Quality Inn Motel into 59 rental housing units of which 58 Units will be required to be occupied by Low-Income Households at affordable rents, subject to the terms and conditions set forth in the CDBG Agreement for households earning 80%, or below, of the area median income for the Fresno Metropolitan Statistical Area (FMSA).

WHEREAS, these restrictions are intended to bind the DECLARANT, and all purchasers of the Property and their successors.

NOW THEREFORE, DECLARANT declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the Project. 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 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 covering any right, title or interest in any part of 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, covenant, and limitations set forth in this Declaration commencing on the date the DECLARANT is notified by the CITY that the Affordable Unit Household information has been entered into HUD's Integrated Disbursement and Information System (IDIS) as provided in the CDBG Agreement, constituting the commencement of the fifty-five year Affordability Period.

1. Declarations. DECLARANT hereby declares that the Property is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Project and the CDBG Agreement and are established and agreed upon for the purpose of enhancing and protecting the value of the Property and in consideration of the CITY entering into the CDBG Agreement with the DECLARANT.

2. Restrictions. The following covenants and restrictions on the use and enjoyment of 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 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. The DECLARANT for itself and its successor(s) on title covenants and agrees that from the date the Project is entered into IDIS as complete, until the expiration of the Affordability Period, it shall cause the Affordable Housing Units to be used as rental affordable housing to Low-Income Households with an income of 80%, or less, of area median income. The DECLARANT further agrees to file a recordable document setting forth the Project Completion Date when determined by the CITY. Unless otherwise provided in the Agreement, the term Affordable Housing shall include, without limitation, compliance with the following requirements:

i. Nondiscrimination. There shall be no discrimination against nor segregation of any persons 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 DECLARANT 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 Project and/or Property.

ii. Principal Residence. The Affordable Units upon the Project Property shall be leased only to eligible natural persons, who shall occupy the Affordable Housing Units as the tenants' principal place of residence. The forgoing requirement that the tenant of unit occupy the unit as their principal residence does not apply to (i) persons, other than natural persons, who acquire the Project Property or portion thereof by foreclosure or deed in lieu of foreclosure; or HUD qualified entities that acquire the Property or portion thereof with the consent of the CITY.

iii. Household Income Requirements. Fifty-eight Housing Units constituting the Project Property shall be conveyed only to a natural person(s) whose annual

Household income at the time of rental is not greater than 80% of the most recent annual median income calculated and published by HUD for the FMSA applicable to such household's size.

Item (a) above is hereinafter referred to as the Covenant and Restriction.

3. 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 any Covenant and Restriction.

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 Covenant and Restriction. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Covenant and Restriction, as may be amended or supplemented from time to time, are accepted and ratified by future owners, tenant or occupant, and such Covenant and Restriction 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 Covenant and Restriction was recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

Notwithstanding the foregoing, upon foreclosure by a lender or other transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD, the Affordability Period shall be terminated unless the foreclosure or other transfer in lieu of foreclosure or assignment recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid the termination of low-income affordability. However, the requirements with respect to Affordable Unit shall be revived according to their original terms, if during the original Affordability Period, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner of those with whom the former owner has or had formally, family or business ties, obtains an ownership interest in the Project or the Property, the Affordability Period shall be revived according to its original terms.

5. Benefit. This Declaration shall run with and bind the Property for a term commencing on the date Project information is entered into IDIS as complete, until the expiration of the 55-year Affordability Period. The failure or delay at any time of CITY and/or any other person entitled to enforce this Declaration 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 DECLARANT or any future owner of the Property to comply with the Covenant and Restriction required by this Declaration, as may be amended from time to time, the 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 DECLARANT nor any future owner of the Property may exempt itself from liability for failure to comply with the Covenant and Restriction required in this Declaration; provided however, that upon the transfer of the Property, the transferring

owner may be released from liability hereunder, upon the CITY's written consent of such transfer, which consent shall not be unreasonably withheld, conditioned, or delayed.

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

9. Pronouns. Any reference 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 Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

11. Amendment. No amendment or modification of this Declaration shall be permitted without the prior written consent of the CITY and DECLARANT.

12. Recordation. DECLARANT acknowledges that this Declaration will be filed of record in the Office of the Recorder of County of Fresno, State of California.

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

14. Headings. The headings of the articles, sections, and paragraphs used in this Declaration are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

15. DECLARANT LIABILITY. The DECLARANT shall not have any personal liability for the obligations under this Declaration. The sole recourse of the CITY shall be exercised by its rights against the Property pursuant to the Deed of Trust and Lender shall have no right to seek or recover any deficiency amount from DECLARANT.

///

IN WITNESS WHEREOF, DECLARANT has executed this Declaration of Restrictions on the date first written above.

DECLARANT:

FRESNO QUALITY HOMEKEY, a limited partnership

By: _____

Name: Cullen J Davis

Title: Manager

(Attach notary certificate of acknowledgment)

Date: 11/14/2023

By: _____

Name: _____

Title: _____

(Attach notary certificate of acknowledgment)

Date: _____

EXHIBIT "A"
Legal Description
To Declaration of Restrictions

Parcel "B" of Parcel Map No. 89-25, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 50 Pages 43 and 44 of Plats, Fresno County Records.

APN 409-200-43

EXHIBIT "F" - PROMISSORY NOTE

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

PROMISSORY NOTE Secured by Deed of Trust

Loan Amount: \$4,250,164.76
Fresno, California

Date: _____

For value received, the undersigned, Fresno Quality Homekey, LP, a California limited partnership (Borrower), promises to pay to the order of the City of Fresno, a California municipal corporation, (Lender), the sum of Four Million Two Hundred Fifty Thousand One Hundred Sixty-Four Dollars and 76/100 (\$4,250,164.76), to the extent that such funds are loaned to the Borrower, with interest on the unpaid principal balance running from the date of disbursement with simple interest at the rate of 2% annually in accordance with the Community Development Block Grant Program Agreement dated _____, 2023, entered into between the Lender and BORROWER, (Agreement), with the balance of principal and interest due and payable on or before the earlier of (i) the Borrower's uncured default under the Agreement with respect to the Project, and (ii) 55 years from the date of this Note, (Maturity Date), on which date the unpaid balance of principal with unpaid interest thereon shall be due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws.

This is a Residual Receipts Note. Principal and interest payments equal to 20% of 100% of annual Residual Receipts, to the extent that Residual Receipts exist and are itemized in audited financial statements supplied to Lender with each payment hereunder, shall be due one hundred eighty days following the end of the year in which the Project converts to its permanent phase under the Financing, and said payment continues each successive year thereafter until the Maturity Date, upon which all principal and interest shall be due and payable (prorated amounts to be paid for the first and last year of the Note). Any failure to make a payment required hereunder within ten days after such payments are due shall constitute a default under the Agreement with respect to the Project and this Note. It shall not be a default hereunder if no payment was made because Project Residual Receipts did not exist for any particular year. Additionally, any failure to timely submit to Lender audited financial statements within 30 days after such financial statements are due shall constitute a default under the Agreement with respect to the Project and Note.

Residual Receipts means in each operating year after the conversion of the Project financing to its permanent phase, 100% of the sum of: (i) all cash received by the Project from (A) rents, lease payments, and all sources generally considered in the apartment industry to be "other income" (which does not include payments for optional services provided by the Borrower), (B) payments from HUD under a Housing Assistance Program Section 8 Contract to the Project, if any, and excluding (a) tenant security or other deposits required by law to be segregated, and (b) interest on reserves not available for distribution, and (ii) the net proceeds of any insurance (including rental interruption

insurance), other than fire and extended coverage and title insurance, to the extent not reinvested, less the sum of: (i) all payments on account of any loans (including unpaid principal and accrued reasonable interest) made for the benefit of the Project by the Borrowers, (ii) contributions to any prudent and reasonable cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as may be reasonably required by the lenders to the Project for the operation of the Project not to exceed the amount required by the Project's permanent lender, annually adjusted in proportion to the average increase of the following indices (a) the United States Bureau of Labor Statistics for Hourly Wage Rates of all workers in manufacturing, and (b) of all Commodity Wholesale Prices, said indices shall be re-defined to the mutual satisfaction of the parties in the event of change in form and basis of indices, all increases shall use the indices for calendar year 2010 as their base; and (iii) the payment of principal and interest, and any associated fees, expenses, and costs, with respect to the Financing.

Operating Expenses means actual, reasonable and customary (for comparable quality, newly constructed rental housing developments in Fresno County) costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the Affordable Project in a calendar year, including, without limitation: painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certificates, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings which are not paid from the capital replacement reserve, fees and expenses of property management and common area expenses, fees and expenses of accountants, attorneys and other professionals, the cost of social services, repayment of any completion or operating loans including any and all deferred contractor's fees per the Budget, made to the Borrower, its successors or assigns, and other actual operating costs and capital costs which are incurred and paid by the Borrower, but which are not paid from reserve accounts.

All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the Agreement. In addition, as used in this Note, the following terms will have the following meanings:

Business Day means any day other than Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day.

Note Maturity Date means 55 years from the Note date.

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust and Assignment of Rents, on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note, and executed in favor of and delivered to the Lender (Deed of Trust), insured as no worse than a 3rd position lien on the Property.

Time is of the essence. It will be a default under this Note if the Borrower defaults under the Agreement, any other Loan Document with the Lender, or this Note and such default continues beyond the notice and cure period as provided in such documents. In the event of a default by the Borrower with respect to any sum payable under this Note and the failure to cure such default within ten days, the Borrower shall pay a late charge equal to the lesser of two percent of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest and then to principal balance. On the occurrence of an uncured default or on the occurrence of any other event that under the terms of the Loan Documents give 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 Lender acknowledges and agrees that it shall send notice of any default hereunder to the limited partners of the Borrower and shall accept any cure offered by such limited partners on the same basis as it would accept a cure from the Borrower.

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

All Loan payments are payable in lawful money of the United States of America at any place that the Lender or the legal holders of this Note may, from time to time, in writing designate.

The Borrower agrees to pay all costs including, without limitation, reasonable attorney fees, incurred by the holder of this Note in the successful enforcement of payment, whether or not suit is filed, and including, without limitation, all costs, reasonable attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the Borrower 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 the Borrower.

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 the Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as acquiescence, nor will any single or partial exercise preclude any further exercise. The Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of the 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:

Except as provided herein or in the Agreement, if the Trustor/Grantor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

The 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 the Borrower, the Lender, and their respective successors and assigns.

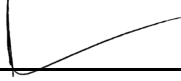
The Borrower and the Lender agree that this Note will be deemed to have been made under and will be governed by the laws of California in all respects, including matters of construction, validity, and performance, and that none of its terms or provisions may be waived, altered, modified, or amended except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

This Note shall be nonrecourse to the Borrower and all its constituent members and may be prepaid at any time without penalty. Neither the Borrower nor any of its general and limited partners shall have any personal liability for repayment of the Loan. The sole recourse of the Lender under the Loan Documents for repayment of the Loan shall be the exercise of its rights against the Property pursuant to the Deed of Trust and the Lender shall have no right to seek or recover any deficiency amount from the Borrower or any partner of the Borrower.

//

IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be executed as of the date and year first above written.

FRESNO QUALITY HOMEKEY, a limited partnership

By:  _____ Date: 11/14/2023
Name: Cullen J Davis
Title: Manager
(Attach notary certificate of acknowledgment)

By: _____ Date: _____
Name: _____
Title: _____
(Attach notary certificate of acknowledgment)

EXHIBIT "G"
EXEMPLAR DEED OF TRUST

Recorded at the Request of
and When Recorded Return to:

City of Fresno
Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721-3605

(SPACE ABOVE THIS LINE FOR
RECORDER'S USE ONLY)

TITLE ORDER NO. _____
A.P.N.: 409-200-43

ESCROW NO. _____

DEED OF TRUST

THIS DEED OF TRUST (Deed of Trust) made this ____ day of _____, 2023, by and between FRESNO QUALITY HOMEKEY, LP (Borrower), Old Republic Title Company, a California Corporation (Trustee), and the City of Fresno, a Municipal Corporation organized and existing under the laws of the State of California whose address is 2600 Fresno Street, Fresno, California 93721 (Beneficiary and Lender).

The Borrower, in consideration of the indebtedness herein recited and the trust herein created, does irrevocably grant and convey to the Trustee, in trust, with power of sale, all the Borrower's right, title, and interest now owned or hereafter acquired in the real property (Land) known as 6051 N. Thesta Street, Fresno, CA 93710 (APN: 409-200-43), located in Fresno County, California and more particularly described in the Attached Exhibit A, incorporated by reference (Borrower agrees that any greater to the Land later acquired during the term of this Deed of Trust will be subject to this Deed of Trust), together with the rents, issues, and profits, subject however, to the right, power, and authority granted and conferred on the Borrower in this Deed of Trust to collect and apply the rents, issues, and profits; and

The Borrower also irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all of the Borrower's right, title and interest now owned or later acquired to the following property (including the rights or interests pertaining to the property) located at the Property:

- (1) All buildings (Buildings) and improvements now or later on the land and all easements, rights, appurtenances, water and water rights, minerals and mineral rights; all machinery, equipment, appliances, and fixtures for the generation or distribution of air, water, heat, electricity, light, fuel, or refrigeration or for ventilating or sanitary purposes or for the exclusion of

vermin or insects or for the removal of dust, refuse, or garbage; all wall safes, built-in furniture, and installations, window shades and blinds, light fixtures, fire hoses and brackets, screens, linoleum, carpets, furniture, furnishings, fixtures, plumbing, laundry tubs and trays, refrigerators, heating units, stoves, water heaters, incinerators, and communication systems and installations for which any Building is specially designed; all of these item, whether now or later installed, being declared to be for all purposes of this Deed of Trust a part of the Land, the specific enumerations in this Deed of Trust not excluding the general;

(2) The rents, issues, profits, and proceeds relating to the foregoing; and

(3) The Property to the extent not included on clauses (1) and (2) above.

TO SECURE, in order of priority that Beneficiary determines:

(1) Payment of the indebtedness evidenced by a note of the Borrower of even date with this Deed of Trust in the principal amount of Four Million Two Hundred Fifty Thousand One Hundred Sixty-Four Dollars and 76/100 (\$4,250,164.76) (Note), payable to Beneficiary or order, and all extensions, modifications, or renewals of that note;

(2) Payment of the interest on that indebtedness according to the terms of the Note;

(3) Payment of all other sums (with interest as provided herein) becoming due and payable to Beneficiary or Trustee pursuant to the terms of this Deed of Trust;

(4) Performance of every obligation contained in this Deed of Trust, the Note, the Community Development Block Grant Program Agreement dated the _____ day of _____, 2023, and its related documents, the Declaration of Restrictions dated the ____ day of _____, 2023, any instrument now or later evidencing or securing any indebtedness secured by this Deed of Trust, and any agreements, supplemental agreements, or other instruments of security executed by the Borrower as of the same date of this Deed of Trust or at any time subsequent to the date of this Deed of Trust for the purpose of further securing any indebtedness amending this Deed of Trust or any instrument secured by this Deed of Trust (collectively the Loan Documents); and

(5) Payment of all other obligations owed by the Borrower to the Beneficiary that by their terms recite that they are secured by this Deed of Trust, including those incurred as primary obligor or as guarantor.

The Borrower covenants that the Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered except for encumbrances of record. The Borrower covenants that the Borrower will forever warrant and will defend the grant made in this Deed of Trust against all claims and demands, subject to encumbrances of record. The

Borrower covenants that the Borrower will maintain and preserve the lien of this Deed of Trust until all the indebtedness under the Note is paid in full.

The Borrower represents and warrants to the Beneficiary that as of the date of this Deed of Trust the Borrower is a validly existing, and in good standing under the laws of the State of California and is qualified to do business in California; that the Borrower has the requisite power and authority to own, develop, and operate the property; and that the Borrower is in compliance with all laws, regulations, ordinances, and orders of public authorities applicable to it.

The Borrower represents and warrants to the Beneficiary that as of the date of this Deed of Trust the execution, delivery, and performance by the Borrower and the borrowings evidenced by the Note are within the power of the Borrower; have been duly authorized by all requisite corporate or partnership actions, as appropriate; has received all necessary governmental approvals; and will not violate any provision of law, any order of any court or agency of government, the charter documents of the Borrower, or any indenture, agreement, or any other instrument to which the Borrower is a party or by which the Borrower or any of its property is bound, nor will they conflict with, result in a breach of, or constitute (with due notice and lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge, or encumbrance of any nature on any of the property or assets of the Borrower, except as contemplated by the provisions of the Loan Documents; and each of the Loan Documents, when executed and delivered to the Beneficiary, will constitute a valid obligation, enforceable in accordance with its terms.

The Borrower represents and warrants to the Beneficiary that as of the date of this Deed of Trust that the Property is not used principally for agricultural or grazing purposes; that the Borrower is engaged in the development and operation of Improvements to the Property; and that the principal purpose of the Loan is the rehabilitation and/or the operation of the Improvements to the Property.

UNIFORM COVENANTS. The Borrower and the Lender covenant and agree as follows:

1. Payment of Principal. The Borrower shall promptly pay when due the principal indebtedness evidenced by the Note.
2. Hazard Insurance. The Borrower, at its sole cost and expense, for the mutual benefit of the Borrower and Beneficiary, shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and, in such amounts, and for such periods as Lender may require as set forth in the CDBG Agreement referenced above.

The insurance carrier providing the insurance shall be chosen by the Borrower subject to approval by the Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to the Lender and shall include a standard mortgage clause in favor

of and in a form acceptable to the Lender. The Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, the Borrower shall give prompt notice to the insurance carrier and the Lender. The Lender may make proof of a loss if not made promptly by the Borrower.

If the Property is abandoned by the Borrower, or if the Borrower fails to respond to the Lender within 30 days from the date notice is mailed by the Lender to the Borrower that the insurance carrier offers to settle a claim for insurance benefits, the Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

3. Preservation and Maintenance of Property. Leaseholds; Condominiums; Planned Unit Developments. The Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, the Borrower shall perform all of the Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. The Borrower shall not permit overcrowded conditions to exist as defined by the U.S. Department of Housing and Urban Development.
4. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then the Lender, at the Lender's option, upon notice to the Borrower, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect the Lender's interest. If the Lender requires mortgage insurance as a condition of making the loan secured by this Deed of Trust, the Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with the Borrower's and the Lender's written agreement or applicable laws.

Any amounts disbursed by the Lender pursuant to this Paragraph 4 shall become additional indebtedness of the Borrower secured by this Deed of Trust. Unless the Borrower and the Lender agree to other terms of payment, such amounts shall be payable upon notice from the Lender to the Borrower requesting payment thereof. Nothing contained in this paragraph 4 shall require the Lender to incur any expense or take any action hereunder.

5. Inspection. The Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that the Lender shall provide the

Borrower notice prior to any such inspection specifying reasonable cause therefore related to the Lender's interest in the Property.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to the Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.
7. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by the Lender to any successor in interest of the Borrower shall not operate to release, in any manner, the liability of the original the Borrower and the Borrower's successors in interest. The Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust be reason of any demand made by the original the Borrower and the Borrower's successors in interest. Any forbearance by the Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be waiver of or preclude the exercise of any such right of remedy.
8. Successors and Assignees Bound; Joint and Several Liability; Co-Signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assignees of the Lender and the Borrower. All covenants and agreements of the Borrower shall be joint and several. Any borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that the Borrower's interest in the Property of Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust or the Note, without that the Borrower's consent and without releasing that the Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.
9. Transferability. One of the inducements to the Beneficiary for making the Loan is the identity of the Borrower. The existence of any interest in the Property other than the interests of the Borrower and the Beneficiary and any encumbrance permitted in this Deed of Trust, even though subordinate to the security interest of the Beneficiary, and the existence of any interest in the Borrower other than those of the present owners, would impair the Property and the security interest of the Beneficiary, and, therefore, except as provided herein or in the Loan Documents, the Borrower will not sell, convey, assign, transfer, alienate, or otherwise dispose of its interest in the Property, either voluntarily or by operation of law, or agree to do so, without the prior written consent of the Beneficiary. Consent to one transaction by the Beneficiary will not be deemed a waiver of the right to require consent to further or successive transactions. If the Borrower is a corporation, any sale, transfer, or disposition of fifty percent or more of the voting interest of the Borrower or of any entity that directly or indirectly owns or controls the Borrower, including, without limitation, the parent company of the Borrower, and the parent company of the parent company of the Borrower, will

constitute a sale of the Property for purposes of this article. If the Borrower is a partnership any change or addition of a general partner of the Borrower, change of a partnership interest of the Borrower, or sale, transfer, or disposition of fifty percent or more of the voting interest or partnership interest of any partner of the Borrower or of any corporation, partnership or entity that directly or indirectly owns or controls any partner of the Borrower, including, without limitation, each parent company of a partner of the Borrower and each parent company of any parent company of a partner of the Borrower, will constitute a sale of the Property for purposes of this section. If the Borrower is a limited liability company, any change of the manager or any sale, transfer or disposition of fifty percent or more of the partnership interests of the Borrower, or disposition of fifty percent or more of the voting interest of the Borrower or of any corporation, partnership or entity that directly or indirectly owns or controls any member of the Borrower, including without limitations, each parent company of the Borrower and each parent company of any parent company of a member of the Borrower, will constitute a sale of the Property for purposes of this section. Any transaction in violation of this section will cause all Indebtedness, irrespective of the maturity dates, at the option of the Beneficiary and without demand or notice, immediately to become due, together with any prepayment premium in accordance with the terms of the Note except as prohibited by law.

10. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to the Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to the Borrower at the Property Address or at such other address as the Borrower may designate by notice to the Lender as provided herein, and (b) any notice to lender shall be given by certified mail to the Lender's address stated herein or to such other address as the Lender may designate by notice to the Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to the Borrower or the Lender when given in the manner designated herein.
11. Governing Law; Severability. The State and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Deed of Trust or if the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses", and "attorney's fees" include all sums to the extent not prohibited by applicable law or limited herein.
12. Borrower's Copy. The Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation thereof.

NON-CONFORMING COVENANTS. Borrower and Lender further covenant and agree as follows:

13. Acceleration; Remedies. Upon the Borrower's breach of any covenant or agreement of the Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, the Note or the Program restrictions, Lender prior to acceleration shall give notice to the Borrower as provided in paragraph 10 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date notice is mailed to the Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform the Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of the Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the Lender, at the Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. The Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 13, including, but not limited to, reasonable attorney's fees. If the Lender invokes the power of sale, the Lender shall execute or cause the Trustee to execute a written notice of the occurrence of an event of default and of the Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. The Lender or the Trustee shall mail copies of such notice in the manner prescribed by applicable law. The Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, the Trustee, without demand on the Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as the Trustee may determine.

The Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. The Lender, or the Lender's designee, may purchase the Property at any sale.

The Trustee shall deliver to the purchaser the Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. The Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

14. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to the Borrower's breach, the Borrower shall have the right to have any proceedings begun by the Lender to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment

enforcing this Deed of Trust if: (a) the Borrower pays the Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) the Borrower cures all breaches of any other covenants or agreements of the Borrower contained in this Deed of Trust; (c) the Borrower pays all reasonable expenses incurred by the Lender and Trustee in enforcing the covenants and agreements of the Borrower in paragraph 13 hereof, including but not limited to, reasonable attorney's fees; and (d) the Borrower takes such action as the Lender may reasonably require to assure that the lien of this Deed of Trust, the Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by the Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

15. Nonrecourse. The Borrower shall not have any personal liability for repayment of the loan. The sole recourse of the Lender under the Loan Documents for repayment of the Loan shall be the exercise of its rights against the Property.
16. Withdrawal, Removal and/or Replacement. The General partner of the Borrower pursuant to the terms of a partnership agreement due to violation by a general partner of the terms of a partnership agreement, or a voluntary withdrawal from a partnership by a general partner, and any transfer of limited partnership interest or interests in the same, shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the loan.
17. Lien of Deed of Trust. The Beneficiary agrees that the lien of this Deed of Trust shall be subordinated to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the internal Revenue Code) (the Extended Use Agreement) recorded against the Property, provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Property by instrument of lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code, subject to the limitations upon evictions, terminations of tenancies and increases in gross rents of tenants of low-income units as provided in that Section.
18. Assignment of Rent; Appointment of Receiver; Lender in Possession. As additional security hereunder, the Borrower hereby assigns to the Lender the rents of the Property, provided that the Borrower shall, prior to acceleration under paragraph 13 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 13 hereunder or abandonment of the Property, the Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the Lender, or the receiver, shall be applied first to premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. The Lender and the receiver shall be liable to account only for those rents actually received.

19. Reconveyance. Upon payment of all sums secured by this Deed of Trust, the Lender shall request the Trustee to reconvey the Property and shall surrender this Deed of Trust, and all notes evidencing indebtedness secured by this Deed of Trust to the Trustee. The Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.
20. Substitute Trustee. The Lender at the Lender's option, may from time to time, appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the Fresno County Recorder's Office. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Instrument is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.
21. Statement of Obligation. The Lender may collect a fee not to exceed fifty dollars (\$50.00) for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.
22. Event of Default. Prior to declaring or taking any remedy permitted under Loan Documents, (where applicable) the Borrower's limited partners shall have an additional period of not less than thirty days to cure such alleged default. Notwithstanding the foregoing, in the case of a default that cannot with reasonable diligence be remedied or cured within 30 days, the Borrower's limited partners shall have such additional time as reasonably necessary to remedy or cure such default, but in no event more than ninety days from the expiration of the initial thirty day period above, and if the Borrower's limited partners reasonably believe that in order to cure such default, the Borrower's limited partners must remove the Borrower's general partners in order to cure such default, the Borrower's limited partners shall have an additional 30 days following the effective date of such removal to cure such default. To the extent that there is a conflict between this paragraph 22 and any remedy permitted by the CDBG Agreement, Loan Documents, or Loan, the terms of this paragraph 22 shall control.

The following events are each an "Event of Default":

- (a) Default in the payment of any sum of principal or interest when due under the Note or any other sum due under the Loan Documents.
- (b) Failure to maintain insurance as provided in Section 2 hereof.
- (c) The failure (without cure during the applicable period, if any, for cure) of any Borrower to observe, perform, or discharge any obligation, term, covenant, or condition of any of the Loan Documents, any agreement relating to the Property, or any agreement or instrument between any Loan Party and the Beneficiary.

- (d) The assignment by the Borrower, as lessor or sublessor, as the case may be, of the rents or the income of the Property or any part of it (other than to Beneficiary) without first obtaining the written consent of Beneficiary.
- (e) The following events:
 - (i) the filing of any claim or lien against the Property or any party of it, whether or not the lien is prior to this Deed of Trust, and the continued maintenance of the claim or lien for a period of thirty days without discharge, satisfaction, or adequate bonding in accordance with the terms of this Deed of Trust;
 - (ii) the existence of any interest in the Property other than those of the Borrower, the Beneficiary, any tenants of the Borrower, and anyone listed in a title exception approved by Beneficiary in writing; or
 - (iii) the sale, hypothecation, conveyance, or other disposition of the Property except with the express written approval of the Beneficiary, any of which will be an Event of Default because the Borrower's obligation to own and operate the Property is one of the inducements to the Beneficiary to make the Loan;
- (f) Default under any agreement to which the Borrower is a party, which agreement relates to the borrowing of money by the Borrower from the Beneficiary.
- (g) Any presentation or warranty made by any Loan Party or any other Person under this Deed of Trust or in, under, or pursuant to the Loan Documents, is false or misleading in any material respect as of the date on which the representation or warranty was made.
- (h) Any of the Loan Documents, at any time after their respective execution and delivery and for any reason, cease to be in full force or are declared null and void, or the validity or enforceability is contested by the Borrower or any stockholder or partner of the Borrower, or the Borrower denies that it has any or further liability or obligation under any of the Loan Documents to which it is a party.

If one or more Event of Default occurs and is continuing, then the Beneficiary may declare all the Indebtedness to be due and the Indebtedness will become due without any further presentment, demand, protest, or notice of any kind, and Beneficiary may:

- (i) in person, by agent, or by a receiver, and without regard to the adequacy of security, the solvency of the Borrower, or the existence of waste, enter on and take possession of the Property or any part of it in its own name or in the name of Trustee, sue for or otherwise collect the rents, issues, and profits, and apply them, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon the Indebtedness, all in any order that the Beneficiary may determine. The entering on and taking possession of the Property, the collection of rents, issues, and profits, and the application of them will not cure or waive any default or notice of default or invalidate any act done pursuant to the notice;

(ii) commence an action to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages of real property;

(iii) deliver to the Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause the Property to be sold, which notice the Trustee or the Beneficiary will cause to be filed for record;

(iv) with respect to any Personalty, proceed as to both the real and personal property in accordance with the Beneficiary's rights and remedies in respect of the Land, or proceed to sell the Personalty separately and without regard to the Land in accordance with Beneficiary's rights and remedies; or

(v) exercise any of these remedies in combination or any other remedy at law or in equity.

23. Protection of Security.

If an Event of Default occurs and is continuing, the Beneficiary or the Trustee, without notice to or demand upon the Borrower, and without releasing the Borrower from any obligations or defaults may:

(a) enter on the Property in any manner and to any extent that either deems necessary to protect the security of this Deed of Trust;

(b) appear in and defend any action or proceeding purporting to affect, in any manner, the Obligations or the Indebtedness, the security of this Deed of Trust, or the rights or powers of Beneficiary or Trustee;

(c) pay, purchase, or compromise any encumbrance, charge, or lien that in the judgment of Beneficiary or Trustee is prior or superior to this deed of Trust; and

(d) pay expenses relating to the Property and its sale, employ counsel, and pay reasonable attorneys' fees.

The Borrower agrees to repay on demand all sums expended by the Trustee or the Beneficiary pursuant to this section with interest at the Note Rate of Interest, and those sums, with interest, will be secured by this Deed of Trust.

24. Effect of Assignment.

The assignment rents as provided herein will not impose on the Beneficiary any duty to produce rents, issues, or profits from the Property, or cause Beneficiary to be:

(a) a "mortgage-in-possession" for any purpose;

(b) responsible for performing any of the obligations of the lessor under any of the Leases; or

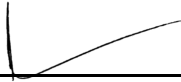
(c) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property.

The Beneficiary will not be liable to the Borrower or any other party as a consequence of the exercise of the rights granted to the Beneficiary under this assignment or the failure of the Beneficiary to perform any obligation of the Borrower arising under Leases.

///

IN WITNESS WHEREOF, the Borrower has executed this Deed of Trust on the day and year set forth above. By signing below, the Borrower agrees to the terms and conditions as set forth above.

BORROWER
FRESNO QUALITY HOMEKEY, a
Limited Partnership

By:  _____
Name: Cullen J Davis
Title: Manager
(Attach notary certificate of acknowledgment)

Date: _____

By: _____
Name: _____
Title: _____
(Attach notary certificate of acknowledgment)

Date: _____

EXHIBIT "A"
Legal Description
To Deed of Trust

Parcel "B" of Parcel Map No. 89-25, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 50 Pages 43 and 44 of Plats, Fresno County Records.

APN 409-200-43

The following is a copy of provisions (1) to (14), inclusive, of the fictitious deed of trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein

To Protect the Security of This Deed of Trust, Trustor (herein Borrower) Agrees:

(1) To keep said property in good condition and repair, not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof, not to commit, suffer or permit any act upon said property in violations of law to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide maintain and deliver to the Beneficiary fire insurance satisfactory to and with loss payable to the Beneficiary. The amount collected under any fire or other insurance policy may be applied by the Beneficiary upon indebtedness secured hereby and in such order as the Beneficiary may determine, or at option of the Beneficiary the entire amount so collected or any part thereof may be released to Borrower. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To 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 to pay all costs and expenses including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which the Beneficiary or the Trustee may appear, and in any suit brought by the Beneficiary to foreclose this Deed of Trust.

(4) To pay at least 10 days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto, all costs, fees and expenses of this Trust.

Should the Borrower fail to make any payment or to do any act as herein provided, then the Beneficiary or the Trustee, but without obligation so to do and without notice to or demand upon the Borrower and without releasing the Borrower from any obligation hereof, 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 upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto, and in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by the Beneficiary or the Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to the Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, the Beneficiary does not waive his rights either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefor and without notice, upon written request of the Beneficiary and presentation of this Deed and said Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, the Trustee may reconvey any part of said property, consent to the making of any map or plot thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of the Beneficiary state that all sums secured hereby have been paid, and upon surrender of this Deed and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property 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" five years after issuance of such full reconveyance, the Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, the Borrower hereby gives to and confers upon the Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto the Borrower the right, prior to any default by the Borrower in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect the rents, issues and profits of said property, reserving unto the Borrower the right, prior to any default by the Borrower in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable

attorney's fees. Upon any indebtedness secured hereby, and in such order as the Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by the Borrower in payment of any indebtedness secured hereby or in performance of any agreement hereunder. The Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property which notice Trustee shall cause to be filed for record. The Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, the Trustee, without demand on the Borrower, shall sell said property at the time and place fixed by it in said 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 said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Borrower, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of the Trustee and of this Trust, including cost of evidence of title in connection with sale, the Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof, all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

(12) The Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original the Borrower, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby whether or not named as Beneficiary herein in this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Borrower, Beneficiary or Trustee shall be a party unless brought by Trustee.

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid:

To Old Republic Title Company, Trustee:

Dated _____

The undersigned is the legal owner and holder of all indebtedness secured by the Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

MAIL RECONVEYANCE TO: By _____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.