

Regular Council Meeting
November 3, 2022

FRESNO CITY COUNCIL



Supplement Packet

ITEM(S)

3-C (22-1698)

Actions related to the One Fresno Housing Strategy to fund a Mixed Income Neighborhood Trust:

[TITLE TRUNCATED FOR SUPPLEMENTAL PACKET COVER PAGE]

Contents of Supplement: Resolution and Agreement

Item(s)

Supplemental Information:

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

Americans with Disabilities Act (ADA):

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

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, APPROVING FUNDING FOR THE
CENTRAL FRESNO NEIGHBORHOOD TRUST TO
IMPLEMENT A MIXED INCOME NEIGHBORHOOD TRUST
PROGRAM

WHEREAS, the City of Fresno (City) expressed an interest in ensuring residents have access to safe and habitable housing; and

WHEREAS, the City's most recent federal Annual Performance Report on Housing showed severe underproduction of homes for low-income families; and

WHEREAS, public and philanthropic funding to subsidize affordable housing is scarce and insufficient to meet the City's needs; and

WHEREAS, the Lowell Community Development Corporation and Trust Neighborhoods have co-sponsored the creation of the Central Fresno Neighborhood Trust (CFNT), a Mixed-Income Neighborhood Trust (MINT) in Central Fresno; and

WHEREAS, CFNT aims to develop, own, and operate mixed-income rental properties throughout the City's neighborhoods; and

WHEREAS, CFNT intends to create long-term, quality affordable rental housing, with the goals to: give the community more control over real estate development; preserve affordable rents in perpetuity to protect renters at risk of displacement; offer high quality rental units as an alternative to negligent landlords; and allow residents to stay in these communities as they change and grow as set forth in its Program Guidelines attached hereto as Exhibit "A"; and

WHEREAS, due to the needs of the local rental market, and the severe

1 of 6

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:



Resolution No. _____

underproduction of homes for families of low- and moderate-income, the community as a whole is negatively impacted such that an income restriction of up to 80% of annual median income is justified in Fresno; and

WHEREAS, on April 27, 2022, the City unveiled its One Fresno Housing Strategy which outlined 47 priorities to address Fresno's three-year housing needs; and

WHEREAS, one of the 47 recommendations contained within the One Fresno Housing Strategy placed priority on partnering with a MINT by way of a one-time allocation of American Rescue Plan Act funding.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. Central Fresno Neighborhood Trust shall be funded with a one-time allocation of \$1,950,000 in American Rescue Plan Funds, subject to a Grant Agreement requiring CFNT to:

- a. Acquire and rehabilitate 50 units of rental housing;
- b. Hold title to these units in the Central Fresno Neighborhood Trust;
- c. Restrict 100% of these units for residents who earn no more than 80% of annual median income; and
- d. Provide affordable housing for no fewer than 55 years.

2. The grant will be disbursed in two installments:

- a. \$1,000,000 will become immediately available for reimbursement upon adoption of this Resolution and pursuant to the terms of the Grant Agreement;
- b. \$950,000 will become available for reimbursement once CFNT

meets the following benchmarks:

- i. 10 of the 50 units have been completed;
 - ii. An additional \$2,000,000 in capital is raised for the Project;
- 3. This resolution is subject to all City rules and regulations.
 - 4. This resolution shall be effective upon final approval.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2022.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2022
Mayor Approval/No Return: _____, 2022
Mayor Veto: _____, 2022
Council Override Vote: _____, 2022

TODD STERMER, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
RINA M. GONZALES
Interim City Attorney

BY: _____
Tracy N. Parvanian Date
Supervising Deputy City Attorney

Attachment:
Exhibit A – Central Fresno Neighborhood Trust Program Guidelines

Exhibit A – Central Fresno Neighborhood Trust Program Guidelines

Program Guidelines 01

Funding Sources

- American Rescue Plan Act Fund - \$1,950,000

Supported Programs and Activities

Mixed-Income Neighborhood Trust (Central Fresno Neighborhood Trust)	DETAIL
GOAL:	Central Fresno Neighborhood Trust (CFNT) will promote (a) affordable rents; (b) quality housing; and (c) neighborhood accountability and oversight by developing, owning, and operating mixed-income rental properties throughout a neighborhood.
AFFORDABLE HOUSING:	<p>CFNT intends to acquire, rehab, and manage 50 units in the neighborhood in under 18 months in its Phase I. With an initial \$1 million investment from the Chan-Zuckerberg Initiative, CFNT has already secured control over 9 units.</p> <ul style="list-style-type: none">• Size: ~First 50 units in 18 months• Typology: Primarily smaller multi-family buildings (2-6 units)• Geography: Central Fresno (neighborhoods in and around downtown)• Unit Mix: 100% affordable<ul style="list-style-type: none">○ All restricted to maximum 80% AMI○ Targeting a majority at deeper levels of affordability• Total Delivered Cost: \$145k/unit average (includes acquisition + rehab cost and Developers' fees)
TARGET CAPITAL STACK :	Bank Debt \$1.7 million Subordinated Debt \$3.05 million City Contribution \$1.95 million Equity \$1 million

RESIDENT OVERSIGHT COMMITTEE (TRUST STEWARDSHIP COMMITTEE):	<ul style="list-style-type: none"> • Lowell CDC Representative • Community Organization Representatives (2) • Community Member • Renter
OPERATING BOARD:	<p>Esther Carver, <i>Executive Director of Lowell CDC</i> Kavya Shankar, <i>Chief Operating Officer of Trust Neighborhoods</i> Hector Chavez, <i>Executive Director of Hidalgo CDC</i> Miguel Arambula, <i>Project Manager at Self-Help Enterprises; board member of Southwest Development Corporation & South Tower Community Land Trust</i> Allysunn Walker, <i>Former Chief Development Officer, Fresno Housing Authority, Board member of Southwest Development Corporation</i> Emily De La Guerra, <i>Former Chief Business Officer, Fresno Housing Authority</i> Jessica Berzac, <i>President & Co-owner of UPholdings</i></p>

PRIORITIZATION AND REFERRALS:

CFNT will maintain the current lease terms for tenants of acquired buildings. When units become available for rent, CFNT will actively market to the Central Fresno neighborhoods and is committed to serving the full racial, ethnic, socioeconomic, and cultural diversity of the residents throughout Central Fresno, to the extent legally possible pursuant to the Fair Housing Act.

ANTI-DISPLACEMENT:

The Central Fresno Neighborhood Trust will be legally mandated by a trust agreement to protect against displacement, including prioritizing existing residents in the provision of affordable housing. In the event an occupied unit is undergoing rehabilitation that cannot be completed while occupied, then tenants will be offered the opportunity to relocate to a vacant unit or provided hotel accommodations until the rehabilitation can be completed.

**STATE AND LOCAL FISCAL RECOVERY FUNDS
(PART OF THE AMERICAN RESCUE PLAN)
GRANT AGREEMENT
FOR CREATION OF A MIXED INCOME NEIGHBORHOOD TRUST**

This State and Local Fiscal Recovery Funds Agreement (Agreement) is entered into on November __, 2022, by and between the City of Fresno, a municipal corporation, (CITY), and CFNT Holdings LLC, a California limited liability company (CFNT).

RECITALS

A. WHEREAS, the CITY has received State and Local Fiscal Recovery Funds (SLFRF) from the U.S. Department of the Treasury under the American Rescue Plan Act (Pub.L. 117-2) (Act) and is subject to any constraints set forth therein including but not limited to, the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Final Rule (31 CFR Part 35).

B. WHEREAS, the City has elected to use a portion of the SLFRF allocation to support the COVID-19 Public Health and Economic Response to address impact on households by using funds to support affordable housing development, an eligible use of funds under the Act.

C. WHEREAS, the Project, as defined below, serves the intent of the SLFRF Program by selecting households that meet the qualifications of the U.S Department of Housing and Urban Development, HOME Investment Partnerships Program.

D. WHEREAS, to advance the supply of affordable rental housing within the City of Fresno, the CITY desires, among other things, to encourage investment in the affordable rental housing market.

E. WHEREAS, CFNT desires to act as the owner/developer/operator exercising effective Project control, as to the acquisition/rehabilitation of mixed-income units assisted with SLFRF and preserved as Low- to Moderate-Income rental housing, as defined by the SLFRF Program, and related on-site and off-site improvements as more particularly described in EXHIBIT "A" – Project Description and Schedule, incorporated herein (Project).

F. WHEREAS, CFNT will acquire and rehabilitate units upon SLFRF Program-eligible Property (Property) to be owned by CFNT.

G. WHEREAS, due to the needs of the local rental market, and the severe under production of homes for families of low and moderate-income, the community as a whole is negatively impacted such that an income restriction of up to 80% of annual median income is justified in Fresno.

H. WHEREAS, to further its goal to increase the supply of Affordable Housing within the City of Fresno, the CITY desires to assist CFNT by providing a One Million Nine Hundred Fifty Thousand Dollars and 00/100 (\$1,950,000.00) SLFRF Program Grant to the Project (Grant) upon the terms and conditions in this Agreement.

I. WHEREAS, the CITY has determined that this Agreement is in the best interest of, and will materially contribute to, the Housing Element of the General Plan. Further, the CITY has found that the Project: (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- to Moderate-Income Housing available at an affordable cost to Low- to Moderate-Income household, as defined hereunder, (v) planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of Low- to Moderate-Income Housing, and (vi) will comply with any and all owner participation rules and criteria applicable thereto.

J. WHEREAS, the CITY and CFNT have determined that CFNT activities constitute routine programmatic/grantee activities utilizing available and allocated program/grantee funding, outside the reach of the California Constitution Article XXXIV and enabling legislation.

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

L. WHEREAS, on October 28, 2022, CFNT's Board reviewed and approved the Project and SLFRF Application for funding.

NOW, THEREFORE, IN CONSIDERATION of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledge, the parties agree as follows:

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 in fee title to CFNT.

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

1.3 Affordability Period means the minimum period of 55 years from the date of execution of this Agreement .

1.4 Affordable Housing or Affordable Rental Housing means all the 50 Units required to meet the affordability requirements of the SLFRF for 55 years.

1.5 Certificate of Completion means that certificate issued, in a form substantially similar to that attached as EXHIBIT "B" (Exemplar Certificate of Completion), to CFNT by the CITY evidencing completion of a Project property and a release of related covenants for the purposes of the Agreement.

1.6 CFR means the Code of Federal Regulations.

1.7 Completion Date means the date the City issues a recorded Certificate of Completion for Project property. The Completion of the Project is identified in EXHIBIT "B".

1.8 Declaration of Restrictions means the Declaration of Restrictions in the form attached hereto as Exhibit "C", which contains the affordability covenants and income level

restrictions of this Agreement which shall run with the land and which the GRANTEE shall record or cause to be recorded against the Project Property at the close of Escrow.

1.9 Eligible Costs means the SLFRF eligible acquisition/rehabilitation costs funded by the Grant allowable under SLFRF regulations, however, costs incurred in connection with any activity that is determined to be ineligible under the SLFRF shall not constitute Eligible Costs.

1.10 Event of Default shall have the meaning assigned to such term under Section 10.1 hereunder.

1.11 Family has the same meaning given that term in 24 CFR 5.403.

1.12 Federal SLFRF Funds (also referred to in this Agreement as "SLFRF Funds" or "Funds") means the federal SLFRF monies consisting of the Grant, in an amount not to exceed the sum of One Million Nine Hundred Fifty Thousand Dollars and 00/100 (\$1,950,000.00) to be used for eligible Project rehabilitation/construction costs.

1.13 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.

1.14 Household means the group of persons occupying a given SLFRF-Assisted Unit within the Project.

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

1.16 Low- to Moderate-Income Households are those with (i) income at or below 300% of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines or (ii) income at or below 65 to 80% of the area median income for the county and size of household based on the most recently published data.

1.17 Project means the acquisition, rehabilitation, and leasing of 50 affordable housing units to be preserved as Affordable Rental Housing.

1.18 Project Schedule means the schedule for commencement and completion of the Project included in EXHIBIT "A".

1.19 Property or Project Property means the properties to be acquired by CFNT and owned and operated by CFNT.

1.20 Unit, Project Unit, or Affordable Units means one or more of the 50 SLFRF-assisted Units to be acquired/rehabilitated upon eligible Property and preserved as Affordable Housing Units for the duration of the 55-year Affordability Period.

1.21 U.S. Department of Treasury means the United States Department of Treasury.

ARTICLE 2. TERMS OF THE GRANT

2.1 Grant of SLFRF Funds. The CITY agrees to provide a Grant of SLFRF Funds to CFNT, in an amount not to exceed One Million Nine Hundred Fifty Thousand Dollars and 00/100 (\$1,950,000.00), all under the terms and conditions provided in this Agreement. The SLFRF Funds shall be used for payment of eligible acquisition/rehabilitation costs.

2.2 Term of Agreement. This Agreement is effective upon the date of full 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 CFNT.

2.3 Incorporation of Documents. If applicable, the CITY Council approved minutes approving this Agreement, the Grant Documents, the SLFRF regulations 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.

2.4 Covenants of CFNT. CFNT for itself and its agents/assigns covenants and agrees to comply with all the terms and conditions of this Agreement and the requirements of the SLFRF, as amended.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF CFNT

3.1 Existence and Qualification. CFNT represents and warrants to the CITY as of the date hereof, that CFNT is a duly organized California limited liability company in good standing with the State of California; CFNT has the requisite power, right, and legal authority to execute, deliver, and perform its obligations under the Agreement and 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 CFNT [is] enforceable against CFNT 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. CFNT 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 CFNT's knowledge, is any such litigation or proceeding now threatened, or anticipated against CFNT that, if adversely determined, would have a material adverse effect on the financial condition, business, or assets of CFNT or on the operation of the Project.

3.3 No Conflict of Interest. CFNT 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 CFNT, and no person, directly or indirectly owning or controlling any interest in CFNT, is an official, officer, agent, or employee of the CITY.

3.4 No Legal Bar. CFNT represents and warrants to the CITY, as of the date hereof that the execution, delivery, performance, or observance by CFNT of this Agreement will not, to the best of CFNT'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 CFNT; or (c) any mortgage, indenture, security agreement, contract, undertaking, or other agreement or instrument to which CFNT is a party or that is binding on any of its properties or assets, the result of which would materially or substantially impair CFNT's ability to perform and discharge its obligations or its ability to complete the Project under this Agreement.

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

3.6 No Litigation Material to Project. CFNT 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 CFNT 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 CFNT'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. CFNT represents and warrants to the CITY, as of the date hereof, that CFNT has obtained and, to the best of the CFNT'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 CFNT for the Project as of the date hereof.

ARTICLE 4. WARRANTIES AND COVENANTS OF CFNT

CFNT, for itself and its development team covenants and warrants that:

4.1 Affirmative Marketing. CFNT warrants, covenants and agrees with the CITY that it shall comply with all affirmative marketing requirements, including without limitation, those set out at 24 CFR 92.350 and 92.351, in order to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the Central Fresno housing market in the rental of the Project Units. CFNT shall maintain records of actions taken to affirmatively market units acquired/rehabilitated in the future, and to assess the results of these actions.

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

4.3 Compliance with Agreement. CFNT warrants, covenants and agrees that, in accordance with the requirements of the SLFRF Act, upon any uncured default by CFNT within the meaning of Article 10.1 of this Agreement, the CITY may suspend or terminate this

Agreement and all other agreements with CFNT without waiver or limitation of rights/remedies otherwise available to the CITY.

4.4 Conflict of Interest. CFNT warrants, covenants and agrees that it shall comply with the Conflict-of-Interest requirements including, without limitation, that no officer, employee, agent, or consultant of CFNT, unless otherwise explicitly provided herein, may occupy a Project Unit. CFNT understands and acknowledges that no employee, agent, consultant, officer or elected official or appointed official of the CITY, who exercises any functions or responsibilities with respect to the Project, or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for anyone with which that person has family or business ties, during his or her tenure or for one year thereafter.

A. Notwithstanding the restrictions outlined in Section 4.4, occupants of a Project Unit serving as members of CFNT's governing bodies (including its board of managers and the stewardship committee governing any trust holding CFNT's Class A membership interest) may, on a case by case basis, be exempt from Conflict of Interest requirements, provided that these individuals do not comprise a majority of their respective governing body.

B. Notwithstanding the restrictions outlined in Section 4.4, CFNT may request limited exemption from Conflict-of-Interest requirements for Project Unit occupants desiring to perform specific tasks in advancement of the Project. Approvals of such requests shall be addressed promptly and shall not be unreasonably withheld.

4.5 Covenants and Restrictions to Run with the Land. The CITY and CFNT 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.

A. The CITY and CFNT hereby declare their understanding and intent that the covenants and restrictions set forth herein directly benefit the land by: (a) enhancing and increasing the enjoyment and occupancy of the proposed Project by a certain Low- to Moderate-Income Households, and (b) making possible the obtaining of advantageous financing for acquisition/rehabilitation. CFNT 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 all Affordable Units to be rented as Affordable Housing for Low- to Moderate-Income Households.

B. 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.

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. Notwithstanding the foregoing, CFNT may request exemption from this clause if property sales are necessary to cover debt service, fund repairs, or otherwise provide for support of CFNT's operation as a going concern.

C. 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.

4.6 Displacement of Persons. CFNT covenants and agrees with the CITY that pursuant to 24 CFR 92.353, it will take reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations and farms).

4.7 Initial and Annual Income Certification and Reporting. CFNT covenants and agrees with the CITY that it shall comply with the procedures for annual income determination. CFNT, shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from the Project Unit Household members. CFNT shall make a good faith effort to verify that the income provided by an applicant or occupying Household in an income certification is accurate by taking one or more of the following steps as part of the verification process: (1) obtain a pay stub for the three most recent pay periods; (2) obtain an income verification form from the applicant's current employer; (3) obtain an income verification form from the Social Security Administration and California Department of Social Services if the applicant receives assistance from either of such agencies; (4) obtain income tax return for the most recent year; (5) if the applicant is unemployed and/or does not have the ability to provide (1) through (4), obtain another form of independent verification. Copies of Household income certification and verification must be available for review and approval by the CITY prior to initial lease up. CFNT further warrants, covenants and agrees that it will cooperate with the CITY in the CITY's income certification/affordability monitoring activities, provided such activities are not unreasonably burdensome on CFNT's operations.

4.8 Lead-Based Paint. CFNT 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 CFR Part 35, including the HUD 1012 Rule, and 24 CFR 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. CFNT 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. CFNT shall be responsible for all disclosure, inspection, testing, evaluation, and control and abatement activities.

4.9 Minority Outreach Activities. CFNT covenants and agrees with the CITY that it shall comply with all federal laws and regulations described in Subpart H of 24 CFR Part 92, including, without limitation, any requirement that CFNT comply with the CITY's minority

outreach program.

4.10 Other Laws and Regulations. CFNT covenants and agrees with the CITY that, in addition to complying with the federal laws and regulations already cited in this Agreement, CFNT 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 SLFRF, including, without limitation, requirements of the Act (Pub.L. 117-2), CSLFRF Final Rule (31 CFR Part 35), 24 CFR 58.6 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128) and the following:

A. CFNT 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 and rehabilitation costs of the Project. The Project is not located in a tract identified by the Federal Emergency Management Agency as having special flood requirements.

B. The property standards at 24 CFR 92.251.

C. The Project "Labor" requirements, as applicable, of 24 C.F.R. 92.354 including Davis Bacon prevailing wage requirements (40 U.S.C. 276a - 276a-7), as supplemented by Department of Labor regulations (29 CFR Part 5). The provisions of Section 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as applicable as supplemented by Department of Labor Regulations (29 CFR Part 5), in regards to the construction and management of the proposed Project. CFNT and its contractors, subcontractors and service providers for the Project, shall comply with all applicable local, State and federal requirements concerning equal employment opportunity, including compliance with Executive Order (E.O.) 11246, "Equal Employment Opportunity", as amended by E.O. 11375, (amending E.O. 11246 Relating to Equal Employment Opportunity), and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor".

D. The provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR 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").

E. The provisions of the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

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

G. The provision of E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24.

H. The provisions of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

I. Title 8 of the Civil Rights Act of 1968 PL. 90-284.

J. E.O. 11063 on Equal Opportunity and Housing.

K. Section 3 of the Housing and Urban Development Act of 1968.

L. The Housing and Community Development Act of 1974.

M. Clean Water Requirements 33 U.S.C. 1251.

N. Civil Rights Requirements, 29 U.S.C. 623, 42 U.S.C. 2000, 42 U.S.C. 6102, 42 U.S.C 12112, 42 U.S.C. 12132, 49 U.S.C 5332, 29 C.F.R. Part 1630, 41 C.F.R. and Part 60 et seq.

O. Recipients of SLFRF Funds shall comply with 2 CFR Part 200, Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly called the 'Uniform Guidance').

P. 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 period of affordability, and inclusion of VAWA lease addendum requirements.

Q. CFNT shall comply with broadband infrastructure requirements for new housing and rehabilitation projects as set forth in 24 CFR 92.251.

4.11 Faith Based Activities. CFNT warrants, covenants and agrees with the CITY that it shall not engage in any prohibited activities described in 24 CFR 92.257.

4.12 Reporting Requirements. CFNT warrants, covenants and agrees with the CITY that it shall submit performance reports to the CITY as detailed in Section 7.17. Furthermore, CFNT agrees to provide, at the sole cost of CFNT, an annual audited Financial Statement for the Project expenses and ongoing financial transactions which occur as a result of this Agreement as detailed in Section 5.6. CFNT agrees to account for the expenditure of SLFRF Funds using generally accepted accounting principles, which financial documentation shall be made available to the CITY upon written request(s). Recipients of SLFRF Funds shall comply with 2 CFR Part 200, Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly called the "Uniform Guidance").

4.13 Housing Affordability. CFNT covenants and agrees with the CITY that all Affordable Units will be rented to Low- to Moderate-Income Households for the Affordability Period except upon foreclosure or other transfer in lieu of foreclosure following default under a Deed of Trust. However, if at any time following a transfer by foreclosure or transfer in lieu of foreclosure, but still during the Affordability Period, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes such owner of record those whom such owner of record has or had business ties, obtains an ownership interest in the Project or the Property, the Affordability Period shall be revived according to its original terms. In the event the CFNT fails to comply with this Section or the Affordability Period is not revived following transfer by foreclosure or transfer in lieu of foreclosure, CFNT shall receive no further reimbursements from the City.

4.14 Terminated Projects. CFNT 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 SLFRF assistance funding to the Project Units.

ARTICLE 5. PROPERTY MAINTENANCE

CFNT covenants and agrees to the following, for the entire term of the Agreement.

5.1 Adequate Repair and Maintenance. CFNT during its time on title shall cause the maintenance to the properties to be in compliance with all applicable codes, laws, and ordinances.

5.2 Affordable Rental Housing. CFNT covenants and agrees that the Project shall constitute a total of fifty Units for rent be preserved as Affordable Rental Housing during the entire Affordability Period. This covenant shall remain in effect and run with and restrict the land during the entirety of the Affordability Period. In the event CFNT fails to comply with the time period in which the Affordable Units constitute Affordable Housing, the CITY shall without waiver or limitation, be entitled to injunctive relief, as CFNT acknowledges that damages are not adequate remedy at law for such breach.

5.3 Compliance with Environmental Laws. CFNT shall cause the Affordable Units to be in compliance with, and not to cause or permit the Project to be in violation of, any Hazardous Materials law, rule, regulation, ordinance, or statute. Although the CITY will utilize its employees and agents for regular inspection and testing of the eligible Property, CFNT agrees that, if the CITY has reasonable grounds to suspect any such violation, CFNT shall be entitled to 30 days' notice and opportunity to cure such violation, provided that if the specified deficiency or default cannot reasonably be cured within the specified time, CFNT 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. If the suspected violation is not cured, the CITY shall have the right to retain an independent consultant to inspect and test the eligible Property for such violation. If a violation is discovered, CFNT shall pay for the reasonable cost of the independent consultant.

Additionally, CFNT agrees:

A. That the CITY shall not be directly or indirectly responsible, obligated or liable with the inspection, testing, removal or abatement of asbestos or other hazardous or toxic chemicals, materials, substances, or wastes and that all cost, expense and liability for such work shall be and remain solely with the CFNT or its contractors or subcontractors;

B. Not to transport to, or from, the proposed Property, or use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, or about the Property, or surrounding real estate, or transport to or from the Project site, or surrounding real estate, any hazardous or toxic chemicals, materials, substance, or wastes or allow any person or entity to do so except in such amounts and under such terms and conditions permitted by applicable laws, rules, regulations, ordinances, and statutes;

C. To give prompt written notice to the CITY of the following:

(i) Any proceeding or inquiry by any governmental authority with respect to the presence of any hazardous or toxic chemicals, materials, substance, or waste in or on the eligible Property or the surrounding real estate or the migration thereof from or to other property;

(ii) All claims made or threatened by any third party against CFNT, or such properties relating to any loss or injury resulting from any hazardous or toxic chemicals, materials, substance, or waste; and

(iii) CFNT's discovery of any occurrence or condition on any real

property adjoining or in the vicinity of such properties that would cause such properties or underlying or surrounding real estate or part thereof to be subject to any restrictions on the ownership, occupancy, transferability, or use of the property under any environmental law, rule, regulation, ordinance or statute; and

D. To indemnify, defend, and hold the CITY harmless from any and all claims, actions, causes of action, demand, judgments, damages, injuries, administrative orders, consent agreements, orders, liabilities, penalties, costs, expenses (including attorney's fees and expenses), and disputes of any kind whatsoever arising out of or relating to CFNT or any other party's use of release of any hazardous or toxic chemicals, materials, substance, or waste on the Property regardless of cause or origin, including any and all liability arising out of or relating to any investigation, site monitoring, containment, cleanup, removal, restoration, or related remedial work of any kind or nature.

5.4 Compliance with Laws. CFNT shall promptly and faithfully comply with, conform to and obey all present and future federal, State and local statutes, regulations, rules, ordinances and other legal requirements applicable by reason of this Agreement or otherwise to the Project including without limitation prevailing wage requirements.

In the absence of existing applicable State or local code requirements and ordinances, at a minimum, CFNT shall comply with all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (24 CFR 92.2, Uniform Physical Condition Standards (UPCS)) prescribed by HUD pursuant to 24 CFR 5.705. UPCS means uniform national standards established by HUD pursuant to 24 CFR 5.703 for housing that is decent, safe, sanitary, and in good repair. Standards are established for inspectable items for each of the following areas: site, building exterior, building systems, dwelling units, and common areas, but do not require the use of any scoring, item weight, or level of criticality.

5.5 Existence, Qualification, and Authority. CFNT shall provide to the CITY any evidence required or requested by the CITY to demonstrate the continuing existence, qualification, and authority of CFNT to execute this Agreement and to perform the acts necessary to carry out the Project.

5.6 Financial Statements and Audits. Annually, within 180 days following: 1) the end of fiscal year(s) in which the SLFRF Funds are disbursed hereunder, and 2) the end of fiscal year(s) in which this contract shall terminate, and otherwise upon the CITY's, written request during the term of this Agreement, CFNT, at its sole cost and expense shall submit to the CITY:

A. Audited annual financial statements with notes that are current, signed, and prepared according to generally accepted accounting principles consistently applied (except as otherwise disclosed therein).

B. Audited Financial Statements with the management notes covering the income and expenses, and the financial transactions for the Project during the prior fiscal year.

5.7 Inspection and Audit of Books, Records and Documents. CFNT shall account for all SLFRF Funds disbursed for the Project pursuant to this Agreement. Any duly authorized representative of the CITY shall, at all reasonable times, have access to and the right to inspect, copy, make excerpts or transcripts, audit, and examine all books of accounts,

records, files and other papers or property, and other documents of CFNT pertaining to the Project or all matters covered in this Agreement and for up to six years after the expiration or termination of this Agreement.

A. CFNT will maintain books and records for the Project using generally accepted accounting principles in compliance with Uniform Guidance and in particular, 24 CFR 92.506. CFNT agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with SLFRF Funds and to keep all invoices, receipts and other documents related to expenditures financed with SLFRF Funds for not less than six years after the expiration or termination of the Agreement. Books and records must be kept accurate and current. For purposes of this section, "books, records and documents" include, without limitation; plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, funding applications, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda, and electronically stored versions of the foregoing. This section shall survive the termination of this Agreement.

B. The CITY may audit any conditions relating to this Agreement at the CITY's expense, unless such audit shows a significant discrepancy in information reported by CFNT in which case CFNT shall bear the cost of such audit. CFNT shall also comply with any applicable audit requirements of 24 CFR 92.506. This section shall survive the termination of this Agreement.

C. CFNT will cooperate fully with the CITY in connection with any interim or final audit relating to the Project that may be performed relative to the performance of this Agreement.

5.8 Inspection of Property. Any duly authorized representative of the CITY shall, at all reasonable times and with 72 hours' written notice, have access and the right to inspect the Affordable Housing until completion of the Project expiration of the applicable Affordability Period, subject to the rights of the tenants.

5.9 Nondiscrimination. CFNT shall comply with and cause any and all contractors and subcontractors to comply with any and all federal, State, and local laws with regard to illegal discrimination, and CFNT shall not illegally discriminate against any persons on account of race, religion, sex, family status, age, handicap, or place of national origin in its performance of this Agreement and the completion of the Project.

5.10 Ownership. Except as required in pursuit hereof, CFNT shall not sell, lease, transfer, assign or otherwise dispose (Transfer) all or any material part of any interest it might hold in the Property or the Project without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed. "Transfer" shall exclude the leasing or renting of any single Unit in the Project.

5.11 Payment of Liabilities. CFNT shall pay and discharge in the ordinary course of its business all material obligations and liabilities, the nonpayment of which could have a material or adverse impact on its financial condition, business, or assets or on the operation of the Project, except such obligations and liabilities that have been disclosed to the CITY in writing and are being contested in good faith.

5.12 Report of Events of Default. CFNT shall promptly give written notice to the CITY upon becoming aware of any Event of Default under this Agreement.

ARTICLE 6. DISBURSEMENT OF SLFRF FUNDS

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

6.1 Use of SLFRF Funds. CFNT warrants, covenants and agrees that it shall request SLFRF Funds only for reimbursement of eligible acquisition and rehabilitation costs incurred and as allowable under the SLFRF, aggregating not more than One Million Nine Hundred Fifty Thousand Dollars and 00/100 (\$1,950,000.00). The CITY's obligations shall in no event exceed the SLFRF amount specified in this Agreement. Funds must be used to cover costs incurred by CFNT between March 3, 2021, and December 31, 2024, and funds must be expended by December 31, 2026. All such costs and expenditures must be eligible for payment and in compliance with the allowable expenditures pursuant to Title 31 CFR, Part 35, including but not limited to § 35.6, subsections (b)(3)(ii)(A)(5) and (11). CFNT may use Funds for only the projected cost of the Grant.

A. If any such Funds shall be determined to have been requested and/or used by CFNT for costs other than for eligible acquisition and rehabilitation costs, and subject to the notice and cure provisions of Section 10.2 hereunder, an equal amount from nonpublic funds shall become immediately due and payable by CFNT to the CITY; provided, however, that CFNT 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 SLFRF Funds are requested to reimburse Eligible Costs which subsequently lose eligibility as Eligible Costs, the CITY shall immediately notify CFNT of such development, and CFNT shall immediately return such SLFRF to the CITY provided that the funds have not already been spent and are recoverable without incurrence of substantial loss.

C. The CITY will disburse SLFRF Funds to CFNT through proper invoicing for Eligible Costs of the Affordable Units as provided in this Article 6.

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

A. Prior to execution of this Agreement by the City, CFNT will permit CITY staff to conduct a risk assessment, as required under the Uniform Guidance (2 CFR 200.332(b)). Failure to allow City staff to conduct this risk assessment may result in the City terminating this Agreement. Additionally, CFNT's failure to be certified by City staff at the end of the risk assessment as having adequate internal controls to manage the funding provided in this agreement may result in the City terminating this Agreement.

B. There exists no Event of Default as provided in Article 10, 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.

C. The CITY has approved the requested reimbursement of Eligible Costs.

D. CFNT has obtained insurance coverage and delivered to the City evidence of insurance as required in Article 9.

E. CFNT is current with its compliance of reporting requirements set forth

in this Agreement.

F. CFNT has provided the CITY with a written request for SLFRF Funds (provided by the CITY), for reimbursement of eligible Project construction costs, and detailing such Eligible Costs applicable to the request.

G. The CITY has received certification required by Section 6.4 of this Agreement.

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

6.3 Requests for Reimbursement of SLFRF Funds. CFNT shall request that the CITY reimburse funds for eligible acquisition and rehabilitation cost using the CITY's Request for Disbursement of Funds form. CFNT shall only request a maximum of One Million Dollars (\$1,00,000.00) in SLFRF assistance for reimbursement until the following conditions are met:

A. Ten Project Units are completed.

B. Proof of Two Million Dollars (\$2,000,000) in additional capital has been raised by CFNT for the Project; for the avoidance of doubt, additional capital shall include, without limitation, a committed guidance line from a financial institution, as evidenced by a letter of commitment.

All requests should provide in detail such Eligible Costs applicable to the request. After the conditions in this Section have been met, CFNT may request reimbursement for the remaining \$950,000 of the Grant. All requests for SLFRF reimbursement shall be accompanied with the Certification required by Section 6.4 of this Agreement.

6.4 CFNT Certification. CFNT 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. CFNT 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 Reimbursement; and

C. CFNT 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 of funds shall be used solely for reimbursement of Eligible construction 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 construction of the Project.

6.5 Disbursement of Funds. The disbursement of SLFRF Program Grant Funds shall occur within the normal course of CITY business (approximately 30 days) after the CITY receives the Certification and Request for Reimbursement with correct supporting documentation and to the extent of annually allocated and available SLFRF Funds.

ARTICLE 7. ACQUISITION AND REHABILITATION OF THE PROJECT

Without waiver of limitation, the parties agree as follows:

7.1 Commencement and Completion of Project. CFNT shall commence acquisition and rehabilitation of the Project, and when a Project property is completed, record a Notice of Completion and provide the CITY with a copy of the recordation.

7.2 Contracts and Subcontracts. Consistent with Section 5.3, all hazardous waste abatement, construction work and professional services, for the Project shall be performed by persons or entities licensed or otherwise legally authorized to perform the applicable work or service in the State of California and the City of Fresno. CFNT shall provide the CITY with copies of all agreements it has entered into with any and all general contractors or subcontractors for this Project. CFNT shall require that each such general contractor agreement contain a provision whereby the party(ies) to the agreement, agree to: (i) notify the CITY immediately of any event of default thereunder, (ii) notify the CITY immediately of the filing of a mechanic's lien, (iii) notify the CITY immediately of termination or cancellation of the construction agreement on the Project, and (iv) provide the CITY, upon the CITY's request, an Estoppel Certificate certifying that the agreement is in full force and effect and CFNT is not in default thereunder. CFNT agrees to notify the CITY immediately of termination or cancellation of any such agreement(s), notice of filing of a mechanic's lien, or breach or default by other party(ies) thereto.

7.3 Damage to Property. To the extent consistent with the requirements of any permitted encumbrance, or as otherwise approved by the CITY, and subject to Article 9 of this Agreement, if any building or improvement on the Property is damaged or destroyed by an insurable cause, CFNT shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications of the Project. Such work or repair shall occur within 90 days after the insurance proceeds are made available to CFNT and shall be completed within two years thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, CFNT shall use its best efforts to make up the deficiency.

7.4 Fees, Taxes and Other Levies. CFNT shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Project and shall pay such charges prior to delinquency. However, CFNT shall not be required to pay and discharge any such charge so long as: (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the CITY, CFNT deposits with the CITY any funds or other forms of assurances that the CITY, in good faith, may determine from time to time are appropriate to protect the CITY from the consequences of the contest being unsuccessful. CFNT shall have the right to apply for and obtain an abatement and/or exemption of the Project from real property taxes in accordance with all applicable rules and regulations.

7.5 Identification Signage. Before the start of rehabilitation of a given Affordable Unit, the City will provide CFNT with a poster or sign, with a minimum four feet by four feet in size, identifying the City of Fresno Planning and Development Department, Housing and Community Development Division as a Project participant. The sign shall also include the CITY's Housing logo, as well as the Equal Housing Opportunity logo. The font size shall be

a minimum of 4 inches. The poster/sign shall be appropriately placed at the Affordable Unit's site and shall remain in place throughout construction/rehabilitation.

7.6 Inspections. CFNT shall permit, facilitate, and require its contractors and consultants to permit and facilitate observation and inspection at the Project sites by the CITY and other public authorities during reasonable business hours, for the purpose of determining compliance with this Agreement, including without limitation those annual on-site inspections required by the CITY.

7.7 Utilities. CFNT shall be responsible, at its sole cost and expense, to determine the location of any utilities on the Property and to negotiate with the utility companies for, and to relocate the utilities, if any, as necessary to complete the Project.

7.8 Insurance and Bonds. CFNT shall submit for CITY approval bonds, certificates and applicable endorsements for all insurance and bonds required by this Agreement in accordance with Article 9.

7.9 Mechanic's Liens and Stop Notices. If any claim of lien is filed against the Property or a stop notice affecting any financing, SLFRF Program Funds or funding sources for the Project is served on the CITY or any other third party in connection with the Project, CFNT shall, within 20 days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the CITY a surety bond in sufficient form and amount, or provide the CITY with other assurance satisfactory to the CITY that the claim of lien or stop notice will be paid or discharged.

A. If CFNT fails to discharge, bond or otherwise satisfy the CITY with respect to any lien, encumbrance, charge or claim referred to in Section 7.9 above, then, in addition to any other right or remedy, the CITY may, but shall not be obligated to, discharge such lien, encumbrance, charge, or claim at CFNT's expense. Alternatively, the CITY may require CFNT to immediately deposit with the CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The CITY may use such deposit to satisfy any claim or lien that is adversely determined against CFNT. CFNT hereby agrees to indemnify and hold the CITY harmless from liability for such liens, encumbrances, charges or claims together with all related costs and expenses.

7.10 Permits and Licenses. CFNT shall submit, for CITY approval, all the necessary permits and licenses required for commencement of acquisition and rehabilitation. As the CITY may reasonably request, CFNT, at its sole cost and expense, shall provide to the CITY copies of any and all permit approvals and authorizations including plot plan, plat, zoning variances, sewer, building, and other permits required by governmental authorities other than the CITY in pursuit of the Project, and for its stated purposes in accordance with all applicable building, environmental, ecological, landmark, subdivision, zoning codes, laws, and regulations. CFNT is responsible at its sole cost and expense to determine the location of any utilities on the Property and to negotiate with the utility companies for and to relocate the utilities, if any, as necessary to complete the Project.

7.11 Plans and Specifications. CFNT shall submit to the CITY preliminary plans and specifications for each Project activity (Project Preliminary Plans). CFNT will rehabilitate the Project in full conformance with the CITY-approved Development Permit and plans and specifications and modifications thereto approved by the CITY. CFNT shall obtain the CITY's

prior written approval for any modifications to the plans and specifications. CITY approval of such plans, specifications, and modifications shall not be unreasonably withheld.

A. Before commencement of rehabilitation, CFNT shall submit to the CITY, for its review and approval, the final Plans and Specifications for the Project. CFNT will rehabilitate the Affordable Housing in full conformance with the Plans and Specifications and modifications thereto approved by the CITY. CFNT shall obtain the CITY's prior written approval for any modifications to the Plans and Specifications. CITY approval of such plans, specifications, and modifications shall not be unreasonably withheld.

7.12 Project Responsibilities/Public Work-Prevailing Wage Requirements. CFNT shall be solely responsible for all aspects of CFNT's conduct in connection with the Project, including but not limited to, compliance with all applicable local, State and federal laws including without limitation, as to prevailing wage and public bidding requirements. The Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification or type of workman needed in the execution of contracts for the CITY. A copy of the resolution is on file at the Office of the City Clerk. Actual wage schedules are available upon request at the City's Construction Management Office. Without limiting the foregoing, CFNT shall be solely responsible for the quality and suitability of the work completed and the supervision of all contracted work, qualifications, and financial conditions of and performance of all contracts, subcontractors, consultants, and suppliers. Any review or inspection undertaken by the CITY with reference to the Project and/or payroll monitoring/auditing is solely for the purpose of determining whether CFNT is properly discharging its obligation to the CITY and shall not be relied upon by CFNT or by any third parties as a warranty or representation by the CITY as to governmental compliance and/or the quality of work completed for the Project.

7.13 Property Condition. CFNT shall maintain the Units and all improvements on site in a reasonably good condition and repair (and, as to landscaping, in a healthy condition), all according to the basic design and related plans, as amended from time to time. CFNT and those taking direction under CFNT shall: (i) maintain all on-site improvements according to all other applicable law, rules, governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the improvements free from graffiti; (iii) keep the Units free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to on-site improvements; (iv) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials, and (v) enforce tenant lease terms.

7.14 Quality of Work. CFNT shall ensure that rehabilitation of the Units employs building materials of a quality suitable for the requirements of the Project.

7.15 Relocation. If and to the extent that the construction of the proposed Project results in the permanent or temporary displacement of residential tenants, CFNT shall comply with all applicable local, State, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. CFNT 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.

7.16 Reporting Requirements. CFNT shall submit to the CITY the following Project

reports:

A. From the date of execution of this Agreement, until issuance of the final Certificate of Completion, CFNT shall submit a Quarterly Report, in a form approved by the CITY, which will include, at a minimum, the following information: progress of the Project and affirmative marketing efforts. The Quarterly Reports are due 15 days after each March 31st, June 30th, September 30th, and December 31st, during said period. Approval of such form shall not be unreasonably withheld.

B. Annually, beginning on the first day of the month following the CITY's issuance of the Certificate of Completion, and continuing until the termination of the Agreement, CFNT shall submit an Annual Rent Roll Report to the CITY, in a form approved by the CITY. The Annual Report shall include, at a minimum, the following information: occupancy of each Project Unit including the annual income and the household size, the date occupancy commenced, certification from an officer of CFNT that the Project is in compliance with the Affordability requirements, and such other information the CITY may be required by federal or state law to obtain. CFNT shall provide any additional information reasonably requested by the CITY upon request and at the annual monitoring of the Affordable Rental Housing.

C. Annually beginning on the first day of the month following the CITY's issuance of the final Certificate of Completion, evidencing the completion of the Project, and continuing until the expiration of the Agreement, CFNT shall submit proof of property and liability insurance, as required in Article 9, listing the CITY as loss payee.

7.17 Scheduling and Extension of Time; Unavoidable Delay in Performance. It shall be the responsibility of CFNT to coordinate and schedule the work to be performed so that the commencement of the rehabilitation and issuance of the Notice of Completion will take place in accordance with the provisions of the Agreement and Project Schedule. The time for performance contained in the Project Schedule shall be automatically extended upon the following:

A. The time for performance of provisions of the Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by: war, insurrection, strike or other labor disputes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics and pandemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by third parties concerning or arising out of this Agreement, or unseasonable weather conditions (force majeure). An extension of time for any of the above specified causes will be granted only if written notice by the party claiming such extension is sent to the other party within ten calendar days from the date the affected party learns of the commencement of the cause and the resulting delay, and such extension of time is accepted by the other party in writing. In any event, the Project must be completed no later than 180 calendar days after the scheduled completion date specified in this Agreement, notwithstanding any delay caused by that included in this Section.

7.18 Certificate of Completion. Upon completion of a Project Property, CFNT shall submit to the CITY: 1) certification in writing that the Project Property has been completed in accordance with the plans and specifications, approved by the CITY; 2) a recorded Notice of

Completion; 3) a cost-certifying final budget where CFNT shall identify the actual costs, in line-item format, and 4) a request for a recorded Certification of Completion. Upon a determination by the CITY that CFNT is in compliance with all of CFNT's construction obligations, as specified in this Agreement, the CITY shall furnish, within 30 calendar days of a written request by CFNT, a recordable Certificate of Completion for the Project Property in the form substantially similar to EXHIBIT "B" attached hereto. The CITY will not unreasonably withhold or delay furnishing the Certificate of Completion. If the CITY fails to provide the Certificate of Completion within the specified time, it shall provide CFNT a written statement indicating in what respects CFNT has failed to complete the Project Unit in conformance with this Agreement or has otherwise failed to comply with the terms of this Agreement, and what measures CFNT will need to take or what standards it will need to meet in order to obtain the Certificate of Completion. Upon CFNT taking the specified measures and meeting the specified standards, CFNT will certify to the CITY in writing of such compliance and the CITY shall deliver the recordable Certificate of Completion to CFNT in accordance with the provisions of this Section. CITY shall also provide CFNT with a Certificate of Completion upon completion of the Project pursuant to the same conditions set forth in this Section.

ARTICLE 8. OPERATIONS OF THE PROJECT

8.1 Operation of the Project. CFNT shall own, operate, and manage the Project in full conformity with the terms of this Agreement.

8.2 Occupancy Requirements. All of the Units acquired and/or rehabilitated shall be rented and occupied by, or if vacant, available for rental occupancy by Low- to Moderate-Income Households, at or below 300% of the Federal Poverty Guideline or (ii) income at or below 65 to 80% of the area median income for the county and size of household based on the most recently published data that have been disproportionately impacted by Covid 19 and are presumed to continue experiencing lack of affordable housing. CFNT shall comply with the income targeting requirements of the SLFRF.

8.3 Leasing the SLFRF-Assisted Affordable Units. Within 120 days of this Agreement, CFNT shall submit its proposed form of lease agreement for the CITY's review and approval which shall not be unreasonably withheld. CFNT covenants and agrees to utilize only leases that have been approved in advance by the CITY. The CITY shall respond to CFNT's submission of a sample lease agreement within 30 days. Should the CITY not respond within 30 days of the lease agreement submittal, CFNT shall be authorized to use the submitted sample lease agreement. Additionally, CFNT agrees not to terminate the tenancy or to refuse to renew or lease with a tenant of the Units assisted with SLFRF Funds except for serious or repeated violations of the terms and conditions of the lease agreement, for violation of applicable federal, State, or local law, or for other good cause. Any such termination or refusal to renew must be preceded by not less than 30 days' written notice served by CFNT or its authorized management entity upon the tenant specifying the grounds for such action. CFNT agrees it shall annually report to the CITY the number of leases that were not renewed or terminated and the reason for such non-renewal or termination.

8.4 Lease of SLFRF-Assisted Affordable Units Provisions. In addition to the SLFRF requirements and the VAWA lease addendum required in accordance with 24 CFR 92.359(e), the leases are subject to the following:

A. CFNT shall include in its Leases for the SLFRF-assisted Affordable

Units, provisions which authorize CFNT to immediately terminate the tenancy of any Household of which one or more of its members misrepresented any fact material to the Household's qualification as a Low- to Moderate-Income Household. Each such lease agreement shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for Low- to Moderate- Income household, such Household's rent may be subject to increase to the lesser of: 1) the amount payable by tenant under State or local law; or 2) 30% of the Household's actual adjusted monthly income.

8.5 Final Management Plan. Within 120 days of this Agreement____, CFNT shall submit to the CITY, for review and approval, a plan for marketing and managing the proposed Affordable Units (Final Management Plan). The Final Management Plan shall address in detail how CFNT plans to market the availability of the Affordable Units to prospective tenants and how CFNT plans to certify the eligibility of potential tenants. The Final Management Plan shall also address how CFNT plans to manage and maintain the Affordable Units in accordance with SLFRF regulations for Property Standards and shall include appropriate financial information and documentation. The Final Management Plan shall contain detailed descriptions of policies and procedures with respect to tenant selections and evictions. Topics to be covered in these procedures shall include at a minimum the following:

- Interviewing procedures for prospective tenants;
- Previous rental history of tenants with references;
- Credit reports;
- Criminal background checks;
- Deposit amounts, purpose, use and refund policy;
- Employment/Income verification;
- Occupancy restrictions;
- Income Limits;
- Equal Housing Opportunity Statement;
- Restrictions on use of the premises; and
- Tenant/Landlord dispute resolution procedures.

The Final Management Plan shall contain copies of all standardized forms associated with the above listed topics. The Final Management Plan shall include a form lease agreement that CFNT proposes to enter into with the Low- to Moderate-income tenants. CFNT shall abide by the terms of this Final Management Plan, approved by the CITY, in marketing, managing, and maintaining the SLFRF-Assisted Affordable Units.

8.6 Property Management. CFNT shall comply with the following:

A. Management Responsibilities. CFNT specifically is responsible for all management functions with respect to the Project including, without limitation, the selection of tenants, certification and re-certification of Household size and income, evictions, collection of Rents and deposits, construction management, affirmative marketing, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. The CITY shall have no responsibility for such management of the Project.

8.7 Maintenance and Security. CFNT shall (i) at its own expense maintain the Project in good condition, in good repair and in decent, safe, sanitary, habitable, and tenantable living conditions for the benefit of the Affordable Unit occupants. CFNT shall not

commit or permit any waste on or to the Project and shall prevent and/or rectify any physical deterioration of the Project. CFNT shall maintain the Units in conformance with all applicable federal, State, and local laws, ordinances, codes and regulations, the Final Management Plan, and this Agreement.

8.8 Nondiscrimination. The SLFRF-Assisted Affordable Units shall be available for occupancy on a continuous basis to households who are income eligible. CFNT shall not illegally discriminate or segregate in the constructed complex, the use, enjoyment, occupancy, or conveyance of any part of the Project or Property on the basis of race, color, ancestry, national origin, religion, sex, marital status, family status, source of income/rental assistance subsidy, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), sexual orientation, or any other arbitrary basis. CFNT shall otherwise comply with all applicable local, State, and federal laws concerning nondiscrimination in housing. Neither CFNT nor any person claiming under or through CFNT, shall establish or permit any such practice or practices of illegal discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants or vendees of any Affordable Unit or in connection with employment of persons for the construction of any Affordable Unit. All deeds or contracts made or entered into by CFNT as to the Affordable Units or the Project or portion thereof, shall contain covenants concerning nondiscrimination consistent with this section. CFNT shall include a statement in all advertisements, notices, and signs for availability of Affordable Units for rent to the effect that CFNT is an Equal Housing Opportunity Provider.

A. Nothing in this section is intended to require CFNT to change the character, design, use or operation of the Project; or to require CFNT to obtain licenses or permits other than those required for the Project.

8.9 Rent Schedule and Utility Allowances. CFNT covenants and agrees to charge rent to tenants occupying the SLFRF-Assisted Units in an amount which does not exceed those rents prescribed to the Project as they associate with particular rent limit established annually by the Department of the Treasury, consistent with the SLFRF Program requirements applicable to the Affordable Units in the Fresno, California area, and further covenants to provide a monthly allowance to tenants occupying the SLFRF Units. CFNT agrees to furnish the CITY with an annual rent roll setting forth the maximum monthly rent and utility allowance for the SLFRF-Assisted Units until the expiration of the Affordability Period. CFNT shall reexamine the rent, utility allowance, and tenant income for the SLFRF Units at least annually.

8.10 Rental Housing Fees. CFNT covenants and agrees not to charge fees that are not customarily charged in rental housing such as laundry room access fees, and other fees in accordance with 24 CFR 92.504(c)(3)(xi).

ARTICLE 9. INSURANCE AND INDEMNITY AND BONDS

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

9.1 Insurance Requirements. Throughout the life of this Agreement, CFNT shall pay for and maintain in full force and effect all policies of insurance hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating

Guide, or (ii) authorized by the CITY's Risk Manager. The following policies of insurance are required:

Best's Insurance Rating Guide, or (ii) authorized by the CITY's Risk Manager. The following policies of insurance are required:

(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:

- a. \$2,000,000 per occurrence for bodily injury and property damage
- b. \$2,000,000 per occurrence for personal and advertising injury
- c. \$4,000,000 aggregate for products and completed operations
- d. \$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 CFNT 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 LIABILITY with coverage for bodily injury, property damage or pollution clean-up costs that could result from of 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:

- a. \$1,000,000 per occurrence
- b. \$2,000,000 general aggregate per annual policy period

In the event CFNT purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, 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.

In the event CFNT 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 CFNT pursuant to the SLFRF Agreement.

In the event CFNT involves any lead-based environmental hazard (e.g., lead-based paint), CFNT's Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event CFNT involves any asbestos environmental hazard (e.g., asbestos remediation), the CFNT'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.

CFNT shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and CFNT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the CITY's Risk Manager or his/her designee. At the option of the CITY's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to the CITY, its officers, officials, employees, agents, and volunteers; or (ii) CFNT shall provide a financial guarantee, satisfactory to the CITY's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the CITY be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to the CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CFNT 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, CFNT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability, Automobile and Pollution 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. All such policies of insurance shall be endorsed so the CFNT'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 CFNT 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 CFNT. The General and Pollution Liability insurance policy shall also name the CITY, its officers, officials, agents, employees, and volunteers as additional insureds for all ongoing and completed operations. 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.

CFNT 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, CFNT 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.

Claims-Made Policies - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown and must be before the effective date of the commencement of work by CFNT.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, CFNT must purchase extended reporting period coverage for a minimum of five years after completion of the work or termination of the SLFRF Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to the CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

If at any time during the life of the Agreement or any extension, CFNT, its contractor, or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to CFNT 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 this Agreement. No action taken by CITY hereunder shall in any way relieve CFNT of its responsibilities under this 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.

The fact that insurance is obtained by CFNT shall not be deemed to release or diminish the liability of CFNT, including, without limitation, liability under the indemnity provisions of this 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 CFNT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CFNT, its principals, officers, agents, employees, persons under the supervision of CFNT,

vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

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, CFNT 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 CFNT 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 – CFNT's subcontracts any or all of the services to be performed under this Agreement, CFNT 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, CONTRACTOR 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. The above-described policies of insurance shall be endorsed to provide an unrestricted 30 day written notice in favor of the CITY, of policy cancellation, change or reduction of coverage. In the event any policy is due to expire during the term of this Agreement, a new certificate evidencing renewal of such policy shall be provided not less than 15 days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, CFNT or its contractors, as the case may be, shall file with the CITY a certified copy of the new or renewal policy and certificates for such policy. CFNT shall furnish the CITY with the certificate(s) and applicable endorsements for ALL required insurance prior to the CITY's execution of this Agreement. CFNT shall furnish the CITY with copies of the actual policies upon the request of the CITY at any time during the life of the Agreement or any extension.

At all times hereunder CFNT shall maintain the required insurance in full force and effect.

9.2 Indemnity. To the furthest extent allowed by law, CFNT shall indemnify, hold harmless and defend the CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the CITY, CFNT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation expenses, and costs to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. The CFNT's obligations under the preceding sentence shall apply regardless of whether the 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 gross negligence or by the willful misconduct of the CITY or any of its officers, officials, employees, agents, or volunteers.

This section shall survive termination or expiration of this Agreement.

9.3 Property Insurance. CFNT shall maintain in full force and effect, throughout

the remaining life of this Agreement, a policy or policies 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.

9.4 Bond Obligations. CFNT 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 100% of CFNT's estimated construction costs as reflected in the CFNT'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 CFNT 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 CFNT's estimated construction costs as reflected in the CFNT'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 CFNT 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.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 Events of Default. The parties agree that each of the following shall constitute an "Event of Default" by CFNT for purposes of this Agreement after the cure period in Section 10.2 has expired without a cure:

A. The CFNT's use of SLFRF Funds for costs other than Eligible Costs or for uses not permitted by the terms of this Agreement; except that there shall be no Event of Default if the CFNTS's use of the SLFRF were for costs that were Eligible Costs at the time they were incurred but subsequently lose eligibility;

B. CFNT's Failure to obtain and maintain the insurance coverage required under this Agreement;

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

without the CITY's prior written consent; (2) CFNT's use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) CFNT's failure to commence or complete the Project, as specified in this Agreement, unless delay is permitted under Section 7.18 of this Agreement; (4) cessation of the Project for a period of more than 15 consecutive days (other than as provided at Section 7.18 of this Agreement) prior to submitting to the CITY certification that the Project is complete; (5) any material adverse change in the condition of CFNT 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) CFNT's failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY's request; or (7) CFNT'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 CFNT shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that CFNT 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 CFNT's inadvertence, CFNT shall have a 30 day opportunity after written notice thereof to cause such representation, warranty, or certification to be true and complete in every respect;

E. CFNT 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 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 90 days;

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

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

H. CFNT'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 CFNT of any material obligation owned by CFNT 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.

10.2 Notice of Default and Opportunity to Cure. The CITY shall give written notice to CFNT 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 no less than ten days, or 30 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, CFNT 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 CFNT shall have the right to cure any defaults hereunder and that notice and cure rights hereunder shall extend to any and all partners of CFNT that are previously identified in writing delivered to the CITY in the manner provided in this Agreement.

10.3 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 SLFRF 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 11. GENERAL PROVISIONS

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

11.1 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 Agreement 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 approval as to form by the City Attorney's Office.

11.2 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.

11.3 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.

11.4 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.

11.5 Disclaimer of Relationship. Nothing contained in this Agreement, nor any act of the CITY or of CFNT, 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.

11.6 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 CFNT 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.

11.7 Effective Date. This Agreement shall be effective upon the date first above written, upon the CITY and CFNT's complete execution following City Council approval and recordation of related documents.

11.8 Entire Agreement. This Agreement represents the entire and integrated agreement of the parties with respect to the subject matter hereof. This Agreement supersedes all prior negotiations, representations or agreements, either written or oral.

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

11.10 Expenses Incurred Upon Event of Default. CFNT 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 CFNT under this Agreement.

11.11 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.

11.12 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.

11.13 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.

11.14 No Third-Party Beneficiary. No contractor, subcontractor, mechanic, materialman, laborer, vendor, or other person hired or retained by CFNT 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 at CFNT 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.

11.15 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 CFNT 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 CFNT in any case shall entitle CFNT 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.

11.16 Nonreliance. CFNT 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.

11.17 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 - Planning and Development Department
Housing and Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721-3605

If CFNT:

CFNT
240 N. Calaveras Street
Fresno, CA 93701

11.18 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.

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

11.20 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

Central Fresno Neighborhood Trust
Holdings, LLC, a California limited liability
company

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

By:  _____
Name: Esther Carver
Title: LLC Member, Board Director
(Attach notary certificate of acknowledgment)

APPROVED AS TO FORM:
RINA M. GONZALES
Interim City Attorney

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

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

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
_____, Deputy

Date

Attachments:

EXHIBIT A: PROJECT DESCRIPTION AND SCHEDULE
EXHIBIT B: EXEMPLAR CERTIFICATE OF COMPLETION
EXHIBIT C: EXEMPLAR DECLARATION OF RESTRICTIONS

EXHIBIT "A"
PROJECT DESCRIPTION AND SCHEDULE

I. PROJECT DESCRIPTION

SLFRF Funds will be made available by the CITY for payment of SLFRF eligible acquisition and rehabilitation costs not to exceed One Million Nine Hundred Fifty Thousand Dollars and 00/100 (\$1,950,000.00), the aggregate for SLFRF-assisted Units as determined by the CITY, as needed.

II. PROJECT SCHEDULE

- A. Commencement of Acquisition/Rehabilitation: _____
- B. Completion of Acquisition and Rehabilitation: _____
- C. Notice of Completion to City: _____

EXHIBIT "B"
CERTIFICATE OF COMPLETION

Recorded at the Request of
and When Recorded Return to:

City of Fresno
Planning and Development Department
Housing and Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721-3605

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

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

APN: _____

City of Fresno

By: _____

Planning and Development Department

Date: _____

Certificate of Completion

APN: _____

Recitals:

A. By a State and Local Fiscal Recovery Funds (SLFRF) Agreement dated _____, 2022, (SLFRF Agreement) between the City of Fresno, a municipal corporation (CITY), and Central Fresno Neighborhood Trust Holdings, LLC, a California limited liability company (CFNT). CFNT agreed to acquire and rehabilitate 50 rental units, of which are to be SLFRF-assisted units while meeting the affordable housing, income targeting and other requirements of the SLFRF according to the terms and conditions of the SLFRF Agreement and other documents/instruments referenced therein.

B. The SLFRF Agreement was entered into on _____, 2022.

C. Under the terms of the SLFRF Agreement, after CFNT completes a Project property, CFNT may ask the CITY to record a Certificate of Completion.

D. CFNT has asked the CITY on _____ to furnish CFNT with a recordable Certificate of Completion.

E. The CITY's issuance of this Certificate of Completion is conclusive evidence that CFNT has completed the _____ property as set forth in the SLFRF Agreement.

NOW THEREFORE:

1. The CITY certifies that CFNT commenced the Project property on _____, 20XX and completed the Project property on _____ 20XX and has done so in full compliance with the SLFRF Agreement.

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

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

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

//

IN WITNESS WHEREOF, CITY has executed this Certificate of Completion as of this _____ day of _____, 20XX.

CITY OF FRESNO

By: _____

Date: _____

Planning & Development Department
(Attach notary certificate of acknowledgment)

ATTEST:
TODD STERMER, CMC
CITY CLERK

APPROVED AS TO FORM:
RINA M. GONZALES
Interim City Attorney

By: _____
_____, Deputy

By: _____
Tracy N. Parvanian
Supervising Deputy City Attorney

Date: _____

Date: _____

Central Fresno Neighborhood Trust Holdings, LLC, a California limited liability company

By: _____
Name: Esther Carver
Title: LLC Member, Board Director
(Attach notary certificate of acknowledgment)

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

(Attach notary certificate of acknowledgment)

EXHIBIT "C"
EXEMPLAR DECLARATION OF RESTRICTIONS

Recorded at the Request of
and When Recorded Return to:

City of Fresno
Planning and Development Dept.
Housing and 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.

APNs:

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (Declaration) is executed as of this ____ day of _____, 2022, by Central Fresno Neighborhood Trust Holdings, LLC, a California limited liability company (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 City of Fresno, County of Fresno, California, [address] ([APN(s)]), 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 SLFRF Grant Agreement dated _____, 2022, incorporated herein by reference (Agreement) and instruments referenced therein, the DECLARANT agrees to utilize, and the CITY agrees to provide, certain funds from the United States Treasury to the DECLARANT and the DECLARANT agrees to acquire and rehabilitate 50 rental housing units which will be reserved as Affordable Rental Housing available as Low- and Moderate Income units, subject to the terms and conditions set forth in the Grant Agreement for households earning 80%, or below, of the area median income for the Fresno Metropolitan Statistical Area (FMSA).

WHEREAS, the Agreement imposes certain affordability requirements upon property owned by the DECLARANT, which affordability restrictions shall be enforceable for a 55-year period; and

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

NOW THEREFORE, the 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 Rental Housing has begun as provided in the Agreement, constituting the commencement of the 55-year Affordability Period.

1. Declarations. The 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 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 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 complete, until the expiration of the Affordability Period, it shall cause 50 Affordable Housing Rental Units to be used as rental affordable housing to Low- to Moderate Households with an income of 80%, or less, of area median income. Unless otherwise provided in the Agreement, all Affordable Rental 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 the 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 Rental Housing shall be leased only to eligible natural persons, who shall occupy the Affordable Rental Housing as the tenants' principal place of residence.

iii. Household Income Requirements. The 50 Affordable Rental Housing constructed on the Project Property may 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 area median income.

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

Rental Housing 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 Project property Completion date 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 the 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 the 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. Amendments or Modifications. No Amendments or modifications shall be permitted without the prior written consent of the CITY and the DECLARANT.

12. Recordation. The DECLARANT acknowledges that this Declaration will be file of record in the County of Fresno Recorder's Office, 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 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.

//

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

DECLARANT:

By:

Name: _____

Title: _____

(Attach notary certificate of acknowledgment)

Date: