

# Regular Council Meeting

May 23, 2024

## FRESNO CITY COUNCIL



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CITY OF FRESNO  
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## Supplement Packet

### ITEM(S)

#### 2-FF (ID 24-615)

Actions pertaining to an Encampment Resolution Funding, Round 2 Agreement between the City of Fresno and Self-Help Enterprises for acquisition, rehabilitation and site development of a mobile home park located at 104 E. Sierra Avenue, Fresno to allow for the placement of affordable housing units (District 6)

[TITLE TRUNCATED FOR SUPPLEMENTAL PACKET COVER PAGE]

Contents of Supplement: 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.

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

CITY OF FRESNO

By: \_\_\_\_\_  
Georgeanne A. White  
City Manager

Date: \_\_\_\_\_

CITY OF FRESNO  
CAL-ICH AND ENCAMPMENT RESOLUTION FUNDS  
AGREEMENT

by and between

CITY OF FRESNO,  
a municipal corporation

and

SELF-HELP ENTERPRISES,  
a California nonprofit public benefit corporation

regarding

Acquisition, rehabilitation and site development of mobile home park for placement of  
affordable housing

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**CITY OF FRESNO**  
**Encampment Resolution Funds**  
**LOAN AGREEMENT**  
**with Self-Help Enterprises**

This Encampment Resolution Funds (ERF) Agreement (Agreement) is entered into on \_\_\_\_\_, 2024, by and between the City of Fresno, a municipal corporation, (City), and Self-Help Enterprises (SHE), a California Nonprofit Public Benefit Corporation (DEVELOPER).

**RECITALS**

A. WHEREAS, the City has received ERF funds from the California Interagency Council on Homelessness (CAL-ICH). The ERF grant program made available to assist local jurisdictions in ensuring the wellness and safety of people experiencing homelessness in encampments by providing services and support that address their immediate physical and mental wellness and result in meaningful paths to safe and stable housing.

B. WHEREAS, the City has elected to use a portion of its ERF allocation to prioritize affordable housing for unhoused individuals that reside within the downtown encampment area. The City will also use the allocated funds to advance the supply of Affordable Housing within the City of Fresno. The City desires, among other things, to encourage investment in the affordable housing market.

C. WHEREAS, the DEVELOPER desires to act as the owner/developer exercising effective project control, as to the acquisition, rehabilitation and preservation of up to a 58-Affordable Housing Units in a mobile home park and related on-site and off-site improvements (Project), as more particularly described in EXHIBIT “B” – Project Description, attached hereto and incorporated herein. The 12 Project Units will be preserved exclusively for Encampment Resolution Fund Individuals as Extremely-Low Income Housing, as defined by the U.S. Department of Housing and Urban Development (HUD), 14 Units will support Very Low-Income households with average incomes of no more than 50% AMI, and up to 32 additional Affordable Units will be preserved as Lower-Income Housing and allocated for current residents of the mobile home park or other eligible tenants.

D. WHEREAS, to advance the supply of affordable housing within the City of Fresno, and to assist those experiencing homelessness in encampments with clear pathways to permanent housing, the CITY desires to assist the DEVELOPER by providing a Three Million Five Hundred Thousand Dollar (\$3,500,000.00) forgivable loan to the Project, at 0% interest, for a period of five years, with up to two, five-year extensions subject to City Council approval, to be secured by the underlying Property – Exhibit “A” – Property Description, the Affordable Housing Covenants attached as EXHIBIT “D” – Exemplar Declaration of Restriction, Exemplar Deed of Trust attached as EXHIBIT “G” – and Exemplar Promissory Note attached as Exhibit “F”, upon the terms and conditions in this Agreement.

E. WHEREAS, existing residents of the Property will be grandfathered in for income verification and any new residents will be income-qualified in accordance with this Agreement. All Affordable Units with existing residents will be filled with an income-qualified Households in accordance with this Agreement.

F. 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 the City residents, (iii) complies with applicable federal, State, and local laws and requirements, (iv) will increase, improve, and preserve the community's supply of Extremely-Low Income and Lower-Income housing available at an affordable cost to Extremely-Low Income Households and Lower-Income Households, as defined hereunder, (v) planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of Extremely-Low, Very Low-Income, and Lower-Income housing, and (vi) will comply with any and all owner participation rules and criteria applicable thereto.

G. WHEREAS, the City and DEVELOPER have determined that the DEVELOPER's 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.

H. WHEREAS, on January 30, 2024, the DEVELOPER's Board reviewed and approved the Project and its application for ERF Funding for the Project.

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

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 the DEVELOPER for the purpose of developing Affordable Housing.

1.2 Affirmative Marketing means a good faith effort to attract eligible persons of all racial, ethnic, and gender groups, in the housing market area, to rent and ownership at the proposed Project and developed on the eligible Property, as hereinafter defined.

1.3 Affordability Period means the minimum period of 30 years commencing from the date the City records a Certification of Completion.

1.4 Affordable Housing Units or Units means up to 58 units in the Project which shall be reserved for Households whose income is between 15% to 80% of the area medium income (AMI) for Fresno County as established by the United States Department of Housing and Urban Development (HUD). 12 Units shall be preserved exclusively for Encampment Resolution Fund Individuals as Extremely-Low Income Housing, 14 Units will support Very Low-Income households with average incomes of no more than 50% AMI, and up to 32 additional Units will be preserved as Lower-Income Housing.

1.5 Certificate of Completion means that certificate issued, in the form attached as EXHIBIT "E" (Exemplar Certificate of Completion), to the DEVELOPER by the City evidencing completion of the Project and a release of construction related covenants for the

purposes of the Agreement.

1.6 CFR means the Code of Federal Regulations.

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

1.8 Completion Date means the date the City issues a recorded Certificate of Completion for the Project as identified in EXHIBIT "E", attached hereto.

1.9 Declaration of Restrictions means the Declaration of Restrictions in the form attached hereto as EXHIBIT "D", which contains the affordability covenants and requirements of this Agreement which shall run with the land and which the DEVELOPER shall record or cause to be recorded against the Property no later than Commencement of Construction.

1.10 Eligible Costs means eligible acquisition, rehabilitation and site development costs for the placement of Affordable Housing funded by the Loan, to assist those experiencing homelessness in encampments with clear pathways to permanent housing, provided, however that costs incurred in connection with any activity that is determined to be ineligible under the ERF Program, shall not constitute Eligible Costs.

1.11 Encampment Resolution Funds or Funds means the federal ERF Program monies consisting of the Loan, in an amount not to exceed the sum of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) to be used for Eligible Costs.

1.12 Event of Default shall have the meaning assigned to such term under Section 9.1 hereunder.

1.13 Extremely-Low Income Household means families whose annual income does not exceed 30% of the area median income (AMI) for Fresno, California as determined by HUD, except as HUD may establish income ceilings higher or lower than 30% of the median for the area on the basis of HUD finding that such variations are necessary. For purposes of this Agreement, Extremely-Income Households shall refer to 15-30% of AMI.

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

1.15 Funding Sources means the CITY's ERF Funds, conventional construction loan, and any other funds that may become available to the Project.

1.16 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.

1.17 Household means persons occupying the rental units within the Project.

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

1.19 Loan means the Project Loan of ERF Funds, in the total amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000.00), made available by the CITY to the Project pursuant to this Agreement, as more specifically described in the Budget attached as Exhibit "C" and in the Promissory Note attached as EXHIBIT "F". The Loan shall be payable in accordance with the terms of the Note and shall be secured by the Deed of Trust attached as EXHIBIT "G".

1.20 Loan Documents are collectively this Agreement, Promissory Note - EXHIBIT "F", Deed of Trust – EXHIBIT "G", and Declaration of Restrictions – EXHIBIT "D", attached hereto and all related documents/instruments as they may be amended, modified, or restated from time to time along with all exhibits and attachments thereto, relative to the Loan.

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

1.22 Note means that certain assumable Three Million Five Hundred Thousand Dollar (\$3,500,000.00), ERF Loan Note, given by the DEVELOPER as promissor, in favor of the CITY as promisee, evidencing the Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement, secured by the Deed of Trust as no worse than 3rd position lien upon the Property, naming the CITY as beneficiary and provided to the CITY, no later than the date of the Project funding hereunder, an exemplar of which is attached hereto as EXHIBIT "F", and incorporated herein, as well as any amendments to, modifications of and restatements of said Note consented to by the CITY.

1.23 Notice of Cancellation means the formal written cancellation by the City upon the written request of the DEVELOPER where the parties terminate their contractual relationship in whole or in part as provided hereunder, without default.

1.24 Notice of Completion means a notice filed by the owner of a construction project, in the county records office, stating that construction has been completed.

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

1.26 Project means the acquisition, rehabilitation and site development for placement of Affordable Housing of up to 58 Units in on the Property and related on-site and off-site improvements to be preserved as Extremely-Low, Very Low-Income, and Lower-Income housing.

1.27 Project Schedule means the schedule for commencement and completion of the Project included in EXHIBIT "B", attached hereto.

1.28 Project Units means the 12 Units acquired, rehabilitated, or developed with ERF Funds and preserved exclusively for Encampment Resolution Fund Individuals as Extremely-Low Income Housing for the duration of the Affordability Period.

1.29 Property means the mobile home park located at 104 E. Sierra Avenue, Fresno California 93710 (APN 408-050-04, 408-050-05, 408-050-09) as more specifically described in Exhibit "A" – Property Description.

1.30 Rent means the total monthly payment a tenant pays for an Affordable Unit including the following: use and occupancy of the Unit and land and associated facilities, including parking, provided by the DEVELOPER (other than parking services acquired by tenants on an optional basis), any separately charged fees or service charges assessed by the DEVELOPER which are required of all tenants (other than security deposits), the cost of an adequate level of service for utilities paid by the tenants (including garbage collection, sewer, water, common area electricity, but not telephone or internet service), any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the DEVELOPER, and paid by the tenant. Rent does not include payments for any optional services provided by the DEVELOPER.

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

1.32 Senior Lender means lenders providing Senior Financing to the Project.

1.33 Very Low-Income Household means families whose annual income does not exceed 50% of the AMI for Fresno, California as determined by HUD, except as HUD may establish income ceilings higher or lower than 50% of the median for the area on the basis of HUD finding that such variations are necessary.

## **ARTICLE 2. TERMS OF THE ERF LOAN**

2.1 Loan of ERF Funds. The City agrees to provide a loan of ERF Funds to the DEVELOPER in an amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000.00) all under the terms and conditions provided in this Agreement. The ERF Funds shall be used for payment of ERF Fund Eligible Costs.

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

2.3 Term of Agreement. This Agreement is effective upon the date of full execution and shall remain in force with respect to the project for duration of the Affordability Period unless earlier terminated as provided herein. After the thirty-year Affordability Period, this Agreement will expire. It is understood and agreed upon, however, that if for any reason this



Agreement should be terminated in whole or in part as provided hereunder, without default, the City agrees to record a Notice of Cancellation regarding this Agreement upon the written request of the DEVELOPER.

2.4 Loan Repayment and Maturity. The Loan will commence interest on the date first drawn and shall be due and payable in accordance with the Promissory Note and in full not later than the Maturity date provided in the Note.

2.5 Incorporation of Documents. The DEVELOPER's ERF application dated April 26, 2024, the City Council approved Minutes of \_\_\_\_\_, 2024, approving this Agreement, the Loan Documents, and all exhibits, attachments, documents and instruments referenced herein, as now in effect and as may be amended from time to time, constitute part of this Agreement and are incorporated herein by reference. All such documents have been provided to the parties herewith or have been otherwise provided to/procured by the parties and reviewed by each of them prior to execution hereof.

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

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

### **ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

3.1 Existence and Qualification. The DEVELOPER, represents and warrants to the City as of the date hereof, that the DEVELOPER is a duly organized California nonprofit community base organization in good standing with the State of California; the DEVELOPER has the requisite power, right, and legal authority to execute, deliver, and perform its obligations under the this 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 the DEVELOPER, is enforceable against the DEVELOPER in accordance with its respective terms, except as such enforceability may be limited by: (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws of general applicability affecting the enforcement of creditors' rights generally, and (b) the application of general principles of equity without the

joinder of any other party.

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

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

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

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

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

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

#### **ARTICLE 4. WARRANTIES AND COVENANTS OF THE DEVELOPER**

The DEVELOPER, for itself and its development team covenants and warrants that:

4.1 Affirmative Marketing. The DEVELOPER 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 housing market in the rental of the Project Units. The DEVELOPER shall maintain records of actions taken to affirmatively market Units constructed in the future, and to assess the results of these actions.

4.2 Accessibility. The DEVELOPER covenants and agrees with the CITY that it shall comply with 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), including, without limitation, the construction of the Project so that it meets the applicable accessibility requirements, including, but not limited to, the following:

A. At least 5% of the dwelling units, or at least three (3), whichever is greater, must be constructed to be accessible for persons with mobility disabilities. An additional 2% of the dwelling units, or at least one (1) unit, whichever is greater, must be accessible for persons with hearing or visual disabilities. These units must be constructed in accordance with the Uniform Federal Accessibility Standards (U.F.A.S.) or a standard that is equivalent or stricter.

B. The design and construction requirements of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended), including the following seven (7) requirements of the Fair Housing Accessibility Guidelines:

- i. Provide at least one accessible building entrance on an accessible route.
- ii. Construct accessible and usable public and common use areas.
- iii. Construct all doors to be accessible and usable by persons in wheelchairs.
- iv. Provide an accessible route into and through the covered dwelling unit.
- v. Provide light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- vi. Construct reinforced bathroom walls for later installation of grab bars around toilets, tubs, shower stalls and shower seats, where such facilities are provided.
- vii. Provide usable kitchens and bathrooms such that an individual who uses a wheelchair can maneuver about the space.

C. Title III of the Americans with Disability Act of 1990 (ADA) as it relates to the required accessibility of public and common use area of the Project.

D. To the extent applicable to newly constructed or placed Affordable Housing Units, the design and construction requirements as required by the CITY's Universal Design Ordinance pursuant to Fresno Municipal Code 11-110, including, but not limited to the following requirements:

- i. No step accessible entry way;
- ii. All interior doorways and passageways at least 32 inches wide;

- iii. One (1) downstairs “flex room” and accessible bathroom with reinforcements for grab bars;
- iv. Six square feet of accessible kitchen counter space; and
- v. Hallways at least 42 inches wide.

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

4.4 Compliance with Agreement. The DEVELOPER warrants, covenants and agrees that, in accordance with the requirements of ERF Funding, upon any uncured default by the DEVELOPER within the meaning of Article 10.1 of this Agreement, the City may suspend or terminate this Agreement and all other agreements with the DEVELOPER without waiver or limitation of rights/remedies otherwise available to the City.

4.5 Conflict of Interest. The DEVELOPER 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 the DEVELOPER may occupy a Project Unit. The DEVELOPER understands and acknowledges that no employee, agent, 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.

4.6 Construction Standards. The DEVELOPER shall rehabilitate or develop the Property for placement of the Affordable Units assisted under this Agreement in compliance with all applicable local codes, ordinances, and zoning requirements in effect at the time of issuance of City building permits (if applicable).

4.7 Covenants and Restrictions to Run with the Land. The City and the DEVELOPER expressly warrant, covenant and agree to ensure that the covenants and restrictions set forth in this Agreement are recorded and will run with the land, provided, however, that, on expiration of this Agreement such covenants and restrictions shall expire.

A. The City and the DEVELOPER 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 ownership of the proposed Project by a certain Extremely-Low Income and Lower-Income Households, and (b) making possible the obtaining of advantageous financing for construction.

B. The DEVELOPER covenants and agrees with the City that after issuance of a recorded Certification of Completion for the Project until the expiration of the Affordability Period, DEVELOPER shall cause 58 Affordable Units to be rented as Affordable Housing for Extremely-Low, Very Low-, and Lower-Income Households

with average incomes of no more than 80% AMI during the Affordability Period. The 12 Project Units, at a minimum, shall be rented to and occupied by, or, if vacant, available for rental and occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than 30% of AMI consistent with ERF Program regulations, for the Affordability Period, and 14 Units will support Very Low-Income households with average incomes of no more than 50% AMI.

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

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

E. The failure or delay at any time of the City or any other person entitled to enforce any such covenants or restrictions shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

4.8 Displacement of Persons. The DEVELOPER covenants and agrees with the City that pursuant to 24 CFR 92.353, it will take all reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations and farms). The parties acknowledge and agree that Property located at 104 E. Sierra Avenue, Fresno, California is currently occupied with tenants. The Parties agree that Developer shall be solely responsible for relocation of any/all tenants as a result of this Project, as set forth in Section 7.16.

4.9 Initial and Annual Income Certification and Reporting. The DEVELOPER covenants and agrees with the City that it shall comply with the procedures for annual income determination at 24 CFR 92.203 for Project Units. The DEVELOPER shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from the Project Unit Household members. The DEVELOPER, 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 three years; or (5) if the applicant is unemployed, 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. The DEVELOPER further warrants, covenants and agrees that it will cooperate with the City in

the City's income certification/affordability monitoring activities. Existing tenants on the Property may be presumed to be income-eligible for Affordable Housing Units, except for Project Units which shall require the income certification and reporting as set forth in this Agreement. This Section shall apply to all future Households after an existing tenant vacates an Affordable Housing Unit.

4.10 Lead-Based Paint. The DEVELOPER covenants and agrees with the City that it shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 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 I(3) of the Toxic Substances Control Act (TSCA) to address lead-based hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities. Contractors performing renovations in lead-based paint units must be EPA-certified renovators. These requirements apply to all units and common areas of the Project. The DEVELOPER shall incorporate or cause incorporation of this provision in all contracts and subcontracts for work performed on the Project, which involve the application of paint. The DEVELOPER shall be responsible for all disclosure, inspection, testing, evaluation, and control and abatement activities.

4.11 Minority Outreach Activities. The DEVELOPER 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 the DEVELOPER comply with the City's minority outreach program.

4.12 Other Laws and Regulations. The DEVELOPER covenants and agrees with the City that, in addition to complying with the federal laws and regulations already cited in this Agreement, the DEVELOPER has reviewed, and shall comply with and require all its contractors and subcontractors on the Project to comply with, all other federal laws and regulations that apply to ERF Funds including the following:

- A. The Project is not located in a tract identified by the Federal Emergency Management Agency as having special flood requirements.
- B. The Project requirements, Subpart F of 24 C.F.R. Part 92, as applicable and in accordance with the type of Project assisted.
- C. The property standards at 24 CFR 92.251
- D. The Project "Labor" requirements, as applicable, of 24 C.F.R. 92.354 including Davis Bacon prevailing wage requirements (40 U.S.C. 27-a - 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 supplemented by Department of Labor Regulations (29 CFR Part 5), in regard to the construction and management of the proposed Project.
- E. The DEVELOPER 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".

F. 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”).

G. 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.

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

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

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

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

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

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

N. The Housing and Community Development Act of 1974.

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

P. 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.

Q. 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.

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

4.13 Faith Based Activities. The DEVELOPER warrants, covenants and agrees with the City that it shall not engage in any prohibited activities described in 24 CFR 92.257.

4.14 Reporting Requirements. The DEVELOPER warrants, covenants and agrees with the City that it shall submit annual income reports to the City. DEVELOPER agrees to provide, at the sole cost of the DEVELOPER, an annual audited Financial Statement and residual receipts calculation for the Project expenses and ongoing financial transactions which occur as a result of this Agreement as detailed in Section 7.17. DEVELOPER agrees to account for the expenditure of ERF Funds using generally accepted accounting principles, which financial documentation shall be made available to the CITY upon written request.

4.15 Housing Affordability. The DEVELOPER covenants and agrees with the City that all 58 Affordable Units will be affordable for Extremely-Low, Very Low-Income and Lower-Income Households with average incomes of no more than 80% AMI during the Affordability Period. The 12 Project Units, at a minimum, shall be rented to and occupied by, or, if vacant, available for rental and occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than 30% of AMI consistent with ERF

Program regulations, for the Affordability Period except upon foreclosure or other transfer in lieu of foreclosure following default. 14 Units will support Very Low-Income households with average incomes of no more than 50% AMI. 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 DEVELOPER fails to comply with this Section, or the Affordability Period is not revived following transfer by foreclosure or transfer in lieu of foreclosure, the DEVELOPER shall return to the City all funds disbursed to the DEVELOPER by the City.

4.16 Terminated Projects. The DEVELOPER understands and agrees that, if the Project is terminated before completion, either voluntarily or otherwise, such constitutes an ineligible activity, and the City will not be required to provide any further ERF Funds to the Project.

## **ARTICLE 5. PROPERTY MAINTENANCE**

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

5.1 Adequate Repair and Maintenance. The DEVELOPER during its time on title shall cause the maintenance to the Project and Property to be in compliance with all applicable codes, laws, and ordinances. The City reserves the right to require the DEVELOPER to change the property management company for the Property if it is determined through annual property monitoring that the property management company is not performing satisfactorily.

5.2 Affordable Rental Housing. The DEVELOPER covenants and agrees that the Project shall constitute 58 Affordable Housing Units for rent to Extremely-Low and Lower-Income Households with average incomes of no more than 80% AMI during the Affordability Period. The 12 Project Units, at a minimum, shall be rented to and occupied by, or, if vacant, available for rental and occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than 30% of AMI consistent with ERF Program regulations, during the entire Affordability Period. 14 Units will support Very Low-Income households with average incomes of no more than 50% AMI. This covenant shall remain in effect and run with and restrict the land during the entirety of the Affordability Period. In the event the DEVELOPER fails to comply with the time period in which the Project Units constitute Affordable Housing, the City shall without waiver or limitation, be entitled to injunctive relief, as the DEVELOPER acknowledges that damages are not adequate remedy at law for such breach.

5.3 Compliance with Environmental Laws. The DEVELOPER shall cause the Project 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, the DEVELOPER agrees that, if the City has reasonable grounds to suspect any such violation, the DEVELOPER shall be entitled to thirty (30) days' notice and opportunity to cure such violation. 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, the DEVELOPER shall pay for the reasonable cost of the independent consultant.

Additionally, the DEVELOPER 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 DEVELOPER;

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 the DEVELOPER, or such properties relating to any loss or injury resulting from any hazardous or toxic chemicals, materials, substance, or waste; and

(iii) The DEVELOPER'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 the DEVELOPER or DEVELOPER's employees', contractors' or agents' use or 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. The DEVELOPER 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. The DEVELOPER acknowledges that the use of ERF Funds subjects the Project to extensive state and federal regulation and covenants and agrees that it shall comply with, conform to

and obey (and take steps as are required of the DEVELOPER to enable the City to comply with, conform to and obey) all state and federal statues, regulations, rules and policies applicable to the Project.

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

5.6 Inspection and Audit of Books, Records and Documents. The DEVELOPER shall account, at its sole cost and expense, for all ERF 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 the DEVELOPER 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. The DEVELOPER will maintain books and records for the Project using generally accepted accounting principles. The DEVELOPER agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures expended or financed for the Project and to keep all invoices, receipts and other documents related to expenditures expended or financed for the completion of the Project, 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 the DEVELOPER in which case the DEVELOPER shall bear the cost of such audit. The DEVELOPER shall also comply with any applicable audit requirements of 24 CFR 92.506. This section shall survive the termination of this Agreement.

C. The DEVELOPER 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.

5.7 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 Property until completion of the Project and expiration of the applicable Affordability Period, subject to the rights of the tenants.

5.8 No Other Liens. The DEVELOPER shall not create or incur, or suffer to be created or incurred, or to exist, any additional mortgage, pledge, lien, charge, or other security interest of any kind on the eligible Property, other than those related to the Project's rehabilitation and construction loans in relation to the Project, consistent with the attached Budget, without the prior written consent of the City.

5.9 Nondiscrimination. The DEVELOPER 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 the DEVELOPER 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, the DEVELOPER 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 of any single Unit in the Project.

A. The DEVELOPER shall request City's written approval of the granting of the security interests in the Property described in Section 5.8 above.

5.11 Payment of Liabilities. The DEVELOPER 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. The DEVELOPER shall promptly give written notice to the City upon becoming aware of any Event of Default under this Agreement.

## **ARTICLE 6. DISBURSEMENT OF ERF FUNDS**

6.1 Loan Commitments and Financing Plan. The DEVELOPER shall submit its most current Finance Plan for the Project to the CITY prior to Council approval and as other funding sources become part of the Project budget. The City shall approve the Finance Plan so long as the Plan is consistent with the Budget contained in EXHIBIT "C". The CITY shall accept the Finance Plan and supporting documentation such as commitment letters, letters of credit, agreements, and resolutions for proposed funding to the Project. If the CITY disapproves the Finance Plan, it will specify the reason for the disapproval and ask the DEVELOPER to provide any additional information the CITY may need to approve the Finance Plan.

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

6.3 Use of ERF Funds. The DEVELOPER warrants, covenants and agrees that it shall request ERF Funds only for reimbursement of Eligible Costs incurred as identified in the itemized Budget.

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

A. 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.

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

C. DEVELOPER has established site control, in the form of a fully executed and legally valid Purchase and Sale Agreement between Developer and owner of the Property and has delivered said site control documents to the CITY.

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

E. The DEVELOPER has obtained insurance coverage and delivered to the City evidence of insurance as required in Article 9.

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

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

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

I. The CITY has received, and continues to have the right to disburse, ERF Funds.

6.5 Request for Reimbursement of ERF funds. The DEVELOPER shall request that the CITY reimburse funds for Eligible Costs using the CITY's Request for Disbursement of Funds form. The DEVELOPER shall only request a maximum of Three Million Five Hundred Thousand Dollars and 00/00 (\$3,500,000.00) in ERF Funds . All requests should provide in detail such Eligible Costs applicable to the request. All requests for ERF Funds shall be accompanied with the Certification required by Section 6.6 of this Agreement.

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

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

B. The DEVELOPER has carried out 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. The DEVELOPER has not committed or suffered an act, event, occurrence, or circumstance that constitutes and 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 Costs identified in the 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.

6.7 Disbursement of Funds. The Disbursement of ERF Funds shall occur within the normal course of CITY business (approximately thirty (30) days) after the CITY receives the Certificate and Request for Reimbursement with correct supporting documentation and to the extent of annually allocated and available ERF Funds. CITY shall wire the ERF Funds directly to Chicago Title Company, 3203 W. March Lane, Suite 110. Stockton, CA 95219 (Attn: Melissa Corbin) on behalf of Developer for Eligible Costs.

## **ARTICLE 7. REHABILITATION AND CONSTRUCTION OF THE PROJECT**

Without waiver of limitation, the parties agree as follows:

7.1 Pre-Construction Meeting Regarding Processes and Procedures. The City may schedule, and the DEVELOPER shall attend, or the DEVELOPER may schedule, and the City shall attend a meeting prior to construction, rehabilitation, or site development for placement of Affordable Housing Units for the purpose of outlining the Project processes and procedures.

7.2 Commencement and Completion of Project. The DEVELOPER shall commence construction, rehabilitation or site development for placement of Affordable Housing Units in the Project, and when completed, record a Certificate of Completion of construction of the Project in accordance with the Project Schedule , and provide the City with a copy of the recordation.

7.3 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. The DEVELOPER shall provide the City with copies of all agreements it has entered into with any and all general contractors or subcontractors for this Project. The DEVELOPER shall require that each such general contractor agreement contain a provision whereby the party(ies) to the agreement, other than the DEVELOPER, agree to: (i) notify the City immediately of any event of default by the DEVELOPER 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 the DEVELOPER is not in default thereunder. The DEVELOPER 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.

7.4 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 constructed on the Property is damaged or destroyed by an insurable cause, the DEVELOPER 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 begin within ninety (90) days after the insurance proceeds are made available to the DEVELOPER and shall be completed within two (2) 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, the DEVELOPER shall use its best efforts to make up the deficiency.

7.5 Fees, Taxes and Other Levies. The DEVELOPER 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, the DEVELOPER 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, the DEVELOPER 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. The DEVELOPER 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, including Section 214(g) of the California Revenue and Taxation Code.

7.6 Financing. The DEVELOPER shall promptly inform the City of any new financing or funding not included in the budget for Project, and the DEVELOPER shall provide the City with copies of all agreements with any and all funding sources for the Project. The DEVELOPER shall require each agreement with any and all funding sources not included in the Budget to contain a provision whereby the party(ies) to the agreement other than the DEVELOPER, if permitted by the party(ies) applicable rules and regulations, agree to notify the City immediately of any event of default by the DEVELOPER thereunder. Should the DEVELOPER not comply with all the obligations of this section, the DEVELOPER shall return to the City all funds disbursed to the DEVELOPER by the City; and the City will not be required to provide any additional funds to the Project. This Section shall survive expiration or termination of this Agreement.

7.7 Inspections. The DEVELOPER shall permit, facilitate, and require its contractors and consultants to permit and facilitate observation and inspection at the Project site 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.

7.8 Utilities. The DEVELOPER 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.

7.9 Insurance and Bonds. The DEVELOPER shall submit for City approval bonds, certificates and applicable endorsements for all insurance and bonds required by this Agreement in accordance with Article 9.

7.10 Mechanic's Liens and Stop Notices. If any claim of lien is filed against the Property or a stop notice affecting any financing, the Project Units or funding sources for the Project is served on the City or any other third party in connection with the Project, the DEVELOPER 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 the DEVELOPER fails to discharge, bond, or otherwise satisfy the City with respect to any lien, encumbrance, charge or claim referred to in Section 7.10 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 the DEVELOPER's expense. Alternatively, the City may require the DEVELOPER 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 the DEVELOPER. The DEVELOPER 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.

7.11 Permits and Licenses. The DEVELOPER shall submit, for City approval, all the necessary permits and licenses required for Commencement of Construction. As the City may reasonably request, the DEVELOPER, 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. The DEVELOPER 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 to relocate the utilities, if any, as necessary to complete the Project.

7.12 Plans and Specifications. Before Commencement of construction, rehabilitation or site development for the placement of the Affordable Housing Units, the DEVELOPER shall submit to the CITY, for its review and approval, the final Plans and Specifications for the Project. The DEVELOPER will construct or rehabilitate the Project in full conformance with the City-approved Development Permit (if required) and plans and specifications and modifications thereto approved by the City. The DEVELOPER shall obtain the City's prior written approval for any modifications to the plans and specifications.

7.13 Project Responsibilities/Public Work-Prevailing Wage Requirements. The DEVELOPER shall be solely responsible for all aspects of the DEVELOPER's conduct in connection with the Project, including but not limited to, compliance with all 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, the DEVELOPER 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 the DEVELOPER is properly discharging its obligation to the City and shall not be relied upon by the DEVELOPER 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.

7.14 Property Condition. The DEVELOPER shall maintain the Project 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. The DEVELOPER and those taking direction under the DEVELOPER 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 Project Property 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.

7.15 Quality of Work. The DEVELOPER shall ensure that the site development of the Project employs building materials of a quality suitable for the requirements of the Project. The DEVELOPER shall cause completion of the construction of the Project on the Property in full conformance with applicable local, State, and federal laws, statutes, regulations, and building and housing codes.

7.16 Relocation. If and to the extent that the proposed Project results in the permanent or temporary displacement of residential tenants, the DEVELOPER shall comply with all applicable local, State, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. The DEVELOPER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

7.17 Reporting Requirements. The DEVELOPER shall submit to the City the following Project reports:

A. Annually, by February 15th of each year, and continuing until the termination of this Agreement, the DEVELOPER shall submit an Annual Rent Roll Report to the City, Exhibit "H" Self-Certification of annual income. 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 the DEVELOPER that the Project is in compliance with the Affordability requirements, and such other information the City may be required by law to obtain. The DEVELOPER shall provide any additional information reasonably requested by the City upon request and at the annual monitoring of the Property.

B. Annually, by February 15th of each year, evidencing the completion of the Project, and continuing until the expiration of this Agreement, the DEVELOPER shall submit proof of property and liability insurance, as required in Article 9, listing the City as loss payee.

C. Annually, by February 15th of each year, report to the City the number of leases that were not renewed or terminated and the reason for such non-renewal or termination

7.18 Scheduling and Extension of Time; Unavoidable Delay in Performance. It shall be the responsibility of the DEVELOPER to coordinate and schedule the work to be performed so that the Commencement of the Construction and issuance of the Notice of Completion will take place in accordance with the provisions of this 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 this 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, 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 10 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.

B. Any and all extensions hereunder shall be by mutual agreement between the City and DEVELOPER. The City's Planning Director may administratively extend deadline for up to 180 days cumulatively. Any extension beyond the Director's 180-day cumulative extension shall require City Council approval.

7.19 Certificate of Completion. Upon completion of the construction, rehabilitation and site development for placement of the Affordable Housing Units in the Project, the DEVELOPER shall submit to the City: 1) certification in writing that the Project has been substantially completed in accordance with the plans and specifications, approved by the City; 2) a recorded Notice of Completion; and 3) a request for a recorded Certification of Completion. Upon a determination by the City that the DEVELOPER is in compliance with all of the DEVELOPER's construction obligations, as specified in this Agreement, the City shall furnish and record, within 30 calendar days of a written request by the DEVELOPER, a recordable Certificate of Completion for the Project in the form attached hereto as EXHIBIT "E". 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 the DEVELOPER a written statement indicating in what respects the DEVELOPER has failed to complete the Project in conformance with this Agreement or has otherwise failed to comply with the terms of this Agreement, and what measures the DEVELOPER will need to take or what standards it will need to meet in order to obtain the Certificate of Completion. Upon the DEVELOPER taking the specified measures and meeting the specified standards, the DEVELOPER will certify to the City in writing of such compliance and the City shall deliver and record the Certificate of Completion to the DEVELOPER in accordance with the provisions of this Section.

## **ARTICLE 8. OPERATIONS OF THE PROJECT**

8.1 Operation of the Project. The DEVELOPER shall lease, operate, and manage the Project in full conformity with the terms of this Agreement.

8.2 Occupancy Requirements. The Affordable Housing Units shall be rented or sold and occupied by, or if vacant, available for rental occupancy by households with average incomes of no more than 80% AMI. The 12 Project Units, at a minimum, shall be rented to and occupied by, or, if vacant, available for rental and occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than 30% of AMI consistent with ERF Program regulations, during the entire Affordability Period. 14 Units will support Very Low-Income households with average incomes of no more than 50% AMI. The DEVELOPER shall comply with the income targeting requirements of ERF.

8.3 Leasing the Project Units. Before leasing or selling any Project Units, the DEVELOPER shall submit its proposed form of lease or purchase and sale agreement for the City's review and approval. The DEVELOPER covenants and agrees to utilize only lease agreements that have been approved in advance by the City. The City shall respond to the DEVELOPER's submission of a sample lease or purchase and sale agreement within 30 days. Should the City not respond within 30 days of the lease or purchase and sale agreement submittal, the DEVELOPER shall be authorized to use the submitted sample lease or purchase and sale agreement. Additionally, the DEVELOPER agrees not to terminate the tenancy or to refuse to sell, renew or lease with a tenant of the Units assisted with ERF 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 the DEVELOPER or its authorized management entity upon the tenant specifying the grounds for such action. The DEVELOPER 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 Project Units Provisions. In addition to the ERF requirements and the VAWA lease addendum required in accordance with 24 CFR 92.359(e), the leases are subject to the following:

A. 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 no more than 30% AMI 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. Before leasing and at least sixty 60 calendar days prior to the Completion Date, the DEVELOPER shall submit to the City, for review and approval, a plan for marketing and managing the proposed Project Units (Final Management Plan). The Final Management Plan shall address in detail how the DEVELOPER or its designated management entity plans to market the availability of the Project Units to prospective tenants and how the DEVELOPER plans to certify the eligibility of potential tenants. The Final Management Plan shall also address how the DEVELOPER and/or the management entity plan to manage and maintain the Project Units in accordance with ERF 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 the DEVELOPER proposes to enter into with the Extremely-Low and Lower-Income tenants. The DEVELOPER shall abide by the terms of this Final Management Plan, approved by the City, in marketing, managing, and maintaining the Project Units.

8.6 Property Management. The DEVELOPER shall comply with the following:

A. Management Responsibilities. The DEVELOPER directly and/or through its designated management entity, is specifically responsible for all management functions with respect to the Project Units including, without limitation, the selection of tenants, certification and recertification 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.

B. If an Affordable Housing Unit is sold to a homeowner or to a resident of the Affordable Housing Unit, management can be provided by the owner of the unit. The owner will be responsible to provide the DEVELOPER income verification on an annual basis to Developer.

8.7 Maintenance and Security. The DEVELOPER 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 Project Unit occupants. The DEVELOPER shall not commit or permit any waste on or to the Project and shall prevent and/or rectify any physical deterioration of the Project. The DEVELOPER 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 DEVELOPER 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. The DEVELOPER shall otherwise comply with all applicable local, State, and federal laws concerning nondiscrimination in housing. Neither the DEVELOPER nor any person claiming under or through the DEVELOPER, 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 Project Unit or in connection with employment of persons for the construction of any Project Unit. All deeds or contracts made or entered into by the DEVELOPER as to the Project Units or the Project or portion thereof, shall contain covenants concerning nondiscrimination consistent with this section. The DEVELOPER shall include a statement in all advertisements, notices, and signs for availability of Project Units for rent to the effect that the Development is an Equal Housing Opportunity Provider.

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

8.9 Rent Schedule and Utility Allowances. The DEVELOPER covenants and agrees to charge rent to tenants occupying the 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 ERF Program requirements applicable to the Project Units in the Fresno, California area. The DEVELOPER agrees to furnish the City with an annual rent roll setting forth the maximum monthly rent for the Assisted Units until the expiration of the Affordability Period. The DEVELOPER shall reexamine the rent and tenant income for the ERF Units at least annually.

8.10 Rental Housing Fees. The DEVELOPER 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 the DEVELOPER's Insurance and Indemnity Obligations:

### 9.1 Insurance Requirements.

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

(b) If at any time during the life of this Agreement or any extension, DEVELOPER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to DEVELOPER shall be withheld until notice is received by the City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve DEVELOPER 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

(c) The fact that insurance is obtained by DEVELOPER shall not be deemed to release or diminish the liability of DEVELOPER, 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 DEVELOPER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of DEVELOPER, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under this Agreement) with limits of liability not less than the following:
  - \$2,000,000 per occurrence for bodily injury and property damage
  - \$2,000,000 per occurrence for personal and advertising injury
  - \$4,000,000 aggregate for products and completed operations
  - \$4,000,000 general aggregate applying separately to the work performed under this 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 by the State of California and Employer’s Liability Insurance.
- (iv) EMPLOYEE LIABILITY insurance with limits of liability of no less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 diseased each employee

**UMBRELLA OR EXCESS INSURANCE**

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

## **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

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

## **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

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

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

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

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

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

The DEVELOPER shall furnish the City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee before work commences. Upon request of the City, the DEVELOPER shall immediately furnish the City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

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

## **SUBCONTRACTORS**

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

## 9.2 Indemnification.

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

To the fullest extent allowed by law, and in addition to the express duty to indemnify, DEVELOPER, whenever there is any causal connection between the DEVELOPER's performance or non-performance of the work or services required under this Agreement and any claim or loss, injury or damage of any type, DEVELOPER expressly agrees to undertake a duty to defend the City and any of its officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader than the duty to indemnify. The duty to defend as herein agreed to by DEVELOPER expressly includes all costs of litigation, attorneys' fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to DEVELOPER as reasonably determined by the City.

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

It is further understood and agreed by DEVELOPER that if the City tenders a defense of a claim on behalf of the City or any of its officers, officials, employees, agents, or volunteers and DEVELOPER fails, refuses or neglects to assume the defense thereof, the City and its officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and DEVELOPER shall be bound and obligated to reimburse the City and its officers, officials, employees, agents, or volunteers for the amounts expended

by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

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

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

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

9.3 Property Insurance. The DEVELOPER 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.

## **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 the DEVELOPER for purposes of this Agreement after the cure period in Section 10.2 has expired without a cure:

- A. DEVELOPER's use of ERF Funds for costs other than Eligible Costs or for uses not permitted by the terms of this Agreement;
- B. The DEVELOPER's failure to obtain and maintain the insurance coverage required under this Agreement;
- C. Except as otherwise provided in this Agreement, the failure of the DEVELOPER to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) the DEVELOPER's material deviation in the Project work specified in the Project Description as identified in this Agreement, without the City's prior written consent; (2) the DEVELOPER's use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) the DEVELOPER's failure to commence or complete the Project, as specified in this Agreement, unless delay is permitted under Section 7.18 of this Agreement; (4) cessation of the Project for a period of more than fifteen (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 the DEVELOPER or its development



team, or the Project that gives the City reasonable cause to believe that the Project cannot be completed by the scheduled completion date according to the terms of this Agreement; (6) the DEVELOPER's failure to remedy any deficiencies in record keeping or failure to provide records to the City upon the City's request; or (7) the DEVELOPER's failure to comply with any federal, State or local laws or applicable City restrictions governing the Project, including but not limited to provisions of this Agreement pertaining to equal employment opportunity, nondiscrimination and lead-based paint;

D. Any representation, warranty, or certificate given or furnished by or on behalf of the DEVELOPER shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that the DEVELOPER concealed or failed to disclose a material fact to the City, provided, however, that if any representation, warranty, or certification that proves to be materially false is due merely to the DEVELOPER inadvertence, the DEVELOPER 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. The DEVELOPER shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, State or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within 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. The DEVELOPER's failure, inability or admission in writing of its inability to pay its debts as they become due or the DEVELOPER assignment for the benefit of creditors;

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

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

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

10.2 Notice of Default and Opportunity to Cure. The City shall give written notice to the DEVELOPER of any Event of Default by specifying: (1) the nature of the event or deficiency giving rise to the default; (2) the action required to cure the deficiency, if any action to cure is possible, and (3) a date, which shall not be less than the lesser of any time period provided in this Agreement, any time period provided for in the notice no less than 10 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, the DEVELOPER shall have an additional

reasonable period to cure so long as it commences cure within the specified time and thereafter diligently pursues the cure in good faith. The City acknowledges and agrees that the DEVELOPER shall have the right to cure any defaults hereunder and that notice, and cure rights hereunder shall extend to any and all partners of the DEVELOPER that are previously identified in writing delivered to the City in the manner provided in this Agreement.

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 ERF Funds shall terminate. The City may also at its option and without notice institute any action, suit, or other proceeding in law, in equity or otherwise, which it shall deem necessary or proper for the protection of its interests and may without limitation proceed with any or all of the following remedies in any order or combination that the City may choose in its sole discretion:

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

## **ARTICLE 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; and 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 the DEVELOPER, or of any other person, shall in and by itself be deemed or construed by any person to create any relationship of third-party beneficiary, or of principal and agent, of limited or general partnership, or of joint venture.

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 the DEVELOPER or any of its executors, administrators, transferees, successors-in-interest or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

11.7 Effective Date. This Agreement shall be effective upon the date first above written, upon the City and the DEVELOPER's complete execution following City Council approval 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 reference, incorporated into and made a part of this Agreement.

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

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 the City of Fresno.

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 Assignment or Succession. The DEVELOPER shall not sell, transfer, assign or otherwise dispose of all or a material part of any interest it might hold in the Property without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

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

agreed to in writing between the City and such person, each such person shall be deemed to have waived in writing all right to seek redress from the City under any circumstances whatsoever.

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

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

11.18 Notice. Any notice to be given to either party under the terms of this Agreement shall be given by certified United States mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties.

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

If to DEVELOPER: Self-Help Enterprise  
                          Attn: Vice President  
                          8445 W. Elowin Court  
                          P.O Box 6520. Visalia CA 93290

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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

CITY OF FRESNO,  
A California municipal corporation

SELF-HELP ENTERPRISE,  
A California nonprofit Community Based Corporation

By: \_\_\_\_\_  
Georgeanne A. White,  
City Manager

By: DocuSigned by:  
Betsy McGovern-Garcia  
876BF C4B55C847D...

(Attach Notary certificate of  
acknowledgement)

Name: Betsy McGovern-Garcia

Title: Vice-President  
(If corporation or LLC., Board Chair, Pres.  
or Vice Pres.)

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

(Attach Notary certificate of  
acknowledgement)

By: Tracy N. Parvanian  
Tracy N. Parvanian Date  
Assistant City Attorney 5-21-24

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

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

ATTEST:  
TODD STERMER, CMC  
City Clerk

Title: \_\_\_\_\_  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

By: \_\_\_\_\_ Date  
Deputy

(Attach Notary certificate of  
acknowledgement)

Attachments:

- EXHIBIT A: PROPERTY DESCRIPTION
- EXHIBIT B: PROJECT DESCRIPTION
- EXHIBIT C: BUDGET
- EXHIBIT D: EXEMPLAR DECLARATION OF RESTRICTIONS
- EXHIBIT E: CERTIFICATE OF COMPLETION
- EXHIBIT F: EXEMPLAR PROMISSORY NOTE
- EXHIBIT G: EXEMPLAR DEED OF TRUST
- EXHIBIT H: ANNUAL INCOME VERIFICATION

**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

**Legal Description:**

**THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:**

**Parcel 1:** The West half of the Southeast Quarter of Lot 204 of Perrin Colony No. 2, in the County of Fresno, State of California, according to the amended Map thereof recorded in Book 4 Page 68 of Plats, Fresno County Records; EXCEPTING therefrom the East 10 feet thereof.

**Parcel 2:** The West 70 feet of the East half of the East half of the South half and the East 10 feet of the West half of the East half of the South half of Lot 204 of Perrin Colony No. 2, in the County of Fresno, State of California, according to the amended Map thereof recorded in Book 4 Page 68 of Plats, Fresno County Records.

**Parcel 3:** The South half of the Northeast Quarter of Lot 204 of Perrin Colony No. 2, in the County of Fresno, State of California, according to the amended Map thereof recorded in Book 4 Page 68 of Plats, Fresno County Records, EXCEPTING THEREFROM the West 30 feet thereof.

**Parcel 4:** Right of way for ingress and egress over the east 30 feet of the west 115 feet and over the east 30 feet of the west 244.5 feet of the following described parcel: the west half of the south east half of lot 204 of Perrin Colony No. 2 according to the amended map there of recorded April one, 1891 in book for, page 68 of plats, in the office of the county recorder of said county

**APNS: 408-050-04, 408-050-05, 408-050-09**

## **EXHIBIT "B"**

### **PROJECT DESCRIPTION, INCOME LEVELS, SCHEDULE**

#### **I. PROJECT DESCRIPTION**

Self-Help Enterprise will acquire a Mobile Home Park. There will be a total of 58 units available where 12 units will be restricted to Individuals that accessed Encampment Resolution Fund (ERF) Services. The target income for the 12 units will be households with average incomes of no more than 30% Area Median Income (AMI). 14 Affordable Housing Units shall be rented to Very Low-Income Households with average incomes of no more than 50% AMI. The income requirements for the remainder 32 units will be households with the average incomes of no more than 80% Area Median Income.

The project will be the acquisition, rehabilitation and site development of properties owned by Self-Help Enterprise (or a wholly controlled LLC affiliated) or single-family owner-occupied residents, partner organizations and community members who have signed an authorization of agent and site control agreement with the Self- Help Enterprise to establish site control.

#### **II. PROJECT SCHEDULE**

- A. November 2024: Commencement of Rehabilitation and improvements. Self Help Enterprise will start the work of repairing and/or replacing items such as lighting, sidewalks and other safety items. Self Help Enterprise will work with the mobile home tenants to renovate or upgrade individual units as needed.
- B. March 2025: Completion of Construction. Self-Help Enterprise will engage with mobile home tenants to gather feedback on the completed work and address any concerns or suggestions. Conduct a final walk through of the project. Compile documentation related to the project, including permits, approvals, contracts and warranties.
- C. April 1, 2025: Rent Up Completion.

#### **III. INCOME LEVEL**

In order to qualify for housing, all tenants will be required to meet or be below 80% AMI to be eligible for housing. While income-qualified tenants will not lose their housing if they start making more income, once they move out, the new tenant will be at or below 80% AMI for Fresno.



## EXHIBIT "C" BUDGET

### Sources

<i>SOURCE</i>	<i>AMT</i>	<i>TERMS</i>
City Bridge Loan	\$3,500,000	60 months; 0%
PRICE Funding	\$8,773,000	N/A Grant
City of Fresno Rehab Program	\$960,000	N/A Grant
<b>Total Sources</b>	<b>\$13,233,000</b>	

Purchase Price	\$3,300,000
Title, Escrow and Legal Fees	\$75,000
<b>Total Acquisition Cost</b>	<b>\$3,375,000</b>

### Improvement Cost

Immediate Stabilization Needs (Initial 6 mo)	\$125,000
Off-site Improvements	\$50,000
Site Work (water system, utility laterals, etc)	\$150,000
Grading & Pavement	\$240,000
Tiny Home Pads & Lateras	\$875,000
Electrical Upgrades & Low-Voltage	\$75,000
Broadband Upgrades	\$75,000
Trim Trees	\$30,000
Signage	\$20,000
Misc Repairs	\$150,000
Landscaping	\$75,000
Fencing & Gate	\$70,000
Lighting Improvements	\$40,000
Parking Improvement	\$20,000
Security Cameras and Systems	\$80,000
Solar PV for Common Areas	\$400,000
Battery Storage	\$100,000
<b>Community Building Construction</b>	<b>\$1,125,000</b>
<i>Subtotal Hard Cost Construction</i>	<b>\$3,575,000</b>
OH&P	\$250,250
General Requirements	\$250,250
Contingency	\$357,500
Owner-Occupied Unit Rehab	\$960,000
<b>Total Hard Cost Construction</b>	<b>\$5,518,000</b>
<b><i>SOFT COSTS</i></b>	
Reports and Studies	\$30,000
Permit Fees	\$75,000
Appraisal	\$15,000
Legal Fees	\$50,000

Property Inspections	\$15,000
Enforcement Compliance	\$50,000
Escrow Title, insurance	\$5,000
Architect	\$75,000
Engineering	\$150,000
Suvery and Inspections	\$75,000
<b>Total</b>	<b>\$540,000</b>

**Other Professional Fees**

Project Mgmt	\$150,000
Broker & Financial Consultant Fee	\$150,000
<b>Total</b>	<b>\$300,000</b>

**Repayment of City Loan** **\$3,500,000**

**Total Expenses** **\$13,233,000**

Surplus/(Deficit) \$0

## EXHIBIT "D" 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.*

APN: 408-050-04, 408-050-05, 408-050-09

### DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (Declaration) is executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by Self-Help Enterprise, a California nonprofit public benefit corporation (DECLARANT), in favor of the CITY OF FRESNO, a California municipal corporation (the CITY).

WHEREAS, the DECLARANT is the owner of the real estate in the City of Fresno, County of Fresno, California, located at, Fresno, CA 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 State and Encampment Resolution Fund (ERF) Agreement dated \_\_\_\_\_, 2024, incorporated herein by reference (ERF Agreement) and instruments referenced therein, the DECLARANT agrees to utilize, and the CITY agrees to provide, certain ERF funded affordable homes from the California Interagency Council on Homelessness, to the DECLARANT and the DECLARANT agrees to acquire, rehabilitate and develop sites to place 12 units, reserved for Extremely-Low-Income households with average incomes of no more than 30% AMI, 14 Units will support Very Low-Income Households with average incomes of no more than 50% AMI, and 32 Units will support Lower-Income households with average incomes of no more than 80% AMI; and

WHEREAS, the ERF regulations promulgated by the Department of the Treasury, impose certain affordability requirements upon property owned by the DECLARANT, which affordability restrictions shall be enforceable for a 30-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 Unit Household information has been obtained and verified, constituting the commencement of the 30-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 ERF 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 ERF 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 determined by the CITY to be complete, until the expiration of the Affordability Period, it shall cause Project Units in this project to be used as rental affordable housing (12 Project Units to Extremely-Low Households at or below 30% AMI, 14 Units will support Very Low-Income Households with average incomes of no more than 50% AMI, and 32 to Lower-Income Households at or below 80% AMI). The DECLARANT further agrees to file a recordable document setting forth the Project Completion Date when determined by the CITY. Unless otherwise provided in the Agreement, the term Affordable Housing shall include, without limitation, compliance with the following requirements:

i. Nondiscrimination. There shall be no discrimination against nor segregation of any persons or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or handicap in the sale, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall 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 Project Units constituting the Affordable Units upon the Project Property shall be leased only to eligible natural persons, who shall occupy the Affordable housing units as the tenants' principal place of residence. The forgoing requirement that the tenant of unit occupy the unit as their principal residence does not apply to (i) persons, other than natural persons, who acquire the Project Property or portion thereof by foreclosure or deed in lieu of foreclosure; or qualified entities that acquire the Property or portion thereof with the consent of the CITY.

iii. Household Income Requirements. In order to qualify for housing, all tenants of Project Units will be required to meet or be below 30% AMI to be eligible for housing and 80% for the remaining Affordable Housing Units. While they will not lose their

housing if they start making more income, once they move out, the new tenant will be at or below 80% AMI for Fresno.

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 affordability. However, the requirements with respect to an Affordable Unit shall be revived according to their original terms, if during the original Affordability Period, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner of those with whom the former owner has or had formally, family or business ties, obtains an ownership interest in the Project or the Property, the Affordability Period shall be revived according to its original terms.

5. Benefit. This Declaration shall run with and bind the Property for a term of 30 years from the date of recordation of the Notice of Completion. The failure or delay at any time of the 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. Amendment. No amendment or modification of this Declaration shall be permitted without the prior written consent of the CITY and the DECLARANT.

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

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

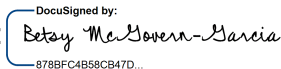
IN WITNESS WHEREOF, DECLARANT has executed this Declaration of Restrictions on the date first written above.

DECLARANT:

Self Help Enterprises,  
a California nonprofit public benefit corporation

Date: \_\_\_\_\_

By: Self-Help Enterprise  
a California nonprofit public benefit organization

By: 878BFC4B59CB47D...

Its: Vice President

**(Attach notary certificate of acknowledgment)**

**EXHIBIT "E"**  
**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 payment of a recording fee pursuant to Government Code Section 6103.

APN: 408-050-04, 408-050-05, 408-050-09

City of Fresno

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

Planning and Development Department

Date: \_\_\_\_\_

## Certificate of Completion

APN: 408-050-04, 408-050-05, 408-050-09

Recitals:

A. By an Encampment Resolutions Fund (ERF) Agreement dated \_\_\_\_\_, 2024, (ERF Agreement) between the City of Fresno, a municipal corporation (the CITY), and Self Help Enterprise, a nonprofit public benefit corporation (DEVELOPER), the DEVELOPER agreed to acquire, rehabilitate and develop site(s) to locate additional affordable homes, and related on-site and off-site improvements, with assistance of ERF Funds while meeting the affordable housing, income targeting and other requirements of the ERF and according to the terms and conditions of the ERF Agreement other documents/instruments referenced therein.

B. The ERF Agreement was recorded on \_\_\_\_\_, as Instrument No. \_\_\_\_\_ in the Official Records of Fresno County, California.

C. Under the terms of the ERF Agreement, after the DEVELOPER completes the Project, the DEVELOPER may ask the CITY to record a Certificate of Completion.

D. The DEVELOPER has asked the CITY to furnish the DEVELOPER with a recordable Certificate of Completion.

E. The CITY's issuance of this Certificate of Completion is conclusive evidence that the DEVELOPER has completed the Project as set forth in the ERF Agreement.

NOW THEREFORE:

1. The CITY certifies that the DEVELOPER commenced construction of the Project on \_\_\_\_\_, 20XX and completed construction of the Project on \_\_\_\_\_ 20XX, and has done so in full compliance with the ERF Agreement.

2. This Certificate of Completion is not evidence of the DEVELOPER'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 ERF Agreement.

//



IN WITNESS WHEREOF, CITY has executed this Certificate of Completion as of this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF FRESNO

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

Date: \_\_\_\_\_

Planning & Development Department  
(Attach notary certificate of acknowledgment)

ATTEST:  
TODD STERMER, CMC  
CITY CLERK

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

By: \_\_\_\_\_  
\_\_\_\_\_, Deputy

By: \_\_\_\_\_  
Tracy N. Parvanian  
Assistant City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Self Help Enterprise  
a California nonprofit public benefit Organization

By: <sup>DocuSigned by:</sup> Betsy McGovern-Garcia  
Betsy McGovern-Garcia  
Vice President

Date: 5/21/2024

**(Attach notary certificate of acknowledgment)**

**EXHIBIT "F"**  
**PROMISSORY NOTE**

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

\$3,500,000.00

Fresno, California  
\_\_\_\_\_, 2024

For value received, the undersigned, Self Help Enterprises, a California non-profit benefit corporation (Borrower), promises to pay to the order of the City of Fresno, a municipal (Lender or Beneficiary), up to Three Million, Five Hundred Thousand Dollars, to the extent that such funds are disbursed to Borrower, at zero percent interest on the unpaid balance and forgivable as described herein. This Promissory Note (Note) is made and entered into in accordance with the terms of the Encampment Resolution Fund Agreement dated \_\_\_\_\_, entered into between Borrower and Lender (ERF Agreement).

Principal on this Note shall be due and payable, on or before the earlier termination or expiration of the ERF Agreement and the 30-year Affordability Period (Maturity Date) to which this Promissory Note relates. Principal on the Note, in Lender's sole discretion, may be forgiven if Borrower fully complies with the terms of the ERF Agreement for a minimum of five years at which time the principal due shall be forgiven, this Note cancelled, and the Trustee instructed to reconvey the Deed of Trust securing the same be reconveyed. Lender in its sole discretion, , may allow up to two additional five-year extensions of this Note during which time Lender may monitor and confirm Borrower's full compliance with the ERF Agreement.

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

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

"Business Day" means any day other than Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day. However, if the extension would cause the payment to be made in a new calendar month, that payment will be made on the preceding Business Day.

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note, and executed in favor of and delivered to the Lender (Deed of Trust), insured by Chicago Title Company as no worse than a third position lien on the Property subordinated only to a lien created by Borrower to insure payment of monies borrowed to pay for the acquisition, rehabilitation and site development for the placement of Affordable Housing Units on the on the Property. Said Deed of Trust is insured by CLTA Lender's policy in the principal amount of and endorsed for this Note.

Time is of the essence with respect to all terms of this Note. It will be a default under this Note if Borrower defaults under the Agreement, any other Loan Documents (as defined in the Agreement), or if Borrower fails to pay when due any sum payable under this Note or under any other obligation secured by a deed of trust or other lien senior to the deed of trust which secures this Note. Borrower shall promptly inform Lender of any new or additional financing or funding, and Borrower shall provide Lender copies of all agreements with any and all Funding Sources for this Project. In the event of a default by Borrower, the Borrower shall pay a late charge equal to 2% of any outstanding payment. All payments

collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest and then to principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the Agreement or Loan Documents gives rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due and payable without any further presentment, demand, protest, or notice of any kind.

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

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

Borrower agrees to pay all costs including, without limitation, attorney fees, incurred by the holder of this Note in enforcing payment, whether or not suit is filed, and including, without limitation, all costs, attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by the holder of this Note of its rights and remedies under this Note. All costs incurred by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Borrower. Borrower will pay to Lender all attorney fees and other costs referred to in this paragraph on demand.

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

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

The Deed of Trust provides as follows:

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

Lender may transfer this Note and deliver to the transferee all or any part of the Property then held by it as security under this Note, and the transferee will then become vested with all the powers and rights

given to Lender; and Lender will then be forever relieved from any liability or responsibility in the matter, but Lender will retain all rights and powers given by this Note with respect to Property not transferred.

If any one or more of the provisions in this Note is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. This Note will be binding on and inure to the benefit of Borrower, Lender, and their respective successors and assigns.

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

The Loan shall be nonrecourse to the Borrower and all constituent members of the Borrower.

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

*[Signatures on following page.]*

IN WITNESS WHEREOF, Borrower has executed this Note on the date first written above.

Borrower

Self Help Enterprises, a California non-profit corporation

By: DocuSigned by: Betsy McGovern-Garcia Date: 5/21/2024

Name: Betsy McGovern-Garcia

Title: Vice President

(Attach notary certificate of acknowledgment)

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

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

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

(Attach notary certificate of acknowledgment)

**EXHIBIT "G"  
DEED OF TRUST**

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)

TITLE ORDER NO. \_\_\_\_\_  
A.P.N.: 408-050-04, 408-050-05, 408-050-09

ESCROW NO. \_\_\_\_\_

**DEED OF TRUST**

THIS DEED OF TRUST (Deed of Trust) made this \_\_\_ day of \_\_\_\_\_, 2024, by and between Self-Help Enterprise, a California Nonprofit Public Benefit Corporation ("Borrower"), Chicago Title Company, a California Corporation ("Trustee"), and the City of Fresno, a Municipal Corporation organized and existing under the laws of the State of California whose address is 2600 Fresno Street, Fresno, California 93721 ("Beneficiary" and "Lender").

The Borrower, in consideration of the indebtedness herein recited and the trust herein created, does irrevocably grant and convey to Trustee, in trust, with power of sale, all the Borrower's right, title, and interest now owned or hereafter acquired in the real property known as 104 E. Sierra Avenue, Fresno, CA 93710 (APN: 408-050-04, 408-050-05, 408-050-09), located in Fresno County, California and more particularly described in the attached EXHIBIT "A", incorporated by reference (the Borrower agrees that any greater to the Land later acquired during the term of this Deed of Trust will be subject to this Deed of Trust), together with the rents, issues, and profits, subject however, to the right, power, and authority granted and conferred on the Borrower in this Deed of Trust to collect and apply the rents, issues, and profits; and

The Borrower also irrevocably grants, transfers, and assigns to the Trustee, in trust, with power of sale, all of the Borrower's right, title and interest now owned or later for and located at the Property:

- (1) All buildings ("Buildings") and improvements now or later on the land and all easements, rights, appurtenances, water and water rights, minerals and mineral rights; all machinery, equipment, appliances, and fixtures for the generation or distribution of air, water, heat, electricity, light, fuel, or refrigeration or for ventilating or sanitary purposes or for the exclusion of vermin or insects or for the removal of dust, refuse, or garbage; all wall safes, built-in furniture, and installations, window shades and blinds, light fixtures, fire hoses and brackets, screens, linoleum, carpets, furniture, furnishings, fixtures, plumbing, laundry tubs and trays, refrigerators, heating units, stoves, water heaters, incinerators, and communication systems and installations for which any Building is specially designed; all of these item, whether now or later installed, being declared to be for all purposes of this Deed of Trust a part of the Land, the specific enumerations in this Deed of Trust not excluding the general; and

- (2) The rents, issues, profits, and proceeds relating to the foregoing; and
- (3) The Property to the extent not included on clauses (1) and (2) above.

TO SECURE, in order of priority that the Beneficiary determines:

- (1) Payment of the indebtedness evidenced by a Note of the Borrower of even date with this Deed of Trust in the principal amount of Three Million Five Hundred Thousand Dollars and 00/100 (\$3,500,000.00), (Note), payable to the Beneficiary or order, and all extensions, modifications, or renewals of that note;
- (2) Payment of the interest on that indebtedness according to the terms of the Note;
- (3) Payment of all other sums (with interest as provided herein) becoming due and payable to the Beneficiary or the Trustee pursuant to the terms of this Deed of Trust;
- (4) Performance of every obligation contained in this Deed of Trust, the Note, the ERF Agreement dated the \_\_ of \_\_, 2024, and its related documents, the Declaration of Restrictions dated the \_\_ of \_\_, 2024, any instrument now or later evidencing or securing any indebtedness secured by this Deed of Trust, and any agreements, supplemental agreements, or other instruments of security executed by Borrower as of the same date of this Deed of Trust or at any time subsequent to the date of this Deed of Trust for the purpose of further securing any indebtedness amending this Deed of Trust or any instrument secured by this Deed of Trust (collectively the Loan Documents); and
- (5) Payment of all other obligations owed by Borrower to Beneficiary that by their terms recite that they are secured by this Deed of Trust, including those incurred as primary obligor or as guarantor.

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

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

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

Documents; and each of the Loan Documents, when executed and delivered to the Beneficiary, will constitute a valid obligation, enforceable in accordance with its terms.

The Borrower represents and warrants to the Beneficiary that as of the date of this Deed of Trust that the Property is not used principally for agricultural or grazing purposes; that the Borrower is engaged in the development and operation of Improvements to the Property; and that the principal purpose of the ERF Loan is acquisition, rehabilitation and site development for the placement of Affordable Housing Units at the Property.

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

1. Payment of Principal. The Borrower shall promptly pay when due the principal indebtedness evidenced by the Note.
2. Hazard Insurance. The Borrower, at its sole cost and expense, for the mutual benefit of the Borrower and Beneficiary, shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as the Lender may require and in such amounts and for such periods as the Lender may require as set forth in the ERF Agreement referenced above. The insurance carrier providing the insurance shall be chosen by the Borrower subject to approval by the Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to the Lender and shall include a standard mortgage clause in favor of and in a form acceptable to the Lender. The Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, the Borrower shall give prompt notice to the insurance carrier and the Lender. The Lender may provide proof of loss if not made promptly by the Borrower. If the Property is abandoned by the Borrower, or if the Borrower fails to respond to the Lender within 30 days from the date notice is mailed by the Lender to the Borrower that the insurance carrier offers to settle a claim for insurance benefits, the Lender is authorized to collect and apply the insurance proceeds at the Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

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



amounts shall be payable upon notice from the Lender to the Borrower requesting payment thereof. Nothing contained in this paragraph 4 shall require the Lender to incur any expense or take any action hereunder.

5. Inspection. The Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that the Lender shall provide the Borrower notice prior to any such inspection specifying reasonable cause therefore related to the Lender's interest in the Property.
6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to the Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.
7. Borrower Not Released; Forbearance By Lender Not a Waiver. The extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by the Lender to any successor in interest of the Borrower shall not operate to release, in any manner, the liability of the original Borrower and the Borrower's successors in interest. The Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust be reason of any demand made by the original Borrower and the Borrower's successors in interest. Any forbearance by the Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right of remedy.
8. Successors and Assignees Bound; Joint and Several Liability; Co-Signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assignees of the Lender and the Borrower. All covenants and agreements of the Borrower shall be joint and several. Any borrower who co-signs this Deed of Trust, but does not execute the Note is: (a) co-signing this Deed of Trust only to grant and convey that the Borrower's interest in the Property of Trustee under the terms of this Deed of Trust, and (b) not personally liable on the Note or under this Deed of Trust or the Note, without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.
9. Transferability. One of the inducements to the Beneficiary for making the Loan is the identity of the Borrower. The existence of any interest in the Property other than the interests of the Borrower and Beneficiary and any encumbrance permitted in this Deed of Trust, even though subordinate to the security interest of the Beneficiary, and the existence of any interest in the Borrower other than those of the present owners, would impair the Property and the security interest of the Beneficiary, and, therefore, except as provided herein or in the Loan Documents, the Borrower will not sell, convey, assign, transfer, alienate, or otherwise dispose of its interest in the Property, either voluntarily or by operation of law, or agree to do so, without the prior written consent of the Beneficiary. The consent to one transaction by the Beneficiary will not be deemed a waiver of the right to require consent to further or successive transactions. If the Borrower is a corporation, any sale, transfer, or disposition of 50 percent or more of the voting interest of the Borrower or of any entity that directly or indirectly owns or controls the Borrower, including, without limitation, the parent company of the Borrower, and the parent company of the parent company of the Borrower, will constitute a sale of the Property for purposes of this article. If the Borrower is a partnership any change or addition of a general partner of the Borrower, change of a partnership interest of the Borrower with the exception of a limited partner transfer, which shall not require the Beneficiary's consent, or sale, transfer, or disposition of 50 percent or more of the voting interest or partnership interest of any general partner of the Borrower or of

any corporation, partnership or entity that directly or indirectly owns or controls any general partner of the Borrower, including, without limitation, each parent company of a general partner of the Borrower and each parent company of any parent company of a general partner of the Borrower, will constitute a sale of the Property for purposes of this section. If the Borrower is a limited liability company, any change of the manager or any sale, transfer or disposition of 50 percent or more of the partnership interests of the Borrower, or disposition of 50 percent or more of the voting interest of the Borrower or of any corporation, partnership or entity that directly or indirectly owns or controls any member of the Borrower, including without limitations, each parent company of the Borrower and each parent company of any parent company of a member of the Borrower, will constitute a sale of the Property for purposes of this section. Any transaction in violation of this section will cause all Indebtedness, irrespective of the maturity dates, at the option of the Beneficiary and without demand or notice, immediately to become due, together with any prepayment premium in accordance with the terms of the Note except as prohibited by law.

10. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to the Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to the Borrower at the Property Address or at such other address as the Borrower may designate by notice to the Lender as provided herein, and (b) any notice to the lender shall be given by certified mail to the Lender's address stated herein or to such other address as the Lender may designate by notice to the Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to the Borrower or Lender when given in the manner designated herein.
11. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust or if the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses", and "attorney's fees" include all sums to the extent not prohibited by applicable law or limited herein.
12. Borrower's Copy. The Borrower shall be furnished a copy of the Note and a conformed copy of the recorded Deed of Trust at the time of execution or after recordation thereof.
13. Acceleration; Remedies. Upon the Borrower's breach of any covenant or agreement of the Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, the Note or the ERF Program restrictions, the Lender prior to acceleration shall give notice to the Borrower as provided in paragraph 10 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date notice is mailed to the Borrower, by which such breach must be cured or 30 days for a non-monetary default; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform the Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of the Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the Lender, at the Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. The Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 13, including, but not limited to, reasonable attorney's fees. If the Lender invokes the power of

sale, the Lender shall execute or cause the Trustee to execute a written notice of the occurrence of an event of default and of the Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. The Lender or the Trustee shall mail copies of such notice in the manner prescribed by applicable law. The Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, the Trustee, without demand on the Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. The Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. The Lender or the Lender's designee may purchase the Property at any sale. The Trustee shall deliver to the purchaser the Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. The Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person, persons, or entities legally entitled thereto.

14. Borrower's Right to Reinstate. Notwithstanding the Lender's acceleration of the sums secured by this Deed of Trust due to the Borrower's breach, the Borrower shall have the right to have any proceedings begun by the Lender to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) the Borrower pays the Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) the Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) the Borrower pays all reasonable expenses incurred by the Lender and Trustee in enforcing the covenants and agreements of Borrower in paragraph 13 hereof, including but not limited to, reasonable attorney's fees; and (d) the Borrower takes such action as the Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and the Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by the Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.
15. Nonrecourse. The Borrower, its officers, commissioners, employees, or agents, shall not have any personal liability for repayment of the loan. The sole recourse of the Lender under the Loan Documents for repayment of the Note shall be the exercise of its rights against the Property.
16. Withdrawal, Removal and/or Replacement. Unless otherwise provided herein, withdrawal of the General partner of the Borrower pursuant to the terms of a partnership agreement due to violation by a general partner of the terms of a partnership agreement, or a voluntary withdrawal from a partnership by a general partner, and any transfer of limited partnership interest or interests in the same, shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the loan.
17. Lien of Deed of Trust. The Beneficiary agrees that the lien of this Deed of Trust shall be subordinated to any senior lender housing commitment (as such term is defined in Section 42(h)(6)(B) of the internal Revenue Code) (the "Extended Use Agreement") recorded against the Property, provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Property by instrument of lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.

18. Appointment of Receiver; Lender in Possession. As additional security hereunder, the Borrower hereby assigns to the Lender the Property, provided that the Borrower shall, prior to acceleration under paragraph 13 or abandonment of the Property, have the right to collect and retain such Property. Upon acceleration under paragraph 13 hereunder or abandonment of the Property, the Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect of monies of the Property including those past due. All monies collected by the Lender or the receiver shall be applied first to premiums on receiver's reasonable attorney's fees, and then to the sums secured by this Deed of Trust. The Lender and the receiver shall be liable to account only for those monies actually received.
19. Release of Deed and Note. Upon payment of all sums secured by this Deed of Trust, the Lender shall request the Trustee to reconvey the Property and shall surrender this Deed of Trust, and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. The Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.
20. Substitute Trustee. At the Lender's option, the Lender may from time to time, appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by the Lender and recorded in the Fresno County Recorder's Office. The instrument shall contain the name of the original the Lender, Trustee and Borrower, the book and page where this Instrument is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.
21. Statement of Obligation. The Lender may collect a fee not to exceed Fifty Dollars and 11/100 (\$50.00) for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.
22. Event of Default. Prior to declaring or taking any remedy permitted under Loan Documents, (where applicable) the Borrower's limited partners shall have an additional period of not less than 30 days to cure such alleged default. Notwithstanding the foregoing, in the case of a default that cannot with reasonable diligence be remedied or cured within 30 days, the Borrower's limited partners shall have such additional time as reasonably necessary to remedy or cure such default, but in no event more than 90 days from the expiration of the initial 30 day period above, and if the Borrower's limited partners reasonably believe that in order to cure such default, the Borrower's limited partners must remove one or both of the Borrower's general partners in order to cure such default, the Borrower's limited partners shall have an additional 30 days following the effective date of such removal to cure such default. To the extent that there is a conflict between this paragraph 22 and any remedy permitted by the ERF Agreement, Loan Documents, or Loan, the terms of this paragraph 22 shall control.

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

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

the Loan Documents, any agreement relating to the Property, or any agreement or instrument between any Loan Party and the Beneficiary.

- (d) The assignment by the Borrower, as lessor or sublessor, as the case may be, of the rents or the income of the Property or any part of it (other than to Beneficiary) without first obtaining the written consent of the Beneficiary.
- (e) The following events:
  - (i) the filing of any claim or lien against the Property or any party of it, whether or not the lien is prior to this Deed of Trust, and the continued maintenance of the claim or lien for a period of 30 days without discharge, satisfaction, or adequate bonding in accordance with the terms of this Deed of Trust;
  - (ii) the existence of any interest in the Property other than those of the Borrower, Beneficiary, any tenants of the Borrower, and any one listed in a title exception approved by the Beneficiary in writing; or
  - (iii) the sale, hypothecation, conveyance, or other disposition of the Property except with the express written approval of the Beneficiary, any of which will be an Event of Default because the Borrower's obligation to own and operate the Property is one of the inducements to the Beneficiary to make the Loan;
- (f) Default under any agreement to which the Borrower is a party, which agreement relates to the borrowing of money by the Borrower from Beneficiary.
- (g) Any presentation or warranty made by any Loan Party or any other Person under this Deed of Trust or in, under, or pursuant to the Loan Documents, is false or misleading in any material respect as of the date on which the representation or warranty was made.
- (h) Any of the Loan Documents, at any time after their respective execution and delivery and for any reason, cease to be in full force or are declared null and void, or the validity or enforceability is contested by the Borrower or any stockholder or partner of the Borrower, or the Borrower denies that it has any or further liability or obligation under any of the Loan Documents to which it is a party. If one or more Event of Default occurs and is continuing, then the Beneficiary may declare all the Indebtedness to be due and the Indebtedness will become due without any further presentment, demand, protest, or notice of any kind, and the Beneficiary may:
  - (i) in person, by agent, or by a receiver, and without regard to the adequacy of security, the solvency of the Borrower, or the existence of waste, enter on and take possession of the Property or any party of it in its own name or in the name of Trustee, sue for or otherwise collect the rents, issues, and profits, and apply them, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon the Indebtedness, all in any order that the Beneficiary may determine. The entering on and taking possession of the Property, the collection of rents, issues, and profits, and the application of them will not cure or waive any default or notice of default or invalidate any act done pursuant to the notice;
  - (ii) commence an action to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages of real property;
  - (iii) deliver to the Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause the Property to be sold, which notice the Trustee or the Beneficiary will cause to be filed for record;

- (iv) with respect to any personal property, proceed as to both the real and personal property in accordance with the Beneficiary's rights and remedies in respect of the Land, or proceed to sell the personal property separately and without regard to the Land in accordance with the Beneficiary's rights and remedies; or
- (v) exercise any of these remedies in combination or any other remedy at law or in equity.

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

- (a) enter on the Property in any manner and to any extent that either deems necessary to protect the security of this Deed of Trust;
- (b) appear in and defend any action or proceeding purporting to affect, in any manner, the Obligations or the Indebtedness, the security of this Deed of Trust, or the rights or powers of Beneficiary or Trustee;
- (c) pay, purchase, or compromise any encumbrance, charge, or lien that in the judgment of Beneficiary or Trustee is prior or senior to this deed of Trust; and
- (d) pay expenses relating to the Property and its sale, employ counsel, and pay reasonable attorneys' fees.

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

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

- (a) a "mortgage-in-possession" for any purpose;
- (b) responsible for performing any of the obligations of the lessor under any of the Leases; or
- (c) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property.

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

//

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

BORROWER

Self-Help Enterprise ,  
a California Nonprofit Public Benefit Corporation

By:  Date: 5/21/2024

Name: Betsy McGovern

Title: Vice President

(Attach notary certificate of acknowledgment)

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

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

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

(Attach notary certificate of acknowledgment)

**EXHIBIT "A"**  
**Legal Description**  
**To Deed of Trust**

**Legal Description:**

**THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:**

**Parcel 1:** The West half of the Southeast Quarter of Lot 204 of Perrin Colony No. 2, in the County of Fresno, State of California, according to the amended Map thereof recorded in Book 4 Page 68 of Plats, Fresno County Records; EXCEPTING therefrom the East 10 feet thereof.

**Parcel 2:** The West 70 feet of the East half of the East half of the South half and the East 10 feet of the West half of the East half of the South half of Lot 204 of Perrin Colony No. 2, in the County of Fresno, State of California, according to the amended Map thereof recorded in Book 4 Page 68 of Plats, Fresno County Records.

**Parcel 3:** The South half of the Northeast Quarter of Lot 204 of Perrin Colony No. 2, in the County of Fresno, State of California, according to the amended Map thereof recorded in Book 4 Page 68 of Plats, Fresno County Records, EXCEPTING THEREFROM the West 30 feet thereof.

**Parcel 4:** Right of way for ingress and egress over the east 30 feet of the west 115 feet and over the east 30 feet of the west 244.5 feet of the following described parcel: the west half of the south east half of lot 204 of Perrin Colony No. 2 according to the amended map there of recorded April one, 1891 in book for, page 68 of plats, in the office of the county recorder of said county

**APNS: 408-050-04, 408-050-05, 408-050-09**



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

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

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

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

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

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

Should the Borrower fail to make any payment or to do any act as herein provided, then the Beneficiary or the Trustee, but without obligation to do so and without notice to or demand upon the Borrower and without releasing the Borrower from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof the Beneficiary or the Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee, pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto, and in exercising

any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

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

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

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

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

(9) That upon written request of the Beneficiary state that all sums secured hereby have been paid, and upon surrender of this Deed and said Note to the Trustee for cancellation and retention and upon payment of its fees, the Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "The person or persons legally entitled thereto." Five years after issuance of such full reconveyance, the Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, the Borrower hereby gives to and confers upon the Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto the Borrower the right, prior to any default by the Borrower in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect the rents, issues and profits of said property, reserving unto the Borrower the right, prior to any default by the Borrower in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and

take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees. Upon any indebtedness secured hereby, and in such order as the Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, the Trustee, without demand on the Borrower, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Borrower, Trustee, or the Beneficiary as hereinafter defined, may purchase at such sale.

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

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

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

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

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**DO NOT RECORD**

**REQUEST FOR FULL RECONVEYANCE**

To be used only when note has been paid:

To \_\_\_\_\_ Title Company, Trustee: Dated

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

**MAIL RECONVEYANCE TO:**

By \_\_\_\_\_

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

## EXHIBIT "H" ANNUAL INCOME VERIFICATION

### INSTRUCTIONS:

Please complete one form and include the requested information for all persons in the household. Complete an additional form if the applicant needs more space. The adult head of household must sign and date the form.

### PART I: ELIGIBILITY

HOME funded rental assistance is limited to income eligible families whose annual income does not exceed 60 percent of the area median income, [as determined by HUD](#).

U.S. DEPARTMENT OF HUD STATE: CALIFORNIA		----- 2023 ADJUSTED HOME INCOME LIMITS -----							
PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON	
<b>Bakersfield, CA MSA</b>									
30% LIMITS	17350	19800	22300	24750	26750	28750	30700	32700	
VERY LOW INCOME	28900	33000	37150	41250	44550	47850	51150	54450	
60% LIMITS	34680	39600	44580	49500	53460	57420	61380	65340	
LOW INCOME	46200	52800	59400	65950	71250	76550	81800	87100	
<b>Chico, CA MSA</b>									
30% LIMITS	17350	19800	22300	24750	26750	28750	30700	32700	
VERY LOW INCOME	28900	33000	37150	41250	44550	47850	51150	54450	
60% LIMITS	34680	39600	44580	49500	53460	57420	61380	65340	
LOW INCOME	46200	52800	59400	65950	71250	76550	81800	87100	
<b>El Centro, CA MSA</b>									
30% LIMITS	17350	19800	22300	24750	26750	28750	30700	32700	
VERY LOW INCOME	28900	33000	37150	41250	44550	47850	51150	54450	
60% LIMITS	34680	39600	44580	49500	53460	57420	61380	65340	
LOW INCOME	46200	52800	59400	65950	71250	76550	81800	87100	
<b>Fresno, CA MSA</b>									
30% LIMITS	17350	19800	22300	24750	26750	28750	30700	32700	
VERY LOW INCOME	28900	33000	37150	41250	44550	47850	51150	54450	
60% LIMITS	34680	39600	44580	49500	53460	57420	61380	65340	
LOW INCOME	46200	52800	59400	65950	71250	76550	81800	87100	
<b>Hanford-Corcoran, CA MSA</b>									
30% LIMITS	17350	19800	22300	24750	26750	28750	30700	32700	
VERY LOW INCOME	28900	33000	37150	41250	44550	47850	51150	54450	
60% LIMITS	34680	39600	44580	49500	53460	57420	61380	65340	
LOW INCOME	46200	52800	59400	65950	71250	76550	81800	87100	
<b>Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area</b>									
30% LIMITS	26500	30300	34100	37850	40900	43950	46950	50000	
VERY LOW INCOME	44150	50450	56750	63050	68100	73150	78200	83250	
60% LIMITS	52980	60540	68100	75660	81720	87780	93840	99900	
LOW INCOME	70650	80750	90850	100900	109000	117050	125150	133200	
<b>Santa Ana-Anaheim-Irvine, CA HUD Metro FMR Area</b>									
30% LIMITS	30150	34450	38750	43050	46500	49950	53400	56850	
VERY LOW INCOME	50250	57400	64600	71750	77500	83250	89000	94750	
60% LIMITS	60300	68880	77520	86100	93000	99900	106800	113700	
LOW INCOME	80400	91850	103350	114800	124000	133200	142400	151550	

**PART II: HOUSEHOLD INFORMATION**

Enter legal address (where the applicant currently lives) and contact information below. If a household is experiencing homelessness or is in temporary housing, provide a mailing address (where the applicant currently receives mail).

	Legal Address	Mailing Address (if different from legal)
Street, Apt./Unit #		
State, City, Zip Code		
Phone Number(s)		
Email(s)		

Date of Occupancy \_\_\_\_\_

**PART III: ANNUAL INCOME**

Report all current income and income expected to be received in the next 12 months including long-term **unemployment compensation and all hazard pay**. **DO NOT INCLUDE:** IRS Economic Impact Payments (stimulus checks), Federal Pandemic Unemployment Compensation (the additional \$600 per week), Lost Wages Supplemental Payment Assistance (up to \$400 per week), income of a live-in-aide, children of live-in-aides, foster children, foster adults, or the income of minors.

The DEVELOPER, 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 three years; or (5) if the applicant is unemployed, 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. The DEVELOPER further warrants, covenants, and agrees that it will cooperate with the CITY in the CITY's income certification/affordability monitoring activities.

# Worksheet for Computing Income

Date: \_\_\_\_\_

## Summary of Family Income Data

Name: \_\_\_\_\_ Address: \_\_\_\_\_

**Assets:**

Family Member	Asset Description	Current Market Value	Income From Assets	Monthly Income From Asset
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1. Net Cash Value of Assets:	\$	-----	-----
2. Total Actual Income From Assets:		\$	\$
3. If Line 1 is greater than \$5,000, multiply by .025 and enter results here, otherwise leave blank.		\$	\$

**Anticipated Monthly Income:**

Family Member:	Wages/ Salaries:	Benefits/ Pensions:	Public Assistance:	Other Income:	Asset Income:
					Enter the Greater of Lines 2 or 3, Monthly Income, Below

4. Totals:            a.                            b.                            c.                            d.                            e.

5. Enter Total of Items 4a through 4e

This is the monthly \$

income

Number of Household Members \_\_\_\_\_

Annual income: \_\_\_\_\_ %

30% AMI Limit: \_\_\_\_\_

Staff: \_\_\_\_\_

### PART IV: APPLICANT CERTIFICATION

I certify under penalty of perjury that the above information is complete and accurate to the best of my knowledge. I understand that Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony and assistance can be terminated for knowingly and willingly making a false or fraudulent statement to a department

of the United States Government. I agree to provide any additional documentation required by the program administer to document my/our household income.

<b>HEAD OF HOUSEHOLD</b>		
<b>Signature</b>	<b>Printed Name</b>	<b>Date</b>
<b>OTHER ADULT HOUSEHOLD MEMBERS</b>		
<b>Signature</b>	<b>Printed Name</b>	<b>Date</b>
<b>Signature</b>	<b>Printed Name</b>	<b>Date</b>
<b>Signature</b>	<b>Printed Name</b>	<b>Date</b>