AFFORDABLE HOUSING AGREEMENT

by and among

City of Fresno, a municipal corporation

and

City of Fresno, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno

and

Corporation for Better Housing

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(Continued)

Page

TABLE OF CONTENTS
(Continued)

Page

TABLE OF CONTENTS
(Continued)

Page

ATTACHMENTS

AFFORDABLE HOUSING AGREEMENT
7th and Cesar Chavez

This **AFFORDABLE HOUSING AGREEMENT** (Agreement) is entered into as of _____ (Effective Date) by and among the **City of Fresno, a municipal corporation** (City), the **City of Fresno, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno** (HSA), and **Corporation for Better Housing** (Developer). The City and HSA shall be collectively referred to as Owner.

A. City is the fee owner of the land located at the Southeast corner of E. Cesar Chavez Boulevard (formerly Ventura Street) and S. Seventh Street in Fresno, California (APNs470-052-02T and 470-052-03T), and legally described in Attachment 1 and the existing improvements located thereon. HSA is the fee owner of the land located at Northwest corner of S. Eighth Street and E, El Monte Way in Fresno, California (470-052-01T) and legally described in Attachment 1 and the existing improvements located thereon. Together the land described in Attachment 1 is known as the Subject Property.

B. On January 19, 2023, pursuant Resolution Number SA-51 and 2023-019, the Owner declared the Subject Property as Surplus Exempt, pursuant to Government Code section 54221(f)(1)(A) because the Subject Property will be disposed for development based upon Government Code section 37364(a) which requires (1) Minimum of 80% of the area of any parcel shall be used for the development of housing (remaining 20% may be ancillary commercial or park/open space use); (2) Not less than 40% of the total number of housing units developed on any parcel pursuant to this section shall be affordable to households whose incomes are equal to, or less than, 75% of the maximum income of lower income households (80% of area median income), and at least half of which (20% of the units) shall be affordable to very low-income households (50% of area median income); and (3) Dwelling units shall be restricted by regulatory agreement to remain continually affordable to those persons and families for the longest feasible time, but not less than 30 years and shall be recorded against the property.

C. In order to expand and improve the supply of affordable housing for Very Low-Income Households and Low-Income Households, to develop viable urban communities by providing decent, safe housing and a suitable living environment, and to expand economic opportunities for Very Low-and Low- Income households, Owner desires for the Subject Property be developed as a affordable rental housing project in accordance with the terms of this Agreement.

D. On March 24, 2023, Owner issued a Request for Proposals (RFP) for the development of the Subject Property into a mixed-use, mixed income housing and commercial retail development for up to 90 units of multifamily housing.

E. On July 26, 2023, and March 11, 2025, California Department of Housing and Community Development (HCD) confirmed and approved the City's determination that the Subject Property qualifies as exempt surplus land under Government Code section 54221(f)(1)(A).

F. WHEREAS, pursuant to the RFP, Developer submitted a bid proposal responsive to the RFP and Developer's Proposal was selected to develop, entitle and construct its proposed affordable housing project on the Subject Property with 54 affordable housing units along with onsite and offsite improvements (Project), as more fully described

herein, upon the fulfillment of certain conditions precedent as set forth herein .

G. It is the intent of the parties to enter into this Agreement, and a Ground Lease, in order for the Developer to develop the Project. It is the Developer's intent to serve the needs of low-income residents.

H. Owner desires to convey a ground leasehold interest in the Subject Property to Developer for the construction and long-term operation of an affordable rental housing project thereon in accordance with the terms of this Agreement.

I. Council adopted a finding of categorical exemption pursuant to Section 15332/Class 32 (Infill) for the disposition of the property for the Project pursuant to the California Environmental Quality Act (CEQA) guidelines on April 24, 2025.

J. Capitalized terms used in this Agreement are defined in these Recitals and in Section 100, *et seq*.

K. As used herein, "Developer" refers to either Corporation for Better Housing and/or Integrated Community Development, LLC which is duly organized under the laws of the State of California. Developer is experienced in the construction, development, operation, and management of first quality housing which is affordable to persons and families of Low to Moderate Income, including Very Low-and Low-Income Households.

L. Developer desires to (i) ground lease the Subject Property, which shall be in a form and content that shall be approved by Developer and Owner, in their reasonable discretion (Ground Lease), (ii) develop, entitle, construct, and operate the Subject Property with 54 affordable housing units along with onsite and offsite improvements as set forth in its Proposal for Very Low-Income Households and Low-Income Households, of which one unit in the Project, will be occupied by on-site management staff (which unit shall be unrestricted as to income, but the rent charged, if any, for such manager unit(s) shall be restricted to an Affordable Rent for a Low-Income Household), (iii) and operate the Project as affordable housing throughout the Affordability Period pursuant to the requirements of this Agreement.

M. Developer intends to file an application with the California Tax Credit Allocation Committee (TCAC) to obtain allocations of federal 4% and/or 9% Low-Income Housing Tax Credits (Tax Credits) for the Project. If Developer does not receive such allocations of Tax Credits after its first TCAC Application, Developer may submit an Application for Tax Credits in the next round following notification that Developer's first Application was not successful, pursuant to the procedure set forth in this Agreement. If Developer's second round Application is not successful, Developer and City may agree to submit additional Tax Credit Applications for the Project, seek other funding or financing sources for the Project, or terminate this Agreement after December 31, 2025.

N. The parties acknowledge and agree that the financing and other terms set forth in this Agreement may require adjustment to ensure the Project is developed and operated in a manner reasonably acceptable to Owner and financially feasible for Developer. In the event Developer is required to find alternate financing sources for the development and operation of the Project and/or to the extent necessary or appropriate to implement and clarify the terms of this Agreement as to the Project, the parties will negotiate in good faith and reasonably consider entering into one or more additional Implementation Agreements for the Project to set forth more specifically the terms, conditions, and restrictions imposed by or which otherwise become appropriate because of the inclusion of additional or different funding

sources for the Project.

O. The Project is vital to and in the best interest of the City of Fresno and the health, safety and welfare of its residents, and are in accordance with the public purposes of applicable state and local laws and requirements.

P. Notwithstanding any provision of this Agreement (or any Implementation Agreements), the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of federal funds, and that such commitment of funds may occur only upon satisfactory completion of environmental review and receipt by City of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties hereto are further prohibited from undertaking or committing any federal funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance; the parties understand that the violation of this provision may result in the denial of any federal funds under this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

100. DEFINITIONS

101. Defined Terms. The defined terms set forth in this Section 101 shall be used to interpret this Agreement and all attachments hereto except to the extent such terms are otherwise defined in the attachments hereto.

"Affiliate" shall mean any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Developer, which shall include each of the constituent partners or members of Developer's limited partnership. The term "control," as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, at least 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

"Affordability Period" shall mean the 55-year duration of the affordable housing and operational covenants, conditions, restrictions, and requirements which are set forth in this Agreement, including the Ground Lease and Regulatory Agreement, as set forth in Section 403.

"Affordable Rent" shall mean the maximum amount of out-of-pocket housing cost to be charged monthly by Developer and paid by each of the eligible Very Low-Income Households and Low-Income Households for each of the Housing Units at the Project as determined and calculated pursuant to the affordable rent and the rent limitations according to TCAC, the Tax Credit Rules, the Tax Credit Regulatory Agreement applicable to the Project, and any other federal resources used in the development of the Project. For purposes of Affordable Rent, the monthly housing payment shall mean the total of monthly payments by each tenant household of a Housing Unit for use and occupancy of a Housing Unit and facilities associated therewith, including a reasonable allowance for utilities for an adequate level of service, as set forth in more detail in Section 402 hereof.

"Agreement" shall mean this Affordable Housing Agreement, including all

attachments hereto, between Owner and Developer.

"Annual Financial Statement" shall mean the certified financial statement of Developer for the Project using generally accepted accounting principles (GAAP), including Operating Expenses and Annual Project Revenue, prepared at Developer's expense, by an independent certified public accountant reasonably acceptable to Owner, once every three years or sooner as and when requested by the Owner, by the City Manager and Executive Director, along with and as a part of the Annual Financial Statement, Developer shall submit true, legible, and complete copies of the source documentation supporting the Annual Financial Statement for the Project.

"Annual Project Revenue" shall mean all gross income and all revenues of any kind from the Project in a calendar year, of whatever form or nature, whether direct or indirect, with the exception of the items excluded below, received by, paid to, or for the account or benefit of Developer or any Affiliate of Developer or any of their agents or employees (provided, in no event shall amounts counted as Annual Project Revenue be double counted if paid by a Developer to one or more of its Affiliates), from any and all sources, resulting from or attributable to the operation, leasing and occupancy of the Project, determined on the basis of GAAP applied on a consistent basis, and shall include, but not be limited to: (i) gross rentals paid by tenants of the applicable Project under leases, and payments and subsidies of whatever nature, including without limitation any payments, vouchers or subsidies from HUD or any other person or organization, received on behalf of tenants under their leases; (ii) amounts paid to Developer or any Affiliate of Developer on account of Operating Expenses for further disbursement by Developer or such Affiliate to a third party or parties, including, without limitation, grants received to fund social services or other housing supportive services at the applicable Project; (iii) late charges and interest paid on rentals; (iv) rents and receipts from licenses, concessions, vending machines, coin laundry, and similar sources; (v) other fees, charges, or payments not denominated as rental but payable to Developer in connection with the rental of office, retail, storage, or other space in the Project; (vi) consideration received in whole or in part for the cancellation, modification, extension or renewal of leases; and (vii) interest and other investment earnings on security deposits, reserve accounts and other Project accounts to the extent disbursed. Notwithstanding the foregoing, Annual Project Revenue shall not include the following items: (a) security deposits from tenants (except when applied by Developer to rent or other amounts owing by tenants); (b) capital contributions to Developer by its members, partners or shareholders (including capital contributions required to pay the portion of the Deferred Developer Fee permitted to be included in eligible basis pursuant to the Tax Credit Rules); (c) condemnation or insurance proceeds; (d) there shall be no line item, expense, or revenue shown allocable to vacant unit(s) at the applicable Project; (e) receipt by an Affiliate of management fees or other bona fide arms-length payments for reasonable and necessary Operating Expenses associated with the applicable Project.

"Application" shall mean, Developer's Tax Credit applications to be submitted to TCAC to obtain an allocation of Tax Credits for the Project or such other financing as may be applied for pursuant to Section 310. All Applications submitted by Developer shall be consistent with the terms of this Agreement.

"Applicable Federal Rate" shall mean the interest rate set by the United States Treasury from time to time for the purpose of determining applicable Low-Income Housing Tax Credit interest rates. The Applicable Federal Rate is published by the Internal Revenue

Service in monthly revenue rulings.

"Area Median Income" and ***"AMI"*** shall mean the area median household income set forth for each county in California (and for this Agreement for Fresno County), adjusted for household size , as set forth by regulation of TCAC.

"Basic Concept Drawings" shall mean the plans and drawings to be submitted and approved by City, as set forth in Section 302.1 hereof.

"Best Knowledge" shall mean the actual knowledge or constructive knowledge of the party's employees and agents who manage the Subject Property or have participated in the preparation of this Agreement, and all documents and materials in the possession of such party, and shall not impose a duty of investigation, except as to documents of record or actually provided to such party or its employees or agents, whether actually known or not.

"Capital Replacement Reserve" shall mean a separate reserve fund account to be established upon closing of the permanent Primary Loan for the Project and maintained by Developer for the Project, which shall equal not less than Two Hundred Fifty Dollars ($250) per year for each Housing Unit (i.e. 54 units in the Project (54 times $250 equals $13,500)), to be used as the primary resource to fund capital improvements and replacement improvements for the Project. The amount of $250 for each Housing Unit that is set aside by the partnership (or its Property Manager) shall be allocated from the gross rents received from the applicable portion of the Subject Property and deposited into a separate interest bearing trust account for capital replacements to the Subject Property fixtures and equipment that are normally capitalized under generally accepted accounting principles and shall include common areas. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve or lessen Developer's obligation to undertake any and all necessary capital repairs and improvements and to continue to maintain the Projects in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to City Manager and Executive Director an accounting for the Capital Replacement Reserve for the Project. Capital repairs to and replacement of the Project shall include only those items with a long useful life, including without limitation the following: carpet and drape replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement; irrigation pipe and controls replacement; sewer line replacement; water line replacement; gas line pipe replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement; and common area repainting. Pursuant to the procedure for submittal of each Annual Budget for the Project to City Manager and Executive Director by Developer, City Manager and Executive Director may evaluate the cumulative amount on deposit in the Capital Replacement Reserve account for the Project and exercise her sole, reasonable discretion to determine if existing balance(s) in, proposed deposits to, shortfalls, if any, and/or a cumulative unexpended/unencumbered account balance in such Capital Replacement Reserve account are adequate to provide for necessary capital repairs and improvement to the Subject Property and the Project (provided that required annual deposits thereto are not required to exceed $250/per Housing Unit).

"City" shall mean the City of Fresno, a California municipal corporation and charter city.

"City Manager" shall mean and include the City of Fresno's City Manager and her authorized designees. Whenever consent, approval or other actions of the "City Manager" is required, such consent may be provided by City Manager or her authorized designees.

"Closing" shall mean the close of escrow for the Project, whereby Owner shall convey a ground leasehold interest in the Subject Property, as applicable, to Developer pursuant to Section 205.4, and such applicable Ground Lease becomes effective and the Term thereof commences.

"Closing Date" shall mean, the date the Memorandum of Ground Lease is recorded against the Subject Property as more specifically set forth in Section 205.4 hereof.

"Conditions Precedent" shall mean the conditions precedent to the execution, effectiveness and commencement of the Ground Lease.

"Construction Contract" shall mean each and every contract between Developer, the Contractor, and/or any Subcontractor for the construction of the Project, or any part thereof, including construction of any on-site or off-site improvements included in the Scope of Development, the land use entitlement approved by the City, and the Development Plans. The Construction Contract between Developer and the Contractor shall be for a fixed fee to complete all work to be performed or caused to be performed by the Contractor under such Construction Contract.

Developer shall provide the Owner with copies of all agreements it has entered into with any and all general contractors or subcontractors for this Project. 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 Owner immediately of any event of default by the Developer thereunder, (ii) notify the Owner immediately of the filing of a mechanic's lien, (iii) notify the Owner immediately of termination or cancellation of the construction agreement on the Project, and (iv) provide the Owner, upon its 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 Owner 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. Developer shall also require each contract to include a full recitation of Section 3 and the Section 3 Clause with an express acknowledgement and agreement by the Contractor and each Subcontractor, as applicable, to fully comply with the Section 3 Clause, (ii) an express acknowledgement and agreement that as a condition precedent to the final payment under its contract, the Contractor or Subcontractor, as applicable, shall provide written evidence, in form reasonably satisfactory to Owner that it and all its subcontractor(s) have complied with the Section 3 Clause in completing the development of the Project, and (iii) reference to all other applicable federal regulations and laws based on the final federal funding sources, if any, to which such Contractor or Subcontractor, as applicable, must comply in undertaking the construction and development of the applicable Project; provided it is understood by the parties that it is and shall remain primarily the Developer's obligation to obtain and submit all required Section 3 Clause documentation.

"Construction Drawings" shall mean the construction plans and drawings to be submitted and approved by City for the Project, as set forth in Section 302.3 hereof.

"Contractor" shall mean one or more general contractors hired by Developer to

perform and complete, or to engage and supervise others to perform and complete, the construction of the Project and all other on-site and off-site improvements required to be constructed in connection with the Project, in accordance with the Scope of Development, the land use entitlement as and when approved by Owner, and the Development Plans. Developer shall submit to Owner evidence regarding the entity serving as the Contractor for the construction of the Project and all other on-site and off-site improvements required to be constructed in connection therewith in accordance with the Scope of Development, the land use entitlement as and when approved by Owner, and the Development Plans, including all required licenses, certifications, insurance, etc., as reasonably requested by the Owner. The parties acknowledge that the Contractor is an Affiliate of the Administrative General Partner; however, Owner wishes to ensure that the costs of constructing the Project are at all times reasonable and that the scope of the construction to be performed is adequate and appropriate. To that end, Owner shall have the ongoing right to review (i) a detailed scope of work for the construction of the Project, (ii) the construction of the Project as such work is performed by Contractor (and its subcontractors), and (iii) invoices, inspection reports, testing, and other evidence showing the work undertaken, to be undertaken, and progress on the construction, and the cost thereof.

"Contractor Fee" shall mean a fee to be paid by Developer to the Contractor pursuant to the Partnership Agreement and Construction Contract, which fee is compensation to perform and complete, or to engage and supervise others to perform and complete, the construction of the Project and all other on-site and off-site improvements required to be constructed in connection therewith in accordance with the Scope of Development, the land use entitlement as and when approved by Owner, and the Development Plans, and all other Improvements required to be constructed in connection with the Project, all in accordance with the Scope of Development, the land use entitlement, and the approved Development Plans. Payment and disbursement of the Contractor Fee shall be postponed, as provided in Section 203, *et seq.,* and pursuant to the Partnership Agreement. The parties acknowledge the amount of the Contractor Fee may increase or decrease in the event the cost of the construction of the Project and all other on-site and off-site improvements required to be constructed in connection therewith increase or decrease and a change order subject to Owner approval is issued reflecting such increased or decreased costs; provided, however, Developer represents and warrants to Owner that the Contractor Fee shall not exceed the amount allowed pursuant to the Tax Credit Rules.

"Corporation for Better Housing" shall mean the Corporation for Better Housing, a California nonprofit public benefit corporation.

"County" shall mean the County of Fresno, California.

"CUAC" shall mean the California Utility Allowance Calculator which may be used to set the tenant utility allowance.

"Debt Service" shall mean payments made in a calendar year pursuant to the approved Primary Loans obtained for the lease, construction/development, and operation of the Project pursuant to Section 310.

"Default" or ***"Event of Default"*** shall mean the failure of a party to perform any action or comply with any covenant required by this Agreement, including the attachments hereto, within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

"Deferred Contractor Fee" shall mean any deferred Contractor Fee allowable under the financing and the Construction Contract which has been approved by Owner pursuant to Section 310.2. In no event shall the Contractor be eligible for disbursement of the Deferred Contractor Fee or any part thereof for the Project prior to completion of construction for such Project, including all on-site and off-site improvements, as approved by the Owner and as evidenced by the issuance by Owner of the Release of Construction Covenants for such Project.

"Deferred Developer Fee" shall mean any deferred Developer Fee allowable under the financing which has been approved by Owner pursuant to Section 310. In no event shall Developer be eligible for disbursement of the Deferred Developer Fee or any part thereof for an applicable Project prior to completion of construction for the Project, including all on-site and off-site improvements, as approved by the Owner and as evidenced by the issuance by Owner of the Release of Construction Covenants.

"Design Development Drawings" shall mean the plans and drawings for the Project to be submitted to and approved by Owner, as set forth in Section 302.2 hereof.

"Developer(s)" shall mean, Corporation for Better Housing, a California non-profit public benefit corporation and/or Integrated Community Development, LLC a for-profit limited liability company, and their permitted successors and assigns.

"Developer Fee" shall mean a fee for the Project to be paid by the entity to Developer that will develop the Project pursuant to this Agreement, which fee is compensation to perform, or to engage and supervise others to perform, services in connection with the negotiating, coordinating, and supervising the planning, architectural, engineering and construction activities necessary to cause completion and complete the Project, including all other on-site and off-site improvements required to be constructed in connection therewith, in accordance with the Scope of Development, the land use entitlement, and the Development Plans, as set forth in the Final Budget and approved as a part of the evidence of financing pursuant to Section 310 herein.

"Development Impact Fees" shall mean amounts required to be paid to or through the Owner prior to and as a condition to issuance of building permits for the Project, including, without limitation, sanitation district, traffic signal assessment, schools, public works/drainage, public works/sewer connection, and/or public works/sewer assessment.

"Development Plans" shall mean the Basic Concept Drawings, Design Development Drawings and Construction Drawings for the Project to be submitted to Owner for review and approval, pursuant to Section 302.

"Environmental Claim" shall mean (i) any judicial or administrative enforcement actions, proceedings, claims, orders (including consent orders and decrees), directives, notices (including notices of inspection, notices of abatement, notices of non-compliance or violation and notices to comply), requests for information or investigation instituted or threatened by any governmental authority pursuant to any Governmental Requirements, or (ii) any suits, arbitrations, legal proceedings, actions or claims instituted, made or threatened that relate, in the case of either (i) or (ii), to any damage, contribution, cost recovery, compensation, loss or injury resulting from the release or threatened release (whether sudden or non-sudden or accidental or non-accidental) of, or exposure to, any Hazardous Materials, or the violation or alleged violation of any Governmental Requirements, or the general,

manufacture, use, storage, transportation, treatment, or disposal of Hazardous Materials.

"Environmental Laws" shall mean all laws, ordinances and regulations relating to Hazardous Materials, including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, *et seq.*; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601, *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 *et seq.*; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Section 11001 *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 *et seq.*; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f *et seq.*; all comparable state and local laws, laws of other jurisdictions or orders and regulations; and all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City, or any other political subdivision in which the Subject Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer, or the Subject Property.

"Environmental Reports" shall mean the Phase I and Phase II reports regarding the Subject Property, which have been delivered by Owner to Developer.

"Escrow" shall have the meaning set forth in Section 205, *et seq.*

"Escrow Agent" shall have the meaning set forth in Section 205, *et seq.*

"Executive Director" shall mean the Executive Director for the City of Fresno, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno and shall include the Executive Director's authorized designees. Whenever consent, approval or other actions of the "Executive Director" is required, such consent may be provided by the Executive Director or her authorized designees.

"Final Budget" shall mean the final budget for the construction and development of the Project, as approved by Owner pursuant to Section 310 hereof.

"Governmental Requirements" shall mean all laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the State of California, the County, the City, or any other political subdivision in which the Subject Property is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over Developer or the Subject Property, as may be amended from time to time.

"Ground Lease" shall mean, the Ground Lease to be entered into for the Project by Owner and the Developer which shall be in a form reasonably acceptable to Developer and Owner in their reasonable discretion.

"*Hazardous Material*" or ***"Hazardous Materials"*** shall mean and include any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, Fresno County Health Care Agency, the Regional Water Quality Control Board, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a "hazardous waste," "acutely hazardous waste," "restricted hazardous waste," or "extremely hazardous waste" under

Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos and/or asbestos containing materials; (vii) lead based paint or any lead based or lead products; (viii) polychlorinated biphenyls, (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. Section 6903); (xi) Methyl tert Butyl Ether; (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601,*et seq.* (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any "Governmental Requirements" (as defined in Paragraph (c) of this Section 308) either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment; and/or (xiv) lead based paint pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, *et seq.*, specifically §§ 4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the applicable Project, including without limitation alcohol, aspirin, tobacco and saccharine.

"Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in, or under the Subject Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Agreement) emanating from the Subject Property.

"HCD" shall mean the State of California Department of Housing and Community Development.

"Housing Unit" and ***"Housing Units"*** shall mean, one of the 54 housing units in the Project to be constructed and operated by Developer on the Subject Property as affordable rental housing for the Affordability Period.

"HUD" shall mean the United States Department of Housing and Urban Development.

"Implementation Agreement" and ***"Implementation Agreements"*** shall mean, individually and collectively, agreements entered into by Owner and Developer (or its permitted successors and/or assigns) in order to implement and/or clarify the terms of this

Agreement, in accordance with the terms of this Agreement.

"Improvements" shall mean the affordable housing units and any other improvements to be constructed on the Subject Property as part of the Project pursuant to this Agreement and as approved by the Owner.

"Indemnitees" is defined in Section 204.4.

"Integrated Community Development, LLC" shall mean Integrated Community Development, a California for-profit limited liability company.

"Investor Limited Partner" shall mean each Tax Credit limited partner of Developer for the Project and their successors/assigns.

"Legal Description" shall mean the description of the Subject Property which is attached hereto as Attachment No. 1 and incorporated herein.

"Lender" shall mean each of the responsible financial lending institutions or persons or entities approved by Owner in its reasonable discretion, which provide the Primary Loans, including acquisition loan(s), construction loan(s) or permanent loan(s) for the construction, development, and/or operation of the applicable Project, as set forth in Section 310 hereof.

"Low-Income," "Lower Income," "Low-Income Households" or ***"Lower Income Households"*** shall have the same meaning as prescribed in Section 405.1 hereof and shall mean and include both: (i) lower income households as defined in the Tax Credit Rules and (ii) 60% AMI Low-Income Households. Lower Income Households include Very Low-Income Households and Extremely Low-Income Households, as defined in the Tax Credit Rules.

"Marketing Program" shall mean the marketing plan and tenant selection program to be prepared by Developer and submitted to Owner for its review and approval as a Condition Precedent to obtaining a Certificate of Occupancy as further described in Section 408.

"Memorandum of Agreement" shall mean the Memorandum of Affordable Housing Agreement to be executed by the parties in substantially the form attached hereto as Attachment No. 9 and fully incorporated by this reference, which Memorandum of Agreement shall include notice of this Agreement and the obligations of Developer to enter into the Ground Lease, complete the construction of the Project, and operate the Project as affordable rental housing pursuant to the terms of this Agreement.

"Memorandum of Ground Lease" shall mean, collectively, the Memorandum of Ground Lease for the Project to be executed by the Developer in a form to be reasonably approved by Owner in its reasonable discretion, which Memorandum of Ground Lease shall include notice of the Ground Lease for the Project and the terms and provisions contained therein, and shall state that in no event shall Owner's fee interest in the Subject Property be subordinated to deeds of trust or any other liens for financing recorded against the Subject Property.

"Notice" shall mean a notice in the form prescribed by Section 602 hereof.

"Notice of Affordability Restrictions" shall mean, collectively, the notices to be executed by the parties in substantially the forms attached hereto as Attachment No. 7 and incorporated herein, which shall recite the affordability restrictions and restrictions on transfer imposed on the Subject Property by this Agreement, the Ground Lease, and the Regulatory Agreement, and which shall be recorded against the Subject Property, as applicable, at the

Closing for the Project.

"*Official Records*" shall mean the official land records of the County.

"Operating Budget" and ***"Annual Budget"*** shall mean the annual operating budget for the Project that sets forth the projected Operating Expenses for the upcoming year that is subject to and shall be submitted for review and approval by Owner, through the City Manager and Executive Director, each year during the Affordability Period as set forth in Section 413 hereof.

"Operating Expenses" shall mean actual, reasonable and customary (for comparable first quality rental housing developments in Fresno County) costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the Project in a calendar year, which are in accordance with the annual Operating Budget for the Project approved by Owner pursuant to Section 413 hereof, including but not limited to: painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certificates, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of property management, fees and expenses of accountants, attorneys and other professionals, the cost of social services and other housing supportive services provided at the Project consistent with Developer's approved Application to TCAC for the Project and rules imposed by HUD with respect to the provision of Project Based Section 8 assistance, if any, repayment of any completion or operating loans made to Developer, deferred developer fee payments, and other actual, reasonable and customary operating costs and capital costs which are directly incurred and paid by Developer, but which are not paid from or eligible to be paid from the Capital Replacement Reserve or any other reserve accounts for the Project. To the extent the Operating Expenses for a Project are not reasonably consistent with the annual Operating Budget for a given year, the Owner shall reasonably review and approve to confirm such Operating Expenses are reasonable and actually incurred; provided, no approval shall be required for emergency expenditures reasonably necessary or appropriate to preserve life, limb, or property.

Operating Expenses shall *exclude* all of the following: (i) salaries of employees of Developer or Developer's general overhead expenses, or expenses, costs and fees paid to an Affiliate of Developer, to the extent any of the foregoing exceed the expenses, costs or fees that would be payable in a bona fide arms' length transaction between unrelated parties in the Fresno County area for the same work or services; (ii) any amounts paid directly by a tenant of the Project to a third party in connection with expenses which, if incurred by Developer, would be Operating Expenses; (iii) optional or elective payments with respect to the Primary Loan (unless made with the consent of the City Manager and Executive Director in their reasonable discretion); (iv) any payments with respect to any Project-related loan or financing other than the Primary Loan (unless made with the consent of the City Manager and Executive Director in their sole discretion); (v) expenses, expenditures, and charges of any nature whatsoever arising or incurred by Developer prior to completion of the applicable Project with respect to the development, maintenance and upkeep of the Project, or any portion thereof, including, without limitation, all costs and capitalized expenses incurred by Developer in connection with the lease of the Subject Property from the Owner (e.g. not leasing to low-income tenants), all predevelopment and preconstruction activities conducted by Developer in connection with the Project, including, without limitation, the preparation of all

plans and the performance of any tests, studies, investigations or other work, and the construction of the Project and any on-site or off-site work in connection therewith; (vi) depreciation, amortization, and accrued principal and interest expense on deferred payment debt; and (vii) any Partnership Related Fees to the extent they are not paid as capitalized expenses.

"Operating Reserve" shall mean the Operating Reserve for the Project, which shall be funded by an installment of Tax Credit equity in a target amount equal to three (3) months of (i) Debt Service on the permanent Primary Loan and (ii) Operating Expenses pursuant to an approved Annual Budget for the applicable Project (Target Amount). The Operating Reserve shall thereafter be replenished from later installments of Tax Credit Equity and from Annual Project Revenue to maintain the Operating Reserve balance of the Target Amount. The operating reserve shall be used in compliance with Tax Credit Regulations and the Partnership Agreement.

"Owner Covenants" shall mean the affordable housing, and related land use/zoning covenants imposed by and as condition(s) of approval of the land use entitlement for the Project. Pursuant to the requirements of the land use entitlement for the Project, the Owner Covenants are and shall remain a senior, non-subordinate lien against the Subject Property and shall not be subordinated to the Primary Loan or any other liens.

"Partnership Agreement" shall mean the agreement(s) which set(s) forth the terms of Developer's (or its approved Affiliate(s)) limited partnership, as such agreement(s) may be amended from time to time, so long as consistent with the requirements of this Agreement.

"Postponed Fees" is defined in Section 203.

"Preliminary Budget" shall mean, budget, for the construction and development of the Subject Property, which are attached hereto as Attachment No. 3A and incorporated herein.

"Primary Loan" shall mean, the permanent and construction financing obtained by Developer for the Project from one or more institutional lender(s) other than an Affiliate of Developer, as approved by Owner, which loan(s) shall be senior to Owner's Regulatory Agreement, but subordinate to Owner's fee interest in the Subject Property and the land use entitlement obtained by Developer, including the Owner Covenants.

"Project" shall mean, 54 Housing Units and associated (on-site and off-site) and appurtenant improvements, upon the Subject Property as affordable rental housing development to be made available to Low-Income Households and Very Low-Income Households at an Affordable Rent, as more particularly described in Section 301 hereof and in the Scope of Development attached hereto as Attachment No. 4 and incorporated herein.

"Property Management Plan" shall mean the management plan required to be created by Developer and submitted to Owner for approval, which approval shall not be unreasonably withheld, which shall include a detailed plan and strategy for long term marketing, operation, maintenance, repair and security of the Project, inclusive of on-site social services to the residents of the Project, and the method of selection of tenants, rules and regulations for tenants, and other rental policies and procedures for the applicable Project as set forth in Section 411.2.

"Property Manager" shall mean the individual property manager or property

management company contracted by and with Developer, after obtaining Owner's written approval of such individual or company, to perform the operation, maintenance, and management of the Project pursuant to Section 411.

"Regulatory Agreement" shall mean, the Regulatory Agreement for the Project which shall be entered into by Owner and Developer concurrently with the Closing for the Project and which will be recorded as an encumbrance to the Subject Property in substantially the form attached hereto as Attachment No. 6 and incorporated herein, in accordance with Section 416 hereof. The Regulatory Agreement for the Project may be subordinate to the Primary Loan and the Tax Credit Regulatory Agreement for that Project subject to the requirements of this Agreement.

"Release of Construction Covenants" shall mean the documents which shall evidence Developer's satisfactory completion of the Project, as set forth in Section 305 hereof, substantially in the form of Attachment No. 5 hereto.

"Request for Notice" or ***"Request for Notice of Default"*** shall mean the requests for notice of default pursuant to Civil Code Section 2924b to be recorded against the Subject Property in connection with the Escrow substantially in the form attached hereto as Attachment No. 8 and fully incorporated by this reference.

"Reservation" means collectively, the reservations of Tax Credits by TCAC for the Project.

"Reserve Deposits" shall mean any payments to the Capital Replacement Reserve and Operating Reserve accounts pursuant to Sections 412 and 413 hereof.

"Schedule of Performance" shall mean (1) that certain Schedule of Performance attached hereto as Attachment No. 3 and incorporated herein, which sets forth the time for performing the various obligations of this Agreement and shall include (2) each supplemental Schedule of Performance to be attached to and incorporated into each Implementation Agreement for the Project, as the context dictates.

It is understood the Schedule of Performance is subject to all of the terms and conditions set forth in this Agreement. The summary of the items of performance set forth in the Schedule of Performance is not intended to supersede or modify the more complete description in this Agreement; in the event of any inconsistency between the Schedule of Performance and this Agreement, this Agreement shall govern.

The time periods set forth in the Schedule of Performance for Owner's approval of submittals, including, without limitation, any plans and drawings, submitted to Owner by Developer shall only apply and commence upon Developer's complete submittal of all the required information. In no event shall an incomplete submittal by Developer trigger any of Owner obligations of review and/or approval hereunder; provided, however, that the Owner shall notify Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for Owner's action on the particular item in question.

The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Developer, City Manager and Executive Director. Any and all extensions hereunder shall be by mutual written agreement of the City Manager and Executive Director, and the Developer, which shall not cumulatively exceed 180 days without City Council approval.

"Scope of Development" shall mean that certain Scope of Development attached hereto as Attachment No. 4 and incorporated herein, which describes the scope and quality of the Project to be constructed by Developer pursuant to the terms and conditions of this Agreement.

"Section 3" shall mean and refer to Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u, as amended. Owner has prepared a Section 3 "checklist" and other forms related to Section 3 compliance; and as provided by Owner to the Developer, its Contractor, Subcontractors, or other contractor(s) or subcontractor(s), as applicable, such forms shall be utilized in all contracts and subcontracts to which Section 3 applies.

"Section 3 Clause" shall mean the language, set forth below, which is required to be included in each and every Construction Contact entered into by Developer, the Contractor, each Subcontractor and/or any other contractor(s) or subcontractor(s), as applicable, for the development of the Project. For purposes of this Section 3 Clause and compliance therewith, whenever the word "contractor" is used it shall mean and include, as applicable, the Developer, Contractor, any and all Subcontractors, and any other contractor(s) and subcontractor(s) performing work on the Project.

Developer hereby acknowledges and agrees to take all responsibility for compliance with all Section 3 Clause federal requirements and further acknowledges and agrees that compliance with all Section 3 Clause requirements by Developer, the Contractor, all Subcontractors, and/or other contractor(s), subcontractor(s), and other agents, is the primary obligation of Developer. Developer shall provide or cause to be provided to its Contractor and each Subcontractor, and each of its other contractor(s),subcontractor(s) and agents, a checklist for compliance with the Section 3 Clause federal requirements, to obtain from the Contractor, each Subcontractor, and other contractor(s), subcontractor(s), and agents, all applicable items, documents, and other evidence of compliance with the items, actions, and other provisions within the checklist, and to submit all such completed Section 3 Clause documentation and proof of compliance to the City.

The particular text to be utilized in any and all contracts of the Contractor or any Subcontractor doing work covered by Section 3 shall be in substantially the form of the following Section 3 Clause, as reasonably determined by City, or as directed by HUD or its representative, and shall be executed by the applicable contractor under penalty of perjury:

"(i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons (inclusive of Very Low-Income Persons, Very Low-Income Households, and Very Low-Income Tenants served by the Project), particularly persons who are recipients of HUD assistance for housing.

(ii) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(iii) The contractor agrees to send to each labor organization or

representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of notices in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(iv) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(v) The contractor will certify that any vacant employment positions, including training positions, that are filled (a) after the contractor is selected but before the contract is executed, and (b) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(vi) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(vii) With respect to work performed in connection with Section 3 covered Indian Housing assistance, section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible, (a) preference and opportunities for training and employment shall be given to Indians, and (b) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b)."

After the foregoing Section 3 Clause, each Developer as to its Project shall add the signature block of the Contractor, Subcontractor, or other contractor(s) and subcontractor(s), as applicable, and shall add the following text immediately above the signature block: "The contractor/provider by this his signature affixed hereto declares under penalty of perjury that contractor has read the requirements of this Section 3 Clause and accepts all its requirements contained therein for all of his operations related to this contract."

"Site Map" shall mean the map of the Site which is attached hereto as Attachment No. 2 and incorporated herein.

"Subcontractor" and ***"Subcontractors"*** shall mean, individually and collectively, one or more subcontractors hired by Developer's Contractor for the Project to perform and complete, or to engage and supervise others to perform and complete, the construction of the Project and all other on-site and off-site improvements required to be constructed in connection with the Project, all of which shall be in accordance with the Scope of Development, the land use entitlement to be approved by Owner, and the Development Plans. Developer shall submit to Owner information regarding the entity serving as the Subcontractor for any portion of the construction of the Project and all other on-site and off-site improvements required to be constructed in connection therewith in accordance with the Scope of Development, the land use entitlement to be approved by Owner, and the Development Plans, including all required licenses, certifications, insurance, etc., as reasonably requested by City Manager and Executive Director.

"Subject Property" shall mean the real property consisting of approximately 3.39 acres of land located at the southeast corner of E. Cesar Chavez Boulevard (formerly Ventura Street) and S. Seventh Street (APNs 470-052-02T and 470-052-03T) and land located at the northwest corner of S. Eighth Street and E. El Monte Way (APN 470-052001T) in Fresno, California, as more particularly described in Attachment 1. Whenever the term "Subject Property" is used in this Agreement it shall mean and include the land and all Improvements.

"Tax Credit Regulatory Agreement" shall mean, collectively, the regulatory agreement(s) which may be required to be recorded against the Subject Property, as applicable, with respect to the issuance of Tax Credits for the Project. The Tax Credit Regulatory Agreement shall be subordinate and junior to the Ground Lease and Owner Covenants and land use entitlement.

"Tax Credit Rules" shall mean Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq.*, as applicable, as the foregoing may be amended from time to time, and the rules and regulations implementing the foregoing.

"Tax Credits" shall mean federal 4% and/or 9% Low-Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq.*, as applicable.

"TCAC" shall mean the California Tax Credit Allocation Committee, the allocating agency for Tax Credits in California.

"Term" shall mean the 55-year term of the Ground Lease, as defined therein, as it may be earlier terminated or extended according to the terms thereof. The term of the Ground Lease shall become effective upon recordation of the Release of Construction Covenants for the Project. Upon completion or waiver of all the conditions precedents set forth herein, Developer shall be granted a Right of Entry for up to 2 years for construction of the Project prior to the commencement of the Ground Lease.

"Third Party Costs" is defined in Section 616.

"Transfer Net Proceeds" shall mean the proceeds of any transfer, in whole or in part, of Developer's leasehold interest in the Subject Property or any sale, assignment, sublease, or other transfer, in whole or in part of the Developer's interests in the Subject Property, net reasonable and customary costs and expenses incurred in connection with such transfer.

"Very Low-Income" and/or ***"Very Low- Income Households"*** shall mean and include: (i) very low-income households as defined in the Tax Credit Rules; (ii) 30% AMI Very Low-Income Households; (iii) 45% AMI Very Low-Income Households; and (iv) 50% AMI Very Low-Income Households. Very Low-Income Households include Extremely Low-Income Households, as defined in the Tax Credit Rules.

"30% AMI Very Low-Income Households" shall mean those households earning not greater than 30% of Fresno County Area Median Income, adjusted for household size, which is set forth by regulation of TCAC.

"45% AMI Very Low-Income Households" shall mean those households earning not greater than 45% of Fresno County Area Median Income, adjusted for household size, which is set forth by regulation of TCAC.

"50% AMI Very Low-Income Households" shall mean those households earning not greater than 50% of Fresno County Area Median Income, adjusted for household size, which is set forth by regulation of TCAC.

60% AMI Low-Income Households" shall mean those households earning not greater than 60% of Fresno County Area Median Income, adjusted for household size, which is set forth by regulation of TCAC.

200. GROUND LEASE OF THE SUBJECT PROPERTY

201. Ground Lease. Subject to the terms and conditions set forth in this Agreement, Owner agrees to lease the Subject Property to Developer and Developer agrees to lease the Subject Property from Owner pursuant to the terms of the Ground Lease, which shall be in a form and content reasonably acceptable to the Developer and to the Owner, subject to approval as to legal form by City Attorney, in their reasonable discretion.

201.1 Term. The Term of the Ground Lease shall commence on the date of recordation of Memorandum of Ground Lease in the Official Records (Commencement Date) and shall continue thereafter until the earlier to occur of (a) the 55th anniversary of the recordation of the Release of Construction Covenants for the Project in the Official Records or (b) upon earlier termination as set forth in this Agreement or the Ground Lease. The Term of Ground Lease shall not commence in any event until the Conditions Precedent set forth in Section 202 have been satisfied as to the Project and the Closing shall have occurred. Upon completion or waiver of all conditions precedent set forth herein, Developer shall be granted a Right of Entry for up to two years for construction of the Project prior to commencement of the Ground Lease.

201.2 Rent. Developer shall pay to Owner an amount equal to One Dollar ($1.00) on or before the first day of each calendar year during the Term of the Ground Lease (together with the advance rental payment, "Rent"), subject to payment of Additional Rent and the Rent adjustment set forth in subdivisions (a) and (b) of this Section 201.2.

(a) Additional Rent. In addition to the Rent required by Section 201.2 above, Developer shall also pay to Owner as "Additional Rent" under the Ground Lease any amounts required to be paid by Developer to reimburse Owner for any payments made by Owner that are required to be paid by Developer pursuant to the Ground Lease, such as taxes and other impositions, insurance premiums, or costs of maintaining the Subject Property and the Project, all with interest, as shall be set forth

in more detail in the Ground Lease.

201.3 Title to Improvements. Upon execution of Ground Lease for the Project, fee title to all Improvements located at the Project shall be held by the Developer for the Project. Upon expiration or earlier termination of the Ground Lease for the Project, the Improvements located on the Subject Property shall automatically vest in Owner; provided, in the event of a foreclosure of Developer's interest in the Ground Lease, title to the Improvements shall vest in the successor tenant under the Ground Lease, subject to the terms of the Ground Lease (or a new Ground Lease approved by Owner) entered into after such foreclosure, which shall provide that upon ultimate termination or expiration of the Ground Lease or such new Ground Lease entered into upon foreclosure or deed in lieu of foreclosure, title to such Improvements shall automatically vest in Owner.

202. Conditions Precedent to Commencement of Ground Lease. The commencement of the Term of the Ground Lease and Owner's obligation to make the conditioned upon the satisfaction (or waiver by the benefited party) of the following terms and conditions within the times designated below (each, a "Condition Precedent," collectively, "Conditions Precedent").

202.1 Owner's Conditions Precedent to the Closing. The commencement of the Term and effectiveness of the Ground Lease is subject to the fulfillment by Developer (or written waiver by Owner) of each and every one of the Conditions Precedent (a) through (q), inclusive, described below, which are solely for the benefit of Owner, and which shall be fulfilled by the Developer entity or waived by Owner within the time periods provided herein:

(a) Execution and Recording of Documents. Developer shall have duly executed and delivered to Escrow Agent the Regulatory Agreement, Ground Lease, Memorandum of Ground Lease, Memorandum of Agreement, Notice of Affordability Restrictions, Request for Notice, Owner Covenants, and any other documents required hereunder for the Project, and such documents shall be ready for and meet all conditions to the Closing pursuant to the requirements of this Agreement, including any Implementation Agreement(s). The Owner Regulatory Agreement, Memorandum of Ground Lease, Memorandum of Agreement, Notice of Affordability Restrictions, Request for Notice, and Owner Covenants, shall be ready to record in the Official Records at Closing.

(b) Grading Permits and Building Plans/Permits. Developer shall have obtained Owner approval of its Construction Drawings and all final grading and building plans for all of the Improvements to be constructed during the Project as required by Section 304. Grading permits shall be ready to issue upon payment of fees and any and all conditional building permits shall be ready to be issued concurrently with the grading permits upon payment of all necessary fees and all required security shall have been posted in order to commence and complete construction of both Projects. The conditional building permits shall state that final unconditional building permits shall be issued upon satisfactory completion of grading, subject to the sole discretion of City's Building and Planning Departments.

(c) Land Use Entitlements; Owner Covenants. Developer shall

have obtained Owner approval of the Basic Concept Drawings and Design Development Drawings pursuant to Section 302 herein, and shall have received all land use entitlements for the Project (but for payment of fees associated therewith) from the Owner, including conditional use permit(s) or variance(s), if required, and including approval of all documentation, studies, and other reports required by the California Environmental Quality Act and the National Environmental Policy Act (NEPA), as applicable.

In connection therewith, the land use entitlements require that Developer cause to be recorded the Owner Covenants in a senior, non-subordinate lien position with respect to the Project; and, in this regard, the Owner Covenants shall be ready for recording concurrently and in a first, senior lien position.

(d) Final Budget. Developer shall have submitted to Owner for its approval the detailed Final Budget for the Project of the construction and development of the Project, and Owner shall have approved the Final Budget for the Project in its reasonable discretion.

(e) Evidence of Financing. Developer shall have provided written proof reasonably acceptable to Owner that Developer has obtained commitments for equity contributions, reservation of Tax Credits, and other approved affordable housing subsidies and/or loans, and Primary Loans (including the construction and permanent financing) for the Project, all subject to customary conditions, and Owner shall have reasonably approved such financing commitments pursuant to Section 310.

(f) Partnership Agreement; Organizational Documents; Resolution. Developer shall have duly executed or, shall execute concurrently with Closing, a Partnership Agreement reasonably acceptable to Owner in accordance with Section 310 and a Certificate of Limited Partnership shall have been filed with the California Secretary of State, under which the limited partners are committed to make equity contributions in an amount, which together with the proceeds of the Primary Loan, the Tax Credits, and any additional affordable housing subsidies and loans are sufficient to finance the construction and development of the Project. In addition, Developer shall have certified in writing to Owner that the Primary Loan, Tax Credits, any additional affordable housing subsidies, Postponed Fees, Deferred Developer Fee, Deferred Contractor Fee, and required equity contributions, are together projected to be sufficient to pay for the completion of development of the Project. Owner shall have received and approved the Partnership Agreement and any other relevant organizational documents of Developer, including a resolution authorizing a representative of Developer to enter into this Agreement, the Regulatory Agreement, the Ground Lease, any Implementation Agreement(s) and to execute all of their documents required under the terms of this Agreement, all on behalf of Developer.

(g) Construction Contract. Developer shall provide Owner with copies of all agreements it has entered into with any and all general contractors or subcontractors for this Project. 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 Owner immediately of

any event of default by the Developer thereunder, (ii) notify Owner immediately of the filing of a mechanic's lien, (iii) notify Owner immediately of termination or cancellation of the construction agreement on the Project, and (iv) provide Owner, upon the Owner'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 Owner 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. Each Construction Contract shall include the Section 3 Clause, as applicable. The Construction Contract with the Contractor shall be for a fixed, all-inclusive fee to complete all work to be performed by the Contractor to construct the Project, subject to approved change orders.

(h) Construction Security. If required by the construction lender and if City funds are used for and during the course of construction then the developer or its General Contractor shall obtain, pay for and deliver good and sufficient payment and performance bonds along with a Primary Obligee, Co-Obligee, or Multiple Obligee Rider in a form acceptable to the Owner from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California and Treasury-listed, in a form satisfactory to the Owner and naming the Owner as Obligee.

(i) The "Faithful Performance Bond" shall be at least equal to 100% of the Developer's estimated construction costs as reflected in the Developer's budget, attached hereto as Attachment 3A, to the guarantee faithful performance of the Project, within the time prescribed, in a manner satisfactory to the Owner, consistent with this Agreement, and that all material and workmanship will be free from original or developed defects.

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

(iii). The "Material and Labor Bond" shall be at least equal to 100% of the Developer's estimated construction costs as reflected in the Developer's budget, attached hereto as Attachment 3A, to satisfy claims of material supplies and of mechanics and laborers employed for this Project. The bond shall be maintained by the Developer in full force and effect until the Project is completed, and until all claims for materials and labor are paid, released, or time barred, and shall otherwise comply with any applicable provision of the California Code.

(i) Review and Approval of Title. Developer shall not have elected to terminate this Agreement due to the condition of title to the Subject Property pursuant to Section 205.7.

(j) Owner's Title Policy. The Title Company (as hereinafter defined) shall have unconditionally committed to issue the Owner Title Policy for the Subject Property, as applicable, to Owner pursuant to Section 205.8.

(k) Environmental Condition of the Site. The environmental condition of the entire Subject Property shall be reasonably acceptable to Developer, and Developer shall not have elected to terminate this Agreement pursuant to Section 204.3.

(l) Proof of Insurance. Developer shall have provided to Owner certificates of insurance and endorsements which satisfy all requirements of Section 306 hereof as to the Project.

(m) Property Management Plan. Developer shall have submitted to Owner, and Owner shall have reasonably approved, the Property Management Plan for the Project.

(n) No Default; Representations and Warranties. Developer shall not be in Default of any of its obligations under the terms of this Agreement. All representations and warranties of Developer contained herein shall be true and correct in all material respects on and as of the Closing Date for the Project as though made at that time, and all covenants of Developer which are required to be performed prior to the Closing shall have been performed by such date.

202.2 Developer Conditions Precedent to the Closing. For the Project, Developer's obligations to proceed with the commencement of the Term and effectiveness of Ground Lease are subject to the fulfillment or waiver by Developer as applicable, of each and all of the Conditions Precedent (a) through (j), inclusive, described below, which are solely for the benefit of the Developer entity, and which shall be fulfilled or waived by the time periods provided for herein:

(a) Land Use Entitlement. Developer shall have obtained Owner approval of the Basic Concept Drawings and Design Development Drawings and shall have received the necessary land use entitlement for the Project from Owner, including conditional use permit(s) or variance(s), if required.

(b) Grading Permits and Building Plans/Permits. Developer shall have obtained Owner approval of its Construction Drawings and all final grading and building plans for the Project. Initial rough grading as well as complete grading permits shall be ready to issue upon payment of fees and any and all conditional building permits shall be ready to be issued concurrently with such grading permits upon payment of all necessary fees and all required security shall have been posted in order to commence and complete construction of the Project. The conditional building permits shall state that final unconditional building permits shall be issued upon satisfactory completion of all rough and complete grading subject to the sole discretion of City's Building and Planning Departments.

(c) Condition of Site. Owner shall have fulfilled its obligations pursuant to Section 301.2 hereof to deliver the Subject Property to Developer clear of occupants and improvements.

(d) Final Budget. Owner shall have approved a detailed Final Budget for the construction and development of the Project, and Owner shall have approved

the Final Budget for the Project in its reasonable discretion.

(e) Evidence of Financing. Developer shall have obtained, and Owner shall have approved, a commitment for equity contributions, a reservation of Tax Credits, and other affordable housing subsidies and/or loans, and the Primary Loan, including the construction financing and permanent financing commitment for the applicable Project in form and substance acceptable to Developer, all subject to customary conditions, and Owner shall have reasonably approved such financing pursuant to Section 310.

(f) Review and Approval of Title. Developer shall have reviewed and approved the condition of title to the Subject Property as provided herein.

(g) Developer's Title Policy. The Title Company shall have unconditionally committed to issue the Developer Title Policy for the Subject Property, as applicable, to Developer pursuant to Section 205.8.

(h) Environmental Condition of the Site. The environmental condition of the Subject Property shall be reasonably acceptable to Developer and Developer shall not have elected to terminate this Agreement pursuant to Section 204.3.

(i) No Default; Representations and Warranties. Owner shall not be in Default of any of its obligations under the terms of this Agreement. All representations and warranties of Owner contained herein shall be true and correct in all material respects on and as of the Closing Date for the Project as though made at that time, and all covenants of Developer which are required to be performed prior to Closing for the Project shall have been performed by such date.

203. Payment of Developer Fee and Contractor Fee The Developer Fee and the Contractor Fee shall be paid pursuant to Developer's Limited Partnership Agreement and Construction Contract so long as both agreements have been provided to Owner for review and are in compliance Tax Credit Regulations.

204. Environmental Condition of the Subject Property.

204.1 Environmental Condition of the Subject Property. True copies of Phase I and Phase II reports regarding the Subject Property, have been delivered by Owner to Developer (collectively, "Environmental Reports"). Except for the foregoing, Owner represents to Developer that it is not aware of, to its Best Knowledge, and it has not received any additional or unrelated notice or communication from any governmental agency having jurisdiction over the Subject Property, notifying it of the presence of Hazardous Materials in, on, or under the Subject Property, or any portion thereof. At all times relevant to this Agreement or the Ground Lease, Developer agrees to provide Owner with any additional supplemental or updated documents relating to the physical and/or environmental condition of the Subject Property, including those relating to the soils and groundwater, which are received by Developer.

204.2 Studies and Reports. Prior to the commencement of the Ground Lease, Developer may obtain data and make any other or additional surveys, tests, studies, and reports necessary to evaluate the suitability of the Subject Property for the Project to carry out this Agreement, including the investigation of the environmental condition of the Subject Property (collectively, the "Studies"). Any studies undertaken on the Subject

Property by Developer prior to the commencement of the applicable Ground Lease shall be done at the sole expense of Developer, and Developer shall execute a Right of Entry and License Agreement in a form reasonably acceptable to Owner prior to undertaking such work and entering the Subject Property. Any studies shall be undertaken only after all insurance required by and conforming to the requirements of such Right of Entry and License Agreement has been issued and is in full force and effect, and Developer has secured any necessary permits therefor from the appropriate governmental agencies. Developer hereby agrees to promptly provide Owner with any and all Studies relating to the environmental condition of the Subject Property upon Developer's acquisition thereof.

204.3 Approval of Environmental Condition of the Site. Prior to the Closing, and within the time set forth in the Schedule of Performance attached to each Implementation Agreement, Developer shall approve or disapprove the environmental condition of the Subject Property by written notice to Owner. In the event that Developer disapproves the environmental condition of the Subject Property, this Agreement shall be terminated as provided in Section 504 hereof prior to the Closing for the Project. In the event Developer disapproves the condition of the Subject Property because it determines that environmental remediation is required to place the Subject Property in a condition suitable for use as required hereunder and subject to Developer's termination right set forth in the immediately preceding sentence, Owner and Developer shall negotiate in good faith regarding the remediation of the Subject Property, and the allocation of the cost of performing such environmental remediation. If after such negotiation the parties are unable to reach agreement upon the remediation of the Subject Property, any party may terminate this Agreement as provided herein prior to the Closing.

204.4 Indemnification. Developer shall save, protect, pay for, defend (with counsel acceptable to Owner), indemnify and hold harmless Owner, and its respective elected and appointed officials, officers, employees, attorneys, representatives, volunteers, contractors and agents (collectively, "Indemnitees") from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs and third-party claims or costs) (the foregoing are hereinafter collectively referred to as "Liabilities") that may now or in the future be incurred or suffered by Indemnitees by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of: (i) the presence, use, release, escape, seepage, leakage, spillage, emission, generation, discharge, storage, or disposal of any Hazardous Materials in, on, under, or about, or the transportation of any such Hazardous Materials to or from, the Site; (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, leakage, spillage, emission, escape, discharge, storage, disposal, or transportation of Hazardous Materials in, on, under, or about, or to or from, the Site; (iii) the physical and environmental condition of the Site, and (iv) any Liabilities relating to any Environmental Laws and other Governmental Requirements relating to Hazardous Materials and/or the environmental and/or physical condition of the Site; provided, however, that the foregoing indemnity shall not apply to any Liabilities arising or occurring (a) prior to the commencement of the Ground Lease, (b) after the expiration or earlier termination of the Term of the Ground Lease or the date Developer vacates the property, whichever occurs later, or (c) as a result of the grossly negligent or wrongful acts or omissions of Owner. The

foregoing indemnification shall continue in full force and effect regardless of whether such condition, liability, loss, damage, cost, penalty, fine, and/or expense shall accrue or be discovered before or after the termination of the applicable Ground Lease. This indemnification supplements and in no way limits the indemnification set forth in Section 307.

204.5 Duty to Prevent Hazardous Material Contamination. During the construction, development, operation and management of the Project, Developer shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Subject Property. Such precautions shall include, but not be limited to, compliance with all Environmental Laws and other Governmental Requirements. Developer shall notify Owner, and provide to Owner a copy or copies of any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to all Environmental Laws and other Governmental Requirements, and Developer shall report to Owner, as soon as possible after each incident, any unusual or potentially important incidents in the event of a release of any Hazardous Materials into the environment.

204.6 Release of Owner by Developer. With the exception of the obligations of Owner under the Ground Lease, the land use entitlements for the Project, Environmental Laws and Government Requirements (except to the extent the responsibility for compliance with Environmental Laws and Governmental Requirements has been assumed by Developer hereunder), Developer hereby waives, releases and discharges forever the Indemnitees from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, including attorney's fees, court and litigation costs and fees of expert witnesses, present and future, arising out of or in any way connected with Developer's possession or use of the Subject Property pursuant to the Ground Lease, improvement of the Subject Property in accordance with this Agreement, the Scope of Development, and the land use entitlements obtained by Developer for the Project, and for the operation of the Project at the Subject Property, of any Hazardous Materials on the Subject Property, or the existence of Hazardous Materials contamination in any state on, under, or about the Subject Property, however they came to be located there.

In connection with the foregoing, Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code that provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

As such relates to this Section 204.6, Developer hereby waives and relinquishes all rights and benefits that it may have under Section 1542 of the California Civil Code.

Notwithstanding the foregoing, this waiver, discharge, and release shall not be effective in the event the presence or release of Hazardous Materials on the Subject

Property occurs as a result of the gross negligence or willful misconduct of Owner or their officers, employees, representatives and agents.

204.7 Environmental Inquiries. Developer shall notify Owner upon receipt, and provide to Owner a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Subject Property and the Project: notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Environmental Laws and other applicable Governmental Requirements relating to Hazardous Materials and underground tanks, and Developer shall report to Owner, as soon as possible after each incident, all material information relating to or arising from such incident, including, but not limited to, the following:

(a) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirements;

(b) All notices of suspension of any permits relating to Hazardous Materials;

(c) All notices of violation from federal, state or local environmental authorities relating to Hazardous Materials;

(d) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions;

(e) All orders under the Porter Cologne Act, including corrective action orders, cease and desist orders, and clean up and abatement orders;

(f) Any notices of violation from OSHA or Cal OSHA concerning employees' exposure to Hazardous Materials;

(g) All complaints and other pleadings filed against Developer relating to Developer's storage, use, transportation, handling or disposal of Hazardous Materials on or about the Subject Property; and

Any and all other notices, citations, inquiries, orders, filings or any other reports containing information which would have a materially adverse effect on the Subject Property or Owner's liabilities or obligations relating to Hazardous Materials.

In the event of a release of any Hazardous Materials into the environment, Developer shall, as soon as possible after the release, furnish to Owner a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of Owner, but subject to any limitations imposed by law or by court order, Developer shall furnish to Owner a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Subject Property in Developer's possession and/or shall notify Owner of any environmental entitlements or inquiries relating to or affecting the Subject Property within Developer's actual or constructive knowledge if Developer is not in possession of same, including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

205. Escrow. Within the time set forth in the Schedule of Performance (or any revised Schedule of Performance appended to each Implementation Agreement, if any) for the Project, the parties shall open an escrow (each an "Escrow") for the Closing for the conveyance by Owner to Developer (or Developer's approved Affiliate assignee) of a ground leasehold interest in the Subject Property, with TICOR Title or another escrow company mutually satisfactory to both parties (Escrow Agent). "Closing" the Project refers to the close of Escrow, including the execution of the Ground Lease and the execution and recordation of the Owner Covenants, Regulatory Agreement, Memorandum of Agreement, Memorandum of Ground Lease, Notice of Affordability Restrictions and Request for Notice of Default and the commencement of the Ground Lease Term.

205.1 Costs of Escrow. Developer shall pay all Escrow charges, the premium for Developer's Title Policy, Owner's Title Policy (including both an owner's policy and a lender's policy, both with requested endorsements), all recording fees and documentary transfer taxes, if any, due with respect to the Closing, and all other fees, charges, and costs which arise from Escrow.

205.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of Developer and Owner, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties agree to do all acts reasonably necessary to close each Escrow within the time set forth in the Schedule of Performance. All funds received in each Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any state or national bank doing business in the State of California.

If in the opinion of any party it is necessary or convenient in order to accomplish the Closing of the Project's Escrow, a party may require that the parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control, unless the supplemental escrow instructions expressly state the intent to amend this Agreement. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Project's Closing shall take place within five days after the date when the Conditions Precedent set forth in Section 202 have been satisfied or waived (or authorized by Owner to be postponed until a date certain post-Closing) by the respective parties as the Project. Escrow Agent is instructed to release Owner's Escrow Closing statement and Developer's Escrow Closing statement to the respective parties.

205.3 Authority of Escrow Agent. Escrow Agent is authorized to, and shall:

(a) Pay and charge Developer for the premium of the Developer's Title Policy and the Owner's Title Policy (including both an owner's policy and a lender's policy, both with requested endorsements), and any endorsements thereto requested by Developer and/or Owner and any amount necessary to place title in the condition necessary to satisfy this Agreement;

(b) Pay and charge Developer for all Escrow fees and charges;

(c) Verify proper and complete execution of the Owner Covenants, Memorandum of Ground Lease, Regulatory Agreement, Memorandum of Agreement,

Notice of Affordability Restrictions, and Request for Notice of Default upon Closing; and

(d) Do such other actions as necessary, including obtaining any Developer and Owner title insurance, required to fulfill parties' obligations under this Agreement.

205.4 Escrow Closing. The Closing for the conveyance of the ground leasehold estate in the Subject Property, as applicable, by Owner to Developer, and commencement of the Term of the Ground Lease, pursuant to the Ground Lease shall occur within five days of the parties' satisfaction of all of the Conditions Precedent set forth in Section 202 hereof and within 180 days from the award of tax credits, unless extended by TCAC (Closing Date). The Closing Date may be extended by the mutual written agreement of Developer and the Owner (through its City Manager and Executive Director).

205.5 Termination of Escrow. If Escrow is not in condition to close by the Closing Date, then any party who is not in material default under this Agreement may, in writing, demand the return of money or property and proceed under the default and/or termination provisions of this Agreement. If any party makes a written demand for return of documents or properties, the Escrow shall not cancel until five (5) days after Escrow Agent shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of this Agreement shall be without prejudice as to whatever legal rights any party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

205.6 Closing Procedure. Escrow Agent shall close Escrow as follows:

(a) Accept receipt of fully and duly executed Owner Covenants, Ground Lease, Memorandum of Ground Lease, Regulatory Agreement, Memorandum of Agreement, Notice of Affordability Restrictions, and Request for Notice of Default;

(b) Record documents in the following order:

(i) Record first the Memorandum of Ground Lease in the Official Records, with instructions for the Recorder of Fresno County, California to deliver the Memorandum of Ground Lease to Owner;

(ii) Record the Owner Covenants in the Official Records with instructions for the Recorder of Fresno County, California, to deliver the Owner Covenants to the City Clerk (unless required to be subordinated by the Primary Loan);

(iii) Record the Primary Loan lien instrument, including the deed of trust securing the Primary Loan, in the Official Records;

(iv) Record the Memorandum of Agreement in the Official Records, with instructions for the Recorder of Fresno County, California to deliver the Memorandum of Agreement to Owner;

(v) Record the Regulatory Agreement in the Official Records, with instructions for the Recorder of Fresno County, California to deliver the Regulatory Agreement to Owner;

(vi) Record the Notice of Affordability Restrictions in the Official Records, with instructions for the Recorder of Fresno County, California to deliver the Notice of Affordability Restrictions to Owner;

(vii) Record the Request for Notice of Default in the Official Records, with instructions for the Recorder of Fresno County, California to deliver the Request for Notice of Default to Owner;

(c) Instruct the Title Company to deliver Developer's Title Policy to Developer and Owner's Title Policy to Owner;

(d) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements; and

(e) Forward to both Developer and Owner a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

205.7 Review of Title. For the Project, Owner shall be responsible for obtaining a preliminary title report (Title Report) from TICOR Title or another title company mutually satisfactory to both parties (Title Company) with respect to the title to the Subject Property. Developer and Owner each shall have the right to reasonably approve or disapprove the exceptions to title set forth in the Title Report (Exceptions); provided, however, that the following Exceptions are hereby approved by the parties:

(a) The lien of any non-delinquent property taxes and assessments (to be prorated at the time of Closing); and

(b) The provisions to be set forth in the Owner Covenants, Memorandum of Ground Lease (which shall incorporate by reference the terms of the Ground Leases), Regulatory Agreements, Memorandum of Agreement (which incorporates by reference the terms of this Agreement), and Notices of Affordability Restrictions.

Each party shall have thirty (30) days from the date of its receipt of the Title Report and legible copies of all back-up documents listed as Exceptions therein or shown on any Survey to give written notice to the other party and to Escrow Agent of approval or disapproval of any of such Exceptions; provided, however, that if following review of the Title Report, the Title Company adds additional exceptions to coverage for matters not caused by a party, each party shall have the right to approve or disapprove any such exceptions (such new exceptions shall likewise be included within the definition of the term "Exceptions"). Except for deed(s) of trust and regulatory agreement(s) approved as part of the financing for the Project pursuant to Section 310, Owner and Developer shall not voluntarily create any new exceptions to title following the Date of Agreement and prior to the Closing, including without limitation any liens or stop notices related to any studies or other work at the Subject Property. Owner and Developer shall use good faith efforts to attempt to remove or modify any Exceptions which are unacceptable. If any Exceptions disapproved by Developer are not removed, insured, or endorsed around, by the Title Company, each party shall have the option to either proceed to Closing and accept title in its existing condition, or to terminate this Agreement.

205.8 Title Insurance. Concurrently with the Closing for the Project, there

shall be issued to Developer at Developer's sole cost, a CLTA or, if requested by Developer, an ALTA leasehold policy of title insurance, together with all endorsements Developer may reasonably require (collectively, the "Developer Title Policy"), issued by the Title Company insuring that Developer holds proper interest in the Subject Property, as tenant under the Ground Lease and that the title to the Subject Property, is vested in Owner in the condition required by this Agreement. The Title Company shall provide Developer and Owner with copies of the Developer Title Policy.

Concurrently with the Closing for the Project, there shall be issued to Owner an ALTA owner's policy and an ALTA lender's policy of title insurance, together with all endorsements Owner may reasonably require (collectively, the "Owner Title Policy"), issued by the Title Company insuring that Owner continues to hold proper fee interest in the Subject Property, as fee owner. The Title Company shall provide Developer and Owner with copies of the Owner Title Policy. The Owner Title Policy insuring Owner's fee interest in the Subject Property shall be for the estimated fair market value of the to be improved Subject Property, including both the land and improvements.

300. DEVELOPMENT OF THE PROJECT.

301. Development of the Project. Subject to the terms of this Agreement, Developer agrees to construct and develop or cause construction and development through completion of the Project, including all on-site and off-site improvements required to be constructed in accordance with the Scope of Development and in compliance with the land use entitlement approved by the Owner and all applicable local codes, development standards, ordinances and zoning ordinances, other applicable Governmental Requirements, and the Development Plans which are approved by the Owner pursuant to Section 302 hereof.

The Project shall include fifty-four (54) Housing Units (sixteen (16) of which shall be one-bedroom Housing Units, nineteen (19) shall be two-bedroom Housing Units, and the remaining nineteen (19) shall be three-bedroom Housing Units, inclusive of one unrestricted manager unit), a community room, management office, central laundry facilities, elevators, on-site covered parking, and passive recreational areas. Each Housing Unit shall include a range, frost-free refrigerator, dishwasher, garbage disposal, central heating and air conditioning, granite countertops, coat closets, mini blinds, vinyl flooring in kitchens and bathrooms, carpeting in living areas and shall include CAT 5 wiring. All of the Housing Units shall be designed for energy efficiency and include energy efficient appliances.

The project 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, whichever is greater, must be constructed to be accessible for persons with mobility disabilities. An additional 2% of the dwelling units, or at least two units, 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 requirements of the Fair Housing Accessibility Guidelines:

a. Provide at least one accessible building entrance on an accessible route.

b. Construct accessible and usable public and common use areas.

c. Construct all doors to be accessible and usable by persons in wheelchairs.

d. Provide an accessible route into and through the covered dwelling unit.

e. Provide light switches, electrical outlets, thermostats and other environmental controls in accessible locations.

f. Construct reinforced bathroom walls for later installation of grab bars around toilets, tubs, shower stalls and shower seats, where such facilities are provided.

g. 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. 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:

a. No step accessible entryway;

b. All interior doorways and passageways at least 32 inches wide;

c. One downstairs "flex room" and accessible bathroom with reinforcements for grab bars;

d. Six square feet of accessible kitchen counter space; and

e. Hallways at least 42 inches wide.

301.1 RESERVED. Management.

301.2 Delivery of Clear Site. Prior to the Closing, Owner shall have cleared the Subject Property of existing improvements, if any, located at the Subject Property.

302. Design Review.

302.1 Basic Concept Drawings. Withing the time set forth in the Schedule of Performance, Developer shall submit to Owner and Owner shall review and approve, disapprove, or conditionally approve basic concept drawings for the Project and all appurtenant improvements, including materials, color board, elevations of all four sides of the Project, preliminary landscape plans (both hardscape and softscape and other amenities of common areas) consistent with the City of Fresno Municipal Code, a traffic and circulation plan as applicable or as may be required, and a rendered perspective, and all appurtenant improvements (collectively, "Basic Concept Drawings"). In the event Developer wishes to in any way alter or modify such Basic Concept Drawings, Developer shall re-submit such modified Basic Concept Drawings to Owner for its reasonable review

and approval of such modifications.

302.2 Design Development Drawings. Within the time set forth in the Schedule of Performance attached to each Implementation Agreement for the Project, Developer shall submit to Owner, and Owner shall review and approve, disapprove, or conditionally approve, the plans and drawings with respect to the Project ("Design Development Drawings") consistent with the City of Fresno Municipal Code, including each of the following:

(a) Applicable accessibility requirements including, but not limited to the design and construction requirements as required by the City's Universal Design Ordinance pursuant to Fresno Municipal Code section 11-110, including but not limited to the following requirements

i. No step accessible entryway;

ii. All interior doorways and passageways at least 32 inches wide;

iii. One 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

(b) A fully dimensioned Site Plan which complies with the City's land use entitlement and site plan submittal process for review by the City (through City's Planning Director, administrative approval of the land use entitlement, or as applicable, the Planning Commission or City Council approval of same all pursuant to applicable local, state and federal laws and regulations), which includes a landscape plan, with hardscape and softscape plans, sections and elevations, including lighting, equipment, furnishings and planting schedules, materials, and color board for all such improvements.

(c) Floor plans.

(d) Roof plans.

(e) Elevations and project sections.

(f) Tabulation of areas/uses.

(g) Elevations of major public spaces.

(h) Graphics and signage plans, together with schedules and samples or manufacturer's literature.

(i) Parking areas, both for tenants and guests.

(j) Common area amenities, including all recreational or leisure areas or improvements.

(k) Lighting schedules with samples or manufacturer's literature for exterior lighting and lighting on building exteriors. Lighting locations are to be shown on landscape plans and elevations.

In the event Developer wishes to in any way alter or modify the Design Development Drawings, Developer shall re-submit such modified Design Development

Drawings, including provision for each of the above elements set forth in subsections (a) through (k) above, to Owner for its reasonable review and approval of such modifications.

302.3 Construction Drawings and Related Documents. Within the time set forth in the Schedule of Performance attached to the Implementation Agreement for the Project, Developer shall submit to Owner, and Owner shall review and approve, disapprove, or conditionally approve, detailed construction plans/working drawings with respect to the Project, including without limitation a grading plan, which shall have been prepared by a registered civil engineer (Construction Drawings).

302.4 Standards for Disapproval. Owner shall have the right to disapprove the Basic Concept Drawings in its sole and complete discretion. Owner shall have the right to disapprove in its reasonable discretion any of the Design Development Drawings if (a) the Design Development Drawings do not conform to the approved Basic Concept Drawings, or (b) the Design Development Drawings do not conform to the Owner guidelines, or (c) the Design Development Drawings do not conform to this Agreement, or (d) the Design Development Drawings are incomplete. Owner shall have the right to disapprove in its reasonable discretion any of the Construction Drawings if (a) the Construction Drawings do not conform to the approved Design Development Drawings, or (b) the Construction Drawings do not conform to the Scope of Development or this Agreement, or (c) the Construction Drawings are incomplete. Owner review and subsequent approval or disapproval shall be conducted within the time periods set forth in the Schedule of Performance attached to each Implementation Agreement for its Project, and any Owner disapproval, if any, shall include a written statement of the reasons for such disapproval. Developer, upon receipt of any such disapproval, shall revise such portions and resubmit the disapproved Basic Concept Drawings, Design Development Drawings, or Construction Drawings, as the case may be, by the time established therefor in the Schedule of Performance attached to the Implementation Agreement for the Project; provided, however, in no event shall any such drawings be deemed approved.

Developer acknowledges and agrees that Owner is entitled to approve or disapprove the Basic Concept Drawings, Design Development Drawings and Construction Drawings (collectively, "Development Plans") in order to satisfy Owner's obligation to promote the sound development of the Subject Property, to promote a high level of design which will impact the surrounding development, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City and all residents of the Project.

302.5 Consultation and Coordination. During the preparation of the Development Plans and throughout construction of the Project, Owner and authorized representatives of Developer shall hold joint progress meetings to coordinate the preparation of, submission to, and review of the Development Plans by City. Owner and authorized Developer representatives shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to Owner can receive prompt and thorough consideration. Owner shall designate a member to serve as the project manager for the Project, who shall be responsible for the coordination of Owner's activities under this Agreement and for coordinating the permitting process.

302.6 Revisions and Change Orders. In the event Owner disapproves or conditionally approves the Development Plans, or any part(s) thereof, or if Developer

desires to propose any substantial revisions to the approved Development Plans, or any part(s) thereof, Developer shall submit its revisions or proposed changes thereto to Owner and shall also proceed in accordance with any and all Governmental Requirements regarding such revisions, within the time frame set forth in the Schedule of Performance attached to each Implementation Agreement for the Project for the resubmittal of such Development Plans, or any part(s) thereof. Any revision or change to such Development Plans proposed by Developer may be approved through the City Manager and Executive Director, in their sole and absolute discretion. Any and all change orders or revisions required by the Owner and its inspectors that are required under the Fresno Municipal Code and all other applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other Governmental Requirements shall be included by Developer in its Development Plans and completed during the construction of the Project. In the event Developer requests revisions, alterations, or modifications to the Development Plans, or any part(s) thereof, for any reason including increased construction costs because of unforeseen occurrences or conditions relating to the construction of the Project, said changes shall be covered using Developer's 5% hard cost contingency. Developer shall be responsible for any changes orders in the event there are no funds available in the 5% hard cost contingency, however, Developer shall have the ability to reallocate soft cost savings subject to the approval of the construction lender.

302.7 Defects in Development Plans. Owner shall not be responsible to Developer or to any third parties in any way for (a) any defects in the Development Plans, (b) any structural or other defects in any work done according to the approved Development Plans, nor (c) any delays caused by the review and approval processes established by this Section 302.7. Developer shall hold harmless, indemnify and defend the Indemnitees from and against any claims or suits for damages to property or injuries to persons (including death) arising out of or in any way relating to defects, latent or patent, in the Development Plans, or the actual construction work and improvements comprising the Project, including, without limitation, the violation of any Governmental Requirements, or arising out of or in any way relating to any defects in any work done and/or improvements completed according to the approved Development Plans.

303. Timing of Development of Project. Developer hereby covenants and agrees to commence the construction and development of the Project within the time set forth in the Schedule of Performance attached and appended to and included in each Implementation Agreement for the Project (subject to force majeure pursuant to Section 503 hereof). Developer further covenants and agrees to diligently prosecute to completion the construction and development of the Project in accordance with the approved Development Plans (as the same may be modified in accordance herewith) and to file a notice of completion therefor pursuant to California Civil Code Section 3093 within the time set forth in the Schedule of Performance attached to the Implementation Agreement for the Project.

304. City and Other Governmental Permits. As a Condition Precedent to Closing for the Project pursuant to Section 202, Developer shall have received, or shall be ready to receive upon payment of required fees, all required final grading permits and conditional building permits for the construction of the Project. Before commencement of construction of the Project or any environmental remediation required for the Project, if any, Developer shall secure or cause its Contractor (and subcontractors) to secure any and all permits and approvals which may be required by City or any other governmental agency affected by

such construction, including, without limitation, rough grading permits, final grading permits, conditional building permits, final building permits. The conditional building permits may state that the final unconditional building permits shall be issued upon satisfactory completion of rough and complete grading, subject to the sole discretion of the City's Building and Planning Departments. Developer shall pay all necessary fees and timely submit to the Owner final drawings with final corrections to the Development Plans to obtain any and all such permits. Owner will, without obligation to incur liability or expense therefor, use their reasonable efforts to expedite the Owner's issuance of final building permits and certificates of occupancy that meet Governmental Requirements and this Agreement.

305. Release of Construction Covenants. Promptly after the completion of the Project in conformity with this Agreement (as reasonably determined by the City Manager and Executive Director) and as determined completed by the City's building official, upon the written request of Developer, Owner shall furnish Developer with a Release of Construction Covenants for the Project as applicable (substantially in the form attached hereto as Attachment No. 5 incorporated herein) which evidences and determines the satisfactory completion of the construction and development of the Project in accordance with this Agreement. The issuance and recordation of the Release of Construction Covenants with respect to the Project shall not supersede, cancel, amend or limit the continued effectiveness of any obligations relating to the maintenance, operation, uses, payment of monies, or any other obligations, except for the obligation to complete the development of the Project as of the time of the issuance of the Release of Construction Covenants as to the Project.

306. 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 CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY and HSA, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the 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 CITY and HSA 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 CITY and HSA. Any failure to maintain the required insurance shall be sufficient cause for CITY and HSA to terminate this Agreement. No action taken by CITY and HSA 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 CITY and HSA 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 CITY and HSA 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:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

DEVELOPER shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, HSA, and their officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY

(i) $2,000,000 per occurrence for bodily injury and property damage;

(ii) $2,000,000 per occurrence for personal and advertising injury;

(iii) $4,000,000 aggregate for products and completed operations; and,

(iv) $4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY

$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

(i) $1,000,000 each accident for bodily injury;

(ii) $1,000,000 disease each employee; and,

(iii) $1,000,000 disease policy limit.

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

(i) $1,000,000 per occurrence or claim; and,

(ii) $2,000,000 general aggregate per annual policy period.

(a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by DEVELOPER pursuant to the Agreement.

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, HSA, and their 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.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

(i) All policies of insurance required herein 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 days written notice has been given to CITY and HSA, except ten (10) days for nonpayment of premium. DEVELOPER is also responsible for providing written notice to the CITY and HSA under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, DEVELOPER shall furnish CITY and HSA 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 CITY and HSA, 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.

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

(iii) The Commercial General, Automobile and Contractors Pollution Liability insurance policies shall be endorsed to name City, HSA, and each of their officers, officials, agents, employees and volunteers as an additional insured. DEVELOPER shall establish additional insured status for the City and HSA and for all ongoing and completed operations under

both Commercial General and Commercial Pollution Liability policies The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) All such policies of insurance shall be endorsed so the DEVELOPER'S insurance shall be primary and no contribution shall be required of City or HSA and their officers, officials, agents, employees and volunteers. The primary and non-contributory coverage under the General Liability policy shall be as broad as that contained in ISO Form CG 20 01 04 13. The coverage shall contain no special limitations on the scope of protection afforded to City and HSA, its officers, officials, employees, agents and volunteers.

(v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these polices will be twice the above stated limits.

(vi) All policies of insurance shall contain, or be endorsed to contain, a waiver of subrogation as to CITY,HSA, and their officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS - DEVELOPER shall furnish CITY and HSA with all certificate(s) and applicable endorsements effecting coverage required herein All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY and HSA'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY and HSA, DEVELOPER shall immediately furnish CITY and HSA 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. All subcontractors working under the direction of DEVELOPER shall also be required to provide all documents noted herein.

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 and HSA to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractors must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, DEVELOPER shall be solely responsible for verifying that its subcontractors maintain insurance meeting all the requirements stated herein. The subcontractors' certificates and endorsements shall be on file with DEVELOPER, CITY and HSA, prior to commencement of any work by the subcontractors.

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

apply regardless of whether CITY, HSA or any of their officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY, HSA or any of their officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, DEVELOPER, whenever there is any causal connection between the DEVELOPER's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, DEVELOPER expressly agrees to undertake a duty to defend CITY, HSA and any of their officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader that 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 CITY and HSA.

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

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

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

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

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

308. Entry by Owner. From the date of the Closing and thereafter, Developer (and its successor and assigns) shall permit Owner and their officers, employees, consultants, and agents at all reasonable times, and in compliance with the reasonable safety policies and procedures of Developer and its contractor, to enter onto the Subject Property and inspect the work of development of the Project to determine that the same is in conformity with the Development Plans and all the requirements hereof. Developer acknowledges that Owner is under no obligation to supervise, inspect, or inform Developer of the progress of construction, and Developer shall not rely upon Owner therefor. Any inspection by Owner is entirely for its purposes in determining whether Developer is in compliance with this Agreement and is not for the purpose of determining or informing Developer of the quality or suitability of construction or any other work at the Subject Property. Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

309. Compliance with Laws. Developer shall carry out the design, construction, development and operation thereof in conformity with all applicable federal, state and local laws, including, without limitation, all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Fresno Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.,* Government Code Section 4450*, et seq.,* Government Code Section 11135*, et seq.,* and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*, and any other applicable Governmental Requirements. Developer (and its Affiliates and successors and assigns) shall pay prior to delinquency all *ad valorem* real estate taxes, possessory interest taxes, and assessments as to the Project, subject to Developer's (and its Affiliates and successors and assigns) right to contest in good faith any such taxes. Developer may apply for and receive any exemption from the payment of property taxes or assessments on any interest in or as to the Project without the prior approval of Owner.

309.1 Prevailing Wage Laws. Developer shall carry out the construction through completion of the Project and the overall development of the Subject Property in conformity with all applicable federal, state and local labor laws and regulations, including, without limitation, as applicable, the requirements to pay prevailing wages under federal law (the Davis-Bacon Act, 40 U.S.C. Section 3141, *et seq.*, and the regulations promulgated thereunder set forth at 29 CFR Part 1 (collectively, "Davis-Bacon")) and California law (Labor Code Section 1720, *et seq.*). 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, City Hall, second floor. Actual wage schedules are available upon request at the City's Construction Management Office, 1721 Van Ness Avenue.

Developer shall be solely responsible, expressly or impliedly, for determining and effectuating compliance with all applicable federal, state and local public works requirements, prevailing wage laws, labor laws and standards, and Owner makes no representation, either legally and/or financially, as to the applicability or non-applicability of any federal, state and local laws to the Projects, either onsite or offsite. Developer

expressly, knowingly and voluntarily acknowledges and agrees that Owner has not previously represented to Developer or to any representative, agent or Affiliate of Developer, or its Contractor or any subcontractor(s) for the construction or development of the Project, in writing or otherwise, in a call for bids or otherwise, that the work and construction undertaken pursuant to this Agreement is (or is not) a "public work," as defined in Section 1720 of the Labor Code or under Davis-Bacon.

Developer knowingly and voluntarily agrees that Developer shall have the obligation to provide any and all disclosures or identifications as required by Labor Code Section 1781 and/or by Davis-Bacon, as the same may be amended from time to time, or any other similar law or regulation. Developer shall indemnify, protect, pay for, defend (with legal counsel chosen by Owner) and hold harmless the Indemnitees, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (i) the noncompliance by Developer with any applicable local, state and/or federal law or regulation, including, without limitation, any applicable federal and/or state labor laws or regulations (including, without limitation, if applicable, the requirement to pay state and/or federal prevailing wages); (ii) the implementation of Section 1781 of the Labor Code and/or of Davis-Bacon, as the same may be amended from time to time, or any other similar law or regulation; and/or (iii) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781 and/or by Davis-Bacon, as the same may be amended from time to time, or any other similar law or regulation. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law or regulation) of the Project, without limitation, any and all public works (as defined by applicable law or regulation), Developer shall bear all risks of payment or non-payment of prevailing wages under applicable federal, state and local law or regulation and/or the implementation of Labor Code Section 1781 and/or by Davis-Bacon, as the same may be amended from time to time, and/or any other similar law or regulation. "Increased costs," as used in this Section 309.1, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of both Projects by Developer.

309.2 Section 3 Compliance. Developer agrees to comply with and to cause the Contractor, each Subcontractor, and any other contractors and/or subcontractors or agents of Developer to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u, and the implementing regulations, in connection with the construction of the Project. Developer shall submit to Owner each Construction Contract with appropriate provisions providing for the construction of the Project in conformance with the terms of this Agreement, including the Section 3 Clause. The Contractor, each Subcontractor, and any other contractors or subcontractors or agents of Developer shall have provided to Owner the certification in appendix B of 24 CFR Part 24 that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the Project, and Owner shall be responsible for determining whether each contractor has been debarred.

310. Financing of the Project.

310.1 Preferred Financing Structure. Developer shall use its reasonable and best efforts to apply for and secure an allocation of Tax Credits and additional gap financing for the Project pursuant to Title 4, California Code of Regulations Section 10323(c)(2). The parties acknowledge and agree that the specific financing for the Project is not assured, and that the possible financing structures and varied funding sources and scenarios for the Project shall be pursued in the following order of preference and priority.

(a) Project.

(i) Developer shall submit a complete Tax Credit Application for the Project (which Application shall be consistent with the terms of this Agreement) to TCAC on or before the TCAC deadline for such submission next following the Date of Agreement.

(ii) In the event Developer does not receive an allocation of Tax Credits for the Project based on its first Application submittal to TCAC, Owner and Developer shall meet and confer in good faith to determine if another method of financing the Project is available and preferable to the method set forth herein. After such meeting(s) with Developer, Owner shall, at its reasonable discretion but sole option, either: (i) allow Developer to submit a second Application to TCAC for Tax Credits for the Project, on or before the deadline immediately following the notice from TCAC that Developer has not received an allocation of Tax Credits for the Project, (ii) negotiate with Developer regarding alternative financing methods and sources of funding for the Project, or (iii) terminate this Agreement pursuant to Section 505. Upon such termination Developer shall deliver true and legible copies or originals of all Development Plans, architectural drawings, and other plans and documents related to planning, design, and construction of the Project.

(iii) If, pursuant to subsection (ii) of Section 310.1(a) above, Owner directs Developer to submit a second Tax Credit Application and Developer does not receive an allocation of federal Tax Credits in response to such second Application, Developer and Owner shall again meet and confer in good faith regarding alternate financing methods and/or the reasonable potential of a submission by Developer of an additional Application for an allocation of Tax Credits and Owner shall, in its reasonable discretion but sole option, determine whether to permit Developer to submit a third Application for Tax Credits. If Developer is permitted to submit a third Application for an allocation of Tax Credits pursuant to the immediately preceding sentence but does not obtain an allocation of Tax Credit for the Project after such Application, either Developer or Owner may terminate this Agreement. Upon such termination Developer shall deliver true and legible copies or originals of all Development Plans, architectural drawings, and other plans and documents related to planning, design, and construction of the Project.

(iv) In the event Owner terminates this Agreement as permitted by subdivisions (ii) and (iii) above, Developer shall deliver, convey and assign to Owner all of Developer's right and interest in and to all Development Plans and all planning, architectural, design and construction plans, drawings, specifications or other related documents prepared for the Project.

(v) Developer's Tax Credit Applications for the Project shall each incorporate the maximum possible points, including readiness points, to maximize the

likelihood of an allocation of Tax Credits for the Project.

(b) No Additional Owner Subsidy. In no event shall Owner be obligated to provide any financial assistance or subsidy to the Project other than the leasehold interest in the Subject Property pursuant to the Ground Lease (as set forth in Section 201) under this Agreement. To the extent that any future Owner financial assistance or subsidy (Owner Assistance) is awarded to Developer, the Owner Assistance shall be addressed in a separate funding agreement consistent with any and all applicable funding requirements.

310.2 Submission of Evidence of Financing. Prior to and as a Condition Precedent to the Closing, Developer shall submit to Owner, and Owner (and its financial consultant(s) and legal counsel(s)) shall review and approve evidence that Developer has obtained sufficient equity capital and firm and binding commitments for financing necessary to undertake the construction, completion and operation of the Project in accordance with this Agreement. 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 Subject Property, other than those related to the Project's construction, consistent with the Financing Plan, without the prior written consent of the Owner.

(a) Required Financing Submittals; Submittal of Construction Contract. Such evidence of financing for the Project and readiness to commence construction of the Project shall include all of the following:

(i) An updated pro forma and Final Budget for the applicable Project showing the projected costs of construction of the applicable Project, including all onsite and offsite improvements to be constructed in connection therewith.

(ii) A copy of the Lender's binding commitment obtained by Developer for the Primary Loan for the Project and, when available, copies of all loan documents evidencing the Primary Loan therefor. The Primary Loan commitments for financing shall be in such form and content acceptable to Owner and its financial advisor(s) and its legal advisor(s) and as such reasonably evidences a legally binding, firm and enforceable commitment, subject only to the Lender's customary and normal conditions and terms and subject to the requirements of this Section 310. The commitment also shall state the specific terms and requirements, if any, by the Lender relating to subordination of the Regulatory Agreement (but in no event the Ground Lease or Owner Covenants). Developer shall provide written certification to Owner that the loan documents submitted are correct copies of the actual loan documents to be executed by Developer concurrently with the Closing. If the Lender requires a subordination agreement between or among Lender, Owner and/or Developer, Owner shall review the form of subordination subject to the reasonable review and approval of City Manager and Executive Director, and legal counsel(s), subject to one or more of the conditions set forth in Section 310.11 necessary for the Primary Loan to be a title insured first monetary lien on the applicable Project; provided, however, in no event shall Owner's fee interest in the Subject Property be subordinated to the Primary Loan or any other financing obtained by Developer or any other encumbrance or lien against the Subject Property. All costs incurred for the review and completion of each subordination agreement (except and excluding the first subordination agreement entered into at the Closing for the Project) and any amendment, modification or other reaffirmation thereof shall be expressly subject to Developer (or another person or

entity other than Owner) paying all Third Party Costs (as defined in Section 716) incurred by Owner in connection therewith, with payment of such incurred costs a condition precedent to any obligation of Owner to sign such subordination or reaffirmation document, except as to the first subordination agreement pre-Closing for the Project for which Owner will assume the costs.

(iii) A current certified financial statement of Developer (and all partners and members thereof, except the Investor Limited Partner) and/or other documentation satisfactory to Owner as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference, if any, between construction and completion costs, and the financing authorized by the Tax Credits, Primary Loan, and any additional subsidies, sources of funding, or financing obtained by Developer for the development of the applicable Project.

(iv) Copies of the Construction Contract(s) and all other contracts between Developer and its Contractor for the construction of the Project and any other on-site or off-site improvements required to be constructed for such Project, certified by Developer to be a true, correct, and fully executed copy thereof, and which shall include reference to this Agreement and Contractor's specific obligation to carry out the construction and completion of the applicable Project (or part thereof) in conformity with the approved Development Plans, Section 3, all applicable federal and state prevailing wage laws, applicable Environmental Laws, and all applicable Governmental Regulations. The scope of work in the Construction Contracts shall conform in all respects to the Scope of Development, the land use entitlement, and the approved Development Plans, and such scope of work shall be subject to the City Manager and Executive Director, or designees sole and absolute approval.

Owner shall have the right to approve or disapprove such evidence of financing within 30 days of submission by Developer to Owner of all complete items required by this Section 310 or as otherwise reasonably imposed by Developer's financing and such approval or disapproval shall be not less than ten days prior to the date scheduled for the Closing (so long as Owner has had not fewer than 30 days for review of a complete submittal). In this regard, Developer agrees it shall use best efforts to cause its Lender to timely provide complete drafts of documents for review by Owner and its legal counsel(s) to perform within such time frames. Approval shall not be unreasonably withheld or conditioned. If Owner disapproves any such evidence of financing, Owner shall do so by written notice to Developer stating the reasons for such disapproval and Developer shall promptly obtain and submit to Owner new evidence of financing within reset but equal time periods. If Developer's submission of new evidence of financing is timely and complete and provides Owner with adequate time to review such evidence within the times established in this Section 310, Owner shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 310 for the approval or disapproval of the evidence of financing as submitted to Owner initially.

The evidence of financing shall be deemed to be an ongoing representation by Developer that the sum total of all sources of financing are equal to and not greater than the amount of the approved Project costs as set forth in the Final Budget for the Project and that such Final Budget conforms to the Tax Credit Application, Tax Credit Reservation, and any and all updates thereto submitted by Developer to TCAC. Once the complete evidence of financing is approved by Owner, Developer shall promptly notify Owner in writing of any

change in, additional conditions to, or additional sources of financing, including without limitation, the award of state or federal Tax Credits, and any updates or additional information material or relevant to such financing and/or the Tax Credits. The representations made by Developer with respect to the budgets and costs for the Project and the sources of funding and method of financing for the Project, inclusive of all submittals and information related to the Tax Credits, were and remain the basis used by Owner to negotiate the financial terms of this Agreement and any change in such budgets and sources of Project funding or financing for the Project shall, at the sole discretion of Owner, because to renegotiate the financial terms hereof for the Project.

310.3 Alternate Financing Sources. It is the intent of the parties to make every effort to secure sources of non-local subsidies for the Project. Developer shall apply for an allocation of federal Tax Credits for the Project, in accordance with Section 310.1(a) and (b), and shall attempt to increase the chance of obtaining an award of Tax Credits by maximizing the points maintained by the Project, including readiness points, and shall re-apply for Tax Credits within the times set forth in Section 310.1(a) and (b) and in the Schedule of Performance attached to the Implementation Agreement for the Project in the event the Project does not receive an allocation of Tax Credits in response to the first Tax Credit Application submitted by Developer.

310.4 Reserved

310.5 Required Submissions. Developer shall submit the following documents as evidence of Tax Credit financing:

(a) The Partnership Agreement or equivalent funding commitment letter from the equity investors in the applicable Project which demonstrates that Developer has sufficient funds and committed capital/equity for commencement through completion of construction, and that such funds have been committed to construction of the applicable Project, and a current financial statement of Developer.

(b) A complete copy of each Application and supporting documentation submitted to TCAC by each Developer, within five (5) days following Developer's submission thereof to TCAC.

(c) A copy of a preliminary Reservation letter from TCAC notifying Developer that an allocation of Tax Credits, has been reserved for construction of the Project, and further documentation demonstrating that Developer remains eligible and qualified to receive such allocation, along with certification that there have not been any material changes to the information provided by Developer in the Application, as defined and referenced in such Reservation letters, and that if there are material changes then such information will be provided to TCAC (and Owner) forthwith.

310.6 Holder Performance of Development of the Project. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to develop the Project or any portion thereof, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder.

310.7 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever Owner may deliver any notice or demand to Developer with respect to

any breach or default by Developer hereunder or under any other document executed pursuant to this Agreement, Owner shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each holder shall (insofar as the rights granted by Owner are concerned) have the right, but not the obligation, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize any holder to undertake or continue the construction or completion of the Project, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to Owner under this Agreement as to such Project by a written assumption agreement reasonably satisfactory to Owner and its legal counsel(s). The holder, in that event, must agree to complete, or cause to be completed by a party which is reasonably acceptable to Owner, in the manner provided in this Agreement, the improvements to which the lien or title of holder relates. Any holder (or assignee approved by Owner) properly completing the improvements for the Project shall be entitled, upon compliance with the requirements of Section 305 of this Agreement, to a Release of Construction Covenants as to such Project. It is understood that a holder (or assignee approved by Owner) shall be deemed to have satisfied the sixty (60) day time limit set forth above for commencing to cure or remedy a Developer default which requires possession of the Subject Property, as applicable (or portion thereof), if and to the extent any holder (or assignee approved by Owner) has within the sixty (60) day period commenced proceedings to obtain possession and thereafter the holder diligently pursues such proceedings to completion and cures or remedies the default.

310.8 Notice of Default to Limited Partner; Right to Cure. Whenever Owner shall deliver any notice to Developer with respect to any Default by Developer hereunder, Owner shall at the same time deliver a copy of such Notice to the limited partner(s) of Developer at the notice address provided by Developer to Owner. No Notice of Default shall be effective as to such limited partner(s) unless such notice is given. Each limited partner shall (insofar as the rights of Owner are concerned) have the right, at its option, within 60 days after the receipt of the copy of the Notice, to cure or remedy or commence to cure or remedy any such Default. Any cure of any Default hereunder made or tendered by the limited partner shall be deemed to be a cure by Developer and shall be accepted or rejected on the same basis as if made or tendered by the Developer.

310.9 Failure of Holder to Complete Applicable Project. In any case where, 90 days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Subject Property, as applicable, or any part thereof receives a notice from Owner of a default by Developer in completion of construction of all or any part of the Project under this Agreement, and the holder has not exercised the option to construct or cause to be constructed the Project as set forth in Section 310.8, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, Owner may fully assume the mortgage or deed of trust by assuming all payment and performance obligations due to the holder for and in the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the possession of the Subject Property, as applicable, or any part thereof has vested in the holder, Owner, if it so desires, shall be entitled to a

conveyance from the holder to Owner upon payment to the holder of an amount equal to the sum of the following:

(a) The unpaid mortgage or deed of trust debt at the time the Ground Lease and possession of the Project became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(b) All reasonable and customary expenses with respect to foreclosure, including reasonable attorneys' fees;

(c) The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Project or part thereof;

(d) The costs of any necessary improvements made by the holder (or assignee approved by Owner) pursuant to the requirements of this Agreement or as otherwise approved by Owner;

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by Owner; and

(f) Any reasonable and customary prepayment charges imposed by the Lender pursuant to its Primary Loan documents and agreed to by Developer.

310.10 Right of Owner to Cure Mortgage or Deed of Trust Default. In the event of Developer's default or breach of the Primary Loan, including the loan agreement, promissory note, mortgage or deed of trust, or a default under the terms of Developer's Partnership Agreement for the Project, Developer shall immediately deliver to Owner a copy of any default notice pertaining thereto. If the holder of the Primary Loan, including the loan agreement, promissory note, mortgage or deed of trust has not exercised its option to construct prior to the issuance of the Release of Construction Covenants as to such Project, pursuant to Section 310.9, Owner shall have the right but not the obligation to cure the default of the Primary Loan, including the loan agreement, promissory note, mortgage or deed of trust. Owner shall likewise have the right but not the obligation to cure any Partnership Agreement default. In such event, Owner shall be entitled to reimbursement from Developer of all proper costs and expenses incurred by Owner in curing any default.

310.11 Subordination of Affordability Covenants; Non-Subordination of Owner's Fee Interest. In the event Owner finds that an economically feasible method of financing for the construction and operation of the Project without the subordination of the Affordable Housing Agreement and/or Regulatory Agreement Owner may agree to subordinate the necessary covenants contained in either Agreements to the Primary Loan and/or the Tax Credit Regulatory Agreement, subject to the terms of this Section 310.11. Each and any subordination agreement evidencing or affirming Owner's subordination of the Regulatory Agreement (but not, and in no event, Owner's fee interest in the Subject Property, or the Owner Covenants) entered into by Owner shall contain written commitments which City Manager and Executive Director finds are reasonably designed to protect Owner's investment in the Project in the event of default; any such

subordination agreement(s) shall contain (a) concurrent delivery to Owner of a true copy of each and any notice provided by the Lender for the Project to Developer (as its borrower) during the term of the Primary Loan for the Project; (b) a reasonably extended cure period (a period of not fewer than 60 additional days beyond and after the Developer's cure period) and right to Owner to cure and assume the Primary Loan, and/or other senior lien(s) for the Project upon the same terms to Developer pursuant to the loan documents thereto with such right, but with no obligation, to the Owner being available both from the date of issuance of any notice of default through and after the recordation of a formal Notice of Default by the Lender for the Project pursuant to applicable California Code of Civil Procedure foreclosure requirements, and (c) a right of Owner to cure a default on each of the senior loan(s) for the Project prior to foreclosure and after recordation of a Notice of Default pursuant to applicable California Code of Civil Procedure requirements; and such cure rights may also include: (d) a right of Owner to negotiate with the senior lender(s) for the Project after notice of default from the senior Lender (or lender(s)) and prior to foreclosure, (e) an agreement that if prior to foreclosure of the senior loan for the Project, Owner takes title to the Subject Property, and cures the default on the senior loan(s) for the Project, the senior Lender (or lender(s)) will not exercise any right it may have to accelerate the senior loan by reason of the transfer of title to Owner, and (f) a right of Owner to acquire the applicable portion of the Subject Property from Developer at any time after a material default on the senior loan for the Project. Notwithstanding the foregoing, the Ground Lease shall be senior and non-subordinate to the Primary Loan, including any and all construction and permanent financing for the Project. The Owner is aware that it will be required to sign a TCAC Standstill Agreement and record against the leasehold interest.

310.12 Failure to Obtain Financing. In the event Developer, despite exercising its reasonable and best efforts to obtain required construction financing for the Project, fails to obtain financing as specified in the Agreement by the time required in Section 310.1(a) and (b) and in the Schedule of Performance attached hereto and as appended to each Implementation Agreement for the Project, either Developer or Owner may terminate this Agreement as provided in Sections 504 and 505 hereof, respectively.

400. OPERATION OF HOUSING.

401. Number of Housing Units. Developer covenants and agrees to make available, restrict occupancy to, and rent the Housing Units in the Project to Very Low - and Low-Income Households, in accordance with this Section 401 and the Regulatory Agreement for the Project as follows:

(i) Three (3) of the one-bedroom Housing Units to 30% AMI Very Low-Income Households at an Affordable Rent.

(ii) Two (2) of the one-bedroom Housing Units to 45% AMI Very Low-Income Households at an Affordable Rent.

(iii) Eight (8) of the one-bedroom Housing Units to 50% AMI Very Low-Income Households at an Affordable Rent.

(iv) Three (3) of the one-bedroom Housing Units to 60% AMI Low-Income Households at an Affordable Rent.

(v) Three (3) of the two-bedroom Housing Units to 30% AMI Very Low-Income Households at an Affordable Rent.

(vi) Two (2) of the two-bedroom Housing Units to 45% AMI Very Low-Income Households at an Affordable Rent.

(vii) Ten (10) of the two-bedroom Housing Units to 50% AMI Very Low-Income Households at an Affordable Rent.

(viii) Four (4) of the one-bedroom Housing Units to 60% AMI Low-Income Households at an Affordable Rent.

(ix) Three (3) of the three-bedroom Housing Units to 30% AMI Very Low-Income Households at an Affordable Rent.

(x) Two (2) of the three-bedroom Housing Units to 45% AMI Very Low-Income Households at an Affordable Rent.

(xi) Nine (9) of the three-bedroom Housing Units to 50% AMI Very Low-Income Households at an Affordable Rent.

(xii) Four (4) of the three-bedroom Housing Units to 60% AMI Low-Income Households at an Affordable Rent.

(xiii)

401.1 On-Site Manager. One additional three-bedroom unrestricted Housing Unit will be occupied by an on-site manager. The on-site manager is not required to income qualify as a Very Low-Income Household or Low-Income Household; provided, however, the monthly housing payment charged for the on-site managers' Housing Unit shall not exceed the Affordable Rent that may be charged to a 60% AMI Low-Income Household.

402. Affordable Rent. Affordable Rent shall be charged for all Housing Units for the Affordability Period. The maximum Affordable Rent chargeable for the Housing Units shall be annually determined by Developer (and as charged and implemented by Developer) in accordance with the following requirements:

(i) The Affordable Rent for the Housing Units to be rented to 30% AMI Very Low-Income Households shall not exceed thirty percent (30%) of 30% AMI for Fresno County as determined and published annually by TCAC for a family size appropriate to the Housing Unit.

(ii) The Affordable Rent for the Housing Units to be rented to 45% AMI Very Low-Income Households shall not exceed thirty percent (30%) of 45% AMI for Fresno County as determined and published annually by TCAC for a family size appropriate to the Housing Unit.

(iii) The Affordable Rent for the Housing Units to be rented to 50% AMI Very Low-Income Households shall not exceed thirty percent (30%) of 50% AMI for Fresno County as determined and published annually by TCAC for a family size appropriate to the Housing Unit.

(iv) The Affordable Rent for the Housing Units to be rented to 60% AMI Low-Income Households shall not exceed thirty percent (30%) of 60% AMI for Fresno County as determined and published annually by TCAC for a family size appropriate to the Housing Unit.

Developer shall, and shall cause its Property Manager to, operate the Project and cause occupancy of all Housing Units thereon in conformity with these covenants and this Agreement.

For purposes of this Agreement, "Affordable Rent" shall mean the total of monthly payments for (a) use and occupancy of each Housing Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, or cable TV or internet services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. No additional charge shall be assessed against tenant households of the Housing Units for any social or supportive services provided at the Subject Property.

403. Duration of Affordability Requirements; Affordability Period for the Project. The Project and all the Housing Units thereon shall be subject to the requirements of this Section 400, *et seq.* for the full term of not less than 55-years from the date that the Release of Construction Covenants for the applicable Project is recorded against the Subject Property, in the Official Records. The duration of these covenants and this requirement for the Project shall be known as the "Affordability Period."

404. Selection of Tenants. Developer shall be responsible for the selection of tenants for the Housing Units in compliance with all lawful and reasonable criteria, and shall adopt a tenant selection system which shall be approved by City Manager and Executive Director in their reasonable discretion, which establishes a chronological waiting list system for selection of tenants, which shall be set forth in the Marketing Program and the Property Management Plan, both of which are required to be submitted by Developer and approved by Owner pursuant to Sections 202, 408 and 411.2 hereof for the Project and as a Condition Precedent to the Closing.

Developer shall not refuse to lease to a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a program pursuant to the HOME Investment Partnership Act, 42 U.S.C. §12701, *et seq.* and the implementing regulations located at 24 CFR part 92, as such now exist and as may hereafter be amended, a Section 8 voucher program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria (collectively "Voucher Programs").

405. Household Income Requirements. Developer covenants and agrees with Owner that it shall comply with the procedures for annual income determination. Developer shall obtain, complete, and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from the tenants of the Housing Units. 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 most recent three 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 Owner prior to initial lease up.

Developer further warrants, covenants and agrees that it will cooperate with Owner in the Owner's income certification/affordability monitoring activities. On or before 120 days following the end of Developer's fiscal year, commencing the first year after issuance of the first certificate of occupancy for the Project, and annually thereafter, Developer shall prepare and submit to Owner, at Developer's expense, a written summary of the income, household size, and rent payable by each of the tenants of the Housing Units and, upon the written request of the Owner, copies of each and all leases or rental agreements and the current rules and regulations for the Project. At Owner's request, Developer shall also provide to Owner completed income computation and certification forms, all in a form reasonably acceptable to Owner, for each and all tenants. Developer shall obtain, or shall cause to be obtained by the Property Manager, a certification from each household leasing a Housing Unit demonstrating that such household is a 30% AMI Very Low-Income Household, 45% AMI Very Low-Income Household, 50% AMI Very Low-Income Household, or 60% AMI Low-Income Household, as applicable and according to the Area Median Income annually determined and published by TCAC for Fresno County, and meets the eligibility and occupancy requirements established for the Housing Unit. Developer shall verify, or shall cause to be verified by the Property Manager, the income and household size certification of the tenant household.

405.1 Income Categories.

(i) **"30% AMI Very Low-Income Households"** shall mean those households not earning greater than thirty percent (30%) of Fresno County Area Median Income, adjusted for household size, which is set forth annually by regulation of TCAC.

(ii) **"45% AMI Very Low-Income Households"** shall mean those households not earning greater than forty-five percent (45%) of Fresno County Area Median Income, adjusted for household size, which is set forth annually by regulation of TCAC.

(iii) **"50% AMI Very Low-Income Households"** shall mean those households not earning greater than fifty percent (50%) of Fresno County Area Median Income, adjusted for household size, which is set forth annually by regulation of TCAC.

(iv) **"60% AMI Low-Income Households"** shall mean those households not earning greater than sixty percent (60%) of Fresno County Area Median Income, adjusted for household size, which is set forth annually by regulation of TCAC.

(v) **"Very Low-Income" or "Very Low-Income Households"** shall mean and include (i) very low-income households as defined in the Tax Credit Rules and (ii) 30% AMI Very Low-Income Households, (iii) 45% AMI Very Low-Income Households, and (iv) 50% AMI Very Low-Income Households. Very Low-Income Households include Extremely Low-Income Households, as defined in the Tax Credit Rules.

(vi) **"Low-Income" or "Lower-Income Households"** shall mean and include both: (i) lower-income households as defined in the Tax Credit Rules, and (ii) 60% AMI Low-Income Households, as defined in the Tax Credit Rules.

406. Intentionally Omitted

407. Leases; Rental Agreements for Housing Units. Developer shall submit a standard lease form, which shall comply with the requirements of this Agreement, including all applicable provisions of the Act and the HAL, to Owner for its approval. Owner shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement. Developer shall enter into a written lease, in the form approved by Owner, with each tenant/tenant household of the Project. During the Affordability Period, any material changes to the lease form are subject to the reasonable review and approval of the City Manager and Executive Director.

408. Marketing Program. Prior to and as a Condition Precedent to the issuance of the Certificate of Occupancy, Developer shall prepare and obtain Owner's approval, which approval shall not be unreasonably withheld, of the Marketing Program. During the Affordability Period, any material changes to an approved Marketing Program are subject to reasonable review and approval by the City Manager and Executive Director. The rental of the Housing Units, as and when they are vacated by the existing tenants, shall be conducted in accordance with the approved Marketing Program and any affirmative marketing and minority outreach activity requirements to attract eligible persons from all racial, ethnic and gender groups in the housing market in the rental of the Housing Units. The availability of Housing Units shall be marketed in accordance with the Marketing Program as the same may be amended from time to time with Owner's prior written approval, which approval shall not unreasonably be withheld. Developer shall provide Owner with periodic reports with respect to the marketing for lease of the Housing Units. Owner agrees to exercise reasonable efforts to assist Developer in connection with the implementation of the Marketing Program; provided, however, Owner shall not be under any obligation to incur any out-of-pocket expenses in connection therewith. Developer shall maintain records of actions taken to affirmatively market Housing Units constructed in the future, and to assess the results of these actions.

409. Reserved

410. Maintenance.

410.1 General Maintenance. Developer shall maintain the Subject Property and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with all applicable provisions of the Fresno Municipal Code. Developer shall maintain in accordance with the Maintenance Standards (as hereinafter defined) the improvements and landscaping on the Subject Property. Such Maintenance Standards shall apply to all buildings, signage, common amenities, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Subject Property and any and all other improvements on the Subject Property and the Project. To accomplish the maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards as to the Project (collectively, "Maintenance Standards"):

(i) The Subject Property shall be maintained in conformance and in compliance with the approved final as-built plans, and reasonable maintenance standards which comply with the industry standard for comparable first quality affordable housing projects in the County, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline. The Subject Property shall be maintained in good condition and in accordance with the industry custom and practice generally applicable to comparable first quality affordable housing projects in the County.

(ii) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(iii) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

Owner agrees to notify Developer in writing if the condition of the Subject Property does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have 30 days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety, then Developer shall have 48 hours to rectify the problem. In the event Developer does not maintain the Subject Property, as applicable, in the manner set forth herein and in accordance with the Maintenance Standards, Owner shall have, in addition to any other rights and remedies hereunder, the right to maintain the Subject Property, as applicable, or to contract for the correction of such deficiencies, after written notice to Developer, and Developer shall be responsible for the payment of all such costs incurred by Owner.

410.2 Program Maintenance. In addition to the routine maintenance and repair required pursuant to Section 410.1 Developer shall perform the following minimum programmed maintenance of the Improvements to the Subject Property:

(i) Interior painting and window covering replacement at least every seven (7) years;

(ii) Exterior painting at least every ten (10) years;

(iii) Repair and resurfacing of parking areas and walkways at least every ten (10) years; and

(iv) Replacement of all deteriorated or worn landscaping and play equipment at least every five (5) years.

Notwithstanding the foregoing, if City Manager and Executive Director reasonably determines that the Project suffers from excess unexpected wear and tear requiring any of the above items of maintenance to be performed sooner than as set forth above, Owner may require that such maintenance actions be performed within a reasonable time, even if sooner than the time periods set forth above. Upon the request of Developer, the City Manager and Executive Director in their sole and absolute discretion, may grant a waiver or deferral of any program maintenance requirement. Developer shall keep such records of maintenance and repair as are necessary to prove performance of the program maintenance requirements.

410.3 Occupancy Limits. The maximum occupancy of the Housing Units in the Project shall not exceed more than such number of persons as is equal to two persons per bedroom, plus one. Thus, for the two (2) bedroom Housing Units, the maximum occupancy shall not exceed five (5) persons. For the three (3) bedroom Housing Units, the maximum occupancy shall not exceed seven (7) persons.

411. Management of the Project.

411.1 Property Manager. Developer shall manage or cause the Project, and all appurtenances thereto that are a part of the Project, to be managed in a prudent and business-like manner, consistent with good property management standards for other comparable first quality, well-managed affordable rental housing projects in the City. Developer may contract with a property management company or property manager, to operate and maintain the Project in accordance with the terms of this Section 410 (Property Manager); provided, however, the selection and hiring of the Property Manager (and each successor or assignee), including any Affiliate, is and shall be subject to prior written approval of City Manager and Executive Director in their sole and reasonable discretion. The Property Manager shall manage the Project in accordance with the definitions of Affordable Rent contained in Section 402 hereof, the tenant selection requirements contained in Section 404, and the definitions relating to income contained in Section 405. Any fee paid to the Property Manager for social services provided to the tenants shall be exclusive of the fee paid to the Property Manager relating to the management of the Project. Developer shall conduct due diligence and background evaluation of any potential third-party property manager or property management company to evaluate experience, references, credit worthiness, and related qualifications as a property manager. Any proposed property manager shall have significant and relevant prior experience with affordable housing projects and properties comparable to the Project and the references and credit record of such property manager/company shall be investigated (or caused to be investigated) by Developer prior to submitting the name and qualifications of such proposed property manager to the City Manager and Executive Director for review and approval. A complete and true copy of the results of such background evaluation shall be provided to the City Manager and Executive Director. Approval of a Property Manager by City Manager and Executive Director shall not be unreasonably delayed but shall be in their sole reasonable discretion, and City Manager and Executive Director shall use good faith efforts to respond as promptly as practicable in order to facilitate effective and ongoing property management of the Project. The replacement of a Property Manager by Developer and/or the selection by Developer of any new or different Property Manager during the Term of the Ground Lease shall also be subject to the foregoing requirements.

411.2 Property Management Plan. Prior to and as a Condition

Precedent to Closing, Developer shall prepare and submit to the City Manager and Executive Director for review and approval, a management plan for the Project which includes a detailed plan and strategy for long-term marketing, operation, maintenance, repair and security of the Project, inclusive of social services for the residents of the Housing Units, and the method of selection of tenants, rules and regulations for tenants, and other rental policies for the Project (Property Management Plan). City Manager and Executive Director approval of the Property Management Plan shall not be unreasonably withheld or delayed. Subsequent to approval of the Property Management Plan by the City Manager and Executive Director the ongoing management and operation of the Project shall be in compliance with the approved Property Management Plan. During the Affordability Period, Developer and its Property Manager may from time to time submit to the City Manager and Executive Director proposed amendments to the Property Management Plan, the implementation of which shall also be subject to the prior written approval of the City Manager and Executive Director.

411.3 Gross Mismanagement. During the Affordability Period, and in the event of "Gross Mismanagement" (as defined below), City Manager and Executive Director shall have and retain the authority to direct and require any condition(s), acts, or inactions of Gross Mismanagement to cease and/or be corrected immediately, and further to direct and require the immediate removal of the Property Manager and replacement with a new qualified and approved Property Manager, if such condition(s) is/are not ceased and/or corrected after expiration of 30 days from the date of written notice from City Manager and Executive Director. If Developer or Property Manager has commenced to cure such Gross Mismanagement condition(s) on or before the 20th day from the date of written notice (with evidence of such submitted to the City Manager and Executive Director), but has failed to complete such cure by the 30th day (or such longer period if the cure cannot reasonably be accomplished in 30 days as reasonably determined by the non- defaulting party), then Developer and its Property Manager shall have an additional 10 days to complete the cure of Gross Mismanagement condition(s). In no event shall any condition of Gross Mismanagement continue uncured for a period exceeding forty-five (45) days from the date of the initial written notice of such condition(s), except that the conditions described in subdivisions (d) and(e) below may exist for up to, but no longer than, seventy-five (75) days without triggering Owner's right to remove the Property Manager as described in the immediately following sentence as long as Developer is diligently working to cure such conditions of Gross Mismanagement. If such condition(s) do persist beyond such period, City Manager and Executive Director shall have the sole and absolute right to immediately and without further notice to Developer (or to Property Manager or any other person/entity) to remove the Property Manager and replace the Property Manager with a new property manager of the City Manager and Executive Director's selection at the sole cost and expense of Developer. If Developer takes steps to select a new Property Manager that selection is subject to the requirements set forth above for selection of a Property Manager.

For purposes of this Agreement, the term "Gross Mismanagement" shall mean management of the Project in a manner which violates the terms and/or intention of this Agreement to operate a first quality affordable housing complex, and shall include, but is not limited to, any one or more of the following:

(a) Leasing to tenants who exceed the prescribed income levels;

(b) Allowing tenants to exceed the prescribed occupancy levels without taking immediate action to stop such overcrowding;

(c) Under-funding required reserve accounts;

(d) Failing to timely maintain Project in accordance with the Property Management Plan and Maintenance Standards; as required herein;

(e) Failing to submit timely and/or adequate annual reports to Owner

(f) Fraud or embezzlement of Project funds, including without limitation funds in the reserve accounts;

(g) Failing to fully cooperate with the Fresno Police Department or other local law enforcement agency(ies) with jurisdiction over the Project, in maintaining a crime- free environment within the Project;

(h) Failing to fully cooperate with the Fresno Fire Department or other local public safety agency(ies) with jurisdiction over the Project, in maintaining a safe and accessible environment within the Project;

(i) Failing to fully cooperate with the Fresno Planning & Building Department, including the Code Enforcement Division, or other local health and safety enforcement agency(ies) with jurisdiction over the Project, in maintaining a decent, safe and sanitary environment within the Project; and

(j) Spending funds from the Capital Replacement Reserve account for items that are not defined as eligible costs, including eligible capital and/or replacement costs, under the standards imposed by GAAP (and/or, as applicable, generally accepted auditing principles).

Notwithstanding the requirements of the Property Manager to correct any condition of Gross Mismanagement as described above, Developer is obligated and shall use its best efforts to correct any defects in property management or operations at the earliest feasible time and, if necessary, to replace the Property Manager as provided above. Developer shall include advisement and provisions of the foregoing requirements and requirements of this Agreement within any contract between Developer and its Property Manager for the Project.

411.4 Code Enforcement. Developer acknowledges and agrees that Owner, and their employees and authorized agents, shall have the right to conduct code compliance and/or code enforcement inspections of the Project and the individual Housing Units for the Project, both exterior and interior, at reasonable times and upon reasonable notice (not less than 48 hours prior notice, except in an emergency) to Developer and/or an individual tenant. If such notice is provided by Owner representative(s) to Developer, then Developer (or its Property Manager) shall immediately and directly advise any affected tenant of such upcoming inspection and cause access to the area(s) and/or Housing Units at the applicable Project to be made available and open for inspection. Developer shall include express advisement of such inspection rights within the lease/rental agreements for each Housing Unit in the Project in order for each and every tenant and tenant household to be aware of this inspection right.

412. Capital Reserve Requirements. Commencing upon the closing for the permanent Primary Loan for the applicable Project, Developer shall annually set aside an

amount of not less than Two Hundred Fifty Dollars ($250.00) per Housing Unit (54 units times $250 equals $13,500) or such increased amount required by TCAC or the Partnership Agreement or the Lender under the Primary Loan for the Project) from the gross rents received from the applicable Project, into a separate interest-bearing trust account defined as the Capital Replacement Reserve. Funds in the Capital Replacement Reserve shall be used only for capital repairs, improvements and replacements to the applicable Project, including fixtures and equipment, which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve or lessen Developer's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein for the applicable Project. Not less than once per year, Developer, at its expense, shall submit to City Manager and Executive Director an accounting for the Capital Replacement Reserve for the applicable Project. Capital improvements and repairs to, and replacements at the applicable Project shall include only those items with a long useful life, including without limitation the following: carpet and drapery replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement; irrigation pipe and controls replacement; sewer line replacement; water line replacement; gas line replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement; and common area repainting. Pursuant to the procedure for submittal of each Annual Budget for the Project to City Manager and Executive Director by Developer, City Manager and Executive Director may evaluate the cumulative amount on deposit in the Capital Replacement Reserve account and exercise her sole, reasonable discretion to determine if existing balance(s) in, proposed deposits to, shortfalls, if any, and/or a cumulative unexpended/unencumbered account balance in such Capital Replacement Reserve account are adequate to provide for necessary capital repairs and improvement for the Project (provided that required annual deposits thereto are not required to exceed $250/per Housing Unit).

413. Operating Budget and Operating Reserve. Within twelve (12) months after commencement of construction of such Project, but in no event later than ninety (90) days prior to the completion of construction of such Project, and not less than annually thereafter on or before November 1 of each year following the issuance of the first certificate of occupancy issued by the City's building official for such Project, Developer shall submit to Owner on not less than an annual basis an operating budget for the applicable Project ("Operating Budget" or "Annual Budget"), which budget shall be subject to the written approval of City Manager and Executive Director, which approval shall not be unreasonably withheld. The City Manager and Executive Director's discretion in review and approval of each proposed annual Operating Budget shall include, without limitation, authority to review individual categories, line items, and accounts, such as the following: extent, type, and amount for social services at or associated with the applicable Project; existing balance(s) in and proposed deposits to the Capital Replacement Reserve for such Project to evaluate shortfalls and/or cumulative unexpended/unencumbered deposits (provided that required annual deposits thereto are not required to exceed $250/per unit); conformity of any annual increases in the Partnership Related Fees for such Project with the increases permitted in

the definition of "Partnership Related Fees"; reasonableness and conformity to prevailing market rates in Fresno County and rates and fees for goods and services to be provided Developer or any of its parent, affiliated, or subsidiary entities, etc. for such Project.

Developer shall, or shall cause the Property Manager to, set aside an "Operating Reserve" in a separate interest bearing trust account a target amount equal to three (3) months of (i) Debt Service on the Primary Loan and (ii) Operating Expenses for the applicable Project ("Target Amount"), which shall be funded by Tax Credit equity. The Operating Reserve shall thereafter be replenished from Tax Credit equity and from Annual Project Revenue to maintain the Operating Reserve balance at the Target Amount. The Target Amount shall be retained in the Operating Reserve to cover shortfalls between Annual Project Revenue and actual Operating Expenses, but shall in no event be used to pay for capital items or capital costs properly payable from the Capital Replacement Reserve. Developer shall, not less than once per every twelve (12) months, submit to the City Manager and Executive Director evidence reasonably satisfactory to Owner of compliance herewith. The operating reserve shall be held by Developer and shall be in compliance with the requirements outlined in the Partnership Agreement.

414. Non-Discrimination Covenants. Developer covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Subject Property, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Subject Property. The foregoing covenants shall run with the land. Developer shall refrain from restricting the rental or lease of the Subject Property on any of the bases listed above. All leases or contracts relating to the Subject Property shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(i) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

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

> "That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(iii) In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

The covenants established in this Section 414 shall, without regard to technical classification and designation, be binding for the benefit and in favor of Owner and its successors and assigns, and shall remain in effect in perpetuity.

415. Monitoring and Recordkeeping. Throughout the Affordability Period for the Project, Developer will maintain books and records for the Project using generally accepted accounting principles, and shall comply with all applicable recordkeeping and monitoring requirements. Developer shall complete and submit to Owner a Certification of Continuing Program Compliance in a form provided by Owner. Representatives of Owner shall be entitled to enter the Subject Property, upon at least twenty-four (24) hours' notice, to monitor compliance with this Agreement, to inspect the records of the Subject Property, and to conduct an independent audit or inspection of such records. The Owner may audit any conditions relating to this Agreement at the Owner's expense, unless such audit shows a significant discrepancy in information reported by the Developer, in which case Developer shall bear the cost of such audit. Records shall be made available for review and inspection and/or audit in Fresno County, California. Developer agrees to maintain all records relating to the Project in a businesslike manner, and to maintain such records for the term of this Agreement. This section shall survive the termination of this Agreement.

416. Regulatory Agreement. The requirements of this Agreement that shall remain applicable after the Closing Date for the Project are set forth in the Owner Regulatory Agreement for the Subject Property, which is attached hereto as Attachment No. 6 and incorporated herein (Regulatory Agreement). The execution and recordation of the

Regulatory Agreement for the Project is a Condition Precedent to the Closing, as set forth in Section 202 hereof.

500. DEFAULT AND REMEDIES.

501. Events of Default. An "Event of Default" or "Default" shall occur under this Agreement when there shall be a breach of any condition, covenant, warranty, promise or representation contained in this Agreement and the breach shall continue for a period of thirty (30) days after written notice thereof to the defaulting party without the defaulting party curing such breach, or if the breach cannot reasonably be cured within a thirty (30) day period, commencing the cure of the breach within the thirty (30) day period and thereafter diligently proceeding to cure the breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of this Agreement, the specific provision shall control.

502. Remedies. The occurrence of any Event of Default shall give the non-defaulting party the right to proceed with any and all remedies set forth in this Agreement, including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under the documents executed pursuant hereto or to enjoin acts or things which may be unlawful or in violation of the provisions of such documents, and the right to terminate this Agreement. In addition, the occurrence of any Event of Default by Developer will relieve Owner of any obligation to further perform hereunder and shall result in Owner's right to terminate the Ground Lease subject to the provisions therein.

503. Force Majeure. 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 Release of Construction Covenants will take place in accordance with the provisions of the Agreement and Project Schedule. The time for performance contained in the Project Schedule shall be automatically extended upon the following:

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

B. Any and all extensions hereunder shall be by mutual written agreement of the City Manager and Executive Director, and the Developer, which shall not cumulatively exceed 180 days without City Council approval.

Subject to the timing and provisions of Section 310.1, Developer's difficulty or inability to obtain

and secure the Primary Loan or other financing shall in no event become an event of force majeure.

504. Termination by Developer. Subject to the timing and provisions of Section 310.1, in the event that Developer is not in Default under this Agreement and:

(a) Developer is unable to obtain sufficient financing for the development and operation of the Project in accordance with the provisions of Section 310; or

(b) Developer fails to receive an allocation of Tax Credits for the Project, subject to the restrictions contained in Section 310.1(a) and (b); or

(c) Developer disapproves of the environmental condition of the Subject Property pursuant to Section 204.3; or

(d) Developer disapproves the condition of title to the Subject Property pursuant to Section 205.7; or

(e) One or more of the Conditions Precedent set forth in Section 202.2 is not satisfied (or waived by Developer) on or before the time set forth in the Schedule of Performance attached to each Implementation Agreement for the Project, and such Condition Precedent is not satisfied after notice and an opportunity to satisfy as provided in Section 601 hereof, and such failure is not caused by Developer; or

(f) Owner is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 601 hereof; then this Agreement and any rights of Owner or any assignee or transferee with respect to or arising out of this Agreement shall, at the option of Developer, be terminated by Developer by written notice thereof to Owner with respect to the Project. From the date of the written notice of termination of this Agreement with respect to the Project by Developer to Owner and thereafter this Agreement shall be deemed terminated subject to the rights of the Lender pursuant to the approved financing for the Primary Loan(s), Developer shall have the option to terminate the Ground Lease, as provided in more detail therein, and there shall be no further rights or obligations between the parties as to such Project, except that if Owner is in default hereunder Developer, after delivery of notice of default and expiration of the cure period provided in Section 601 hereof, may pursue any remedies it has at law or equity.

505. Termination by Owner. Subject to the timing and provisions of Section 310.1, in the event that Owner is not in Default under this Agreement, and:

(a) Developer is unable to obtain sufficient financing for the development and operation of the Project in accordance with the provisions of Section 310; or

(b) Developer fails to receive an allocation of Tax Credits for the Project, subject to the restrictions contained in Section 310.1(a) and (b); or

(c) One or more of the Conditions Precedent set forth in Section 202.1 is not satisfied (or waived by Owner) on or before the time set forth in the Schedule of Performance attached to each Implementation Agreement for the

Project, and such Condition Precedent is not satisfied after notice and an opportunity to satisfy as provided in Section 501 hereof, and such failure is not caused by Owner; or

(d) Developer is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 601 hereof; then this Agreement and any rights of Developer or any assignee or transferee with respect to or arising out of this Agreement shall, at the option of Owner, be terminated by Owner by written notice thereof to Developer. From the date of the written notice of termination of this Agreement by Owner to Developer and thereafter this Agreement shall be deemed terminated, Owner shall have the option to terminate the Ground Lease, as provided in more detail therein, and there shall be no further rights or obligations between the parties (except as provided in Section 310 as to Developer's delivery and assignment of Development Plans and other materials to Owner, if applicable), except that if Developer is in default hereunder Owner, after delivery of notice of default and expiration of the cure period provided in Section 501 hereof, may pursue any remedies it has at law or equity.

506. Attorneys' Fees. In addition to any other remedies provided hereunder or available pursuant to law, if any party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder or under any of the documents executed pursuant hereto, the prevailing party shall be entitled to recover from the other party its costs of suit, including without limitation expert witness fees, and reasonable attorneys' fees.

507. Remedies Cumulative. No right, power, or remedy given to Owner by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to Owner by the terms of any such instrument, or by any statute or otherwise against Developer and any other person.

508. Waiver of Terms and Conditions. Owner may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

600. GENERAL PROVISIONS.

601. Time is of the Essence. Time is expressly made of the essence with respect to the performance by Owner and Developer of each and every obligation and condition of this Agreement.

602. Notices. Any approval, disapproval, demand, document or other notice (Notice) which any party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (iii) facsimile transmission, or (vi) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice. Service shall be deemed conclusively made at the time of service if personally served; upon confirmation of receipt if sent by facsimile transmission; the next business day

if sent by overnight courier and receipt is confirmed by the signature of an agent or employee of the party served; the next business day after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by express mail; and three days after deposit thereof in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail.

Developer:

Corporation for Better Housing
20750 Ventura Blvd, Suite 155
Woodland Hills, CA 91364
Attention: Executive Director (Lori Koester)

Integrated Community Development, LLC
20750 Ventura Blvd., Suite 155
Woodland Hills, CA 91364
Attention: Benjamin Lingo

With a Copy to:

Chernove & Associates
74710 Highway 111, Suite 114
Palm Desert, CA 92260
Attention: Sheldon Chernove

Tax Credit Investor: (to be determined)

City:
Georgeanne A. White, City Manager
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Housing Successor Agency:
Marlene Murphey, Executive Director
848 M Street, 3rd floor
Fresno, California 93721

With Copies To:

Such addresses may be changed by Notice to the other party(ies) given in the same manner as provided above.

603. Representations and Warranties of Developer. Developer hereby represents and warrants to Owner as follows:

(a) Organization. Developer is a California corporation duly organized, validly existing, formed, and in good standing under the laws of the State of California that have the power and authority to own property and carry on business as is now being conducted.

(b) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement to execute and deliver as to the Project, the Regulatory Agreement, Ground Lease, Memorandum of Ground Lease, Memorandum of Agreement, Notice of Affordability Restrictions, Request for Notice and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Valid Binding Agreements. This Agreement, the Regulatory Agreement, the Ground Lease, Memorandum of Ground Lease, Memorandum of Agreement, Request for Notice, Notice of Affordability Restrictions, and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Developer enforceable against it in accordance with their respective terms, as to the Project.

(d) Pending Proceedings. Developer is not in default under any law or regulation or under any order of any federal, state, or local court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer or the Subject Property, as applicable, at law or in equity, before or by any federal, state, or local court, board, commission or agency whatsoever which might, if determined adversely to Developer, materially affect Developer's ability to perform its obligations hereunder, as to the Project.

(e) Tax Credits. All information included or to be included within and provided to TCAC in the Application submitted by Developer upon which TCAC issues its preliminary Reservation letters shall be true and correct in all material respects as of the date of the Application. In the event any information or representation made by Developer to TCAC related, directly or indirectly, to the Tax Credits is not true, complete, and correct in all material respects, Developer shall, and acknowledges it has an obligation to, inform TCAC and Owner of such changes and to provide updated information to TCAC, Owner, and its Lender(s), as necessary.

(f) Commercial or Private Funding Review. Developer agrees to notify Owner in the event that it applies for or proposes to use other sources of funds for the Project prior to the issuance of the Release of Construction Covenants as to the Project.

604. Limitation Upon Change in Ownership, Management and Control of Developer.

604.1 Prohibition. The identity and qualification of Developer, as an experienced and successful developer and operator of affordable apartment complexes is of particular concern to Owner. It is because of this identity and these qualifications that Owner has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement by assignment, assumption or otherwise, nor shall Developer make any total or partial transfer, conveyance, encumbrance to secure financing or refinancing, assignment or sublease of the whole or any part of the leasehold interest in the Subject Property, as applicable, nor shall there be any change in the general or limited partners of Developer, without the prior written approval of City Manager and Executive Director pursuant to Section 604.3 below, except as expressly set forth herein, which approval shall not be

unreasonably withheld or delayed.

604.2 Permitted Transfers. Developer shall not sell, lease, transfer, assign, or otherwise dispose (Transfer) all or any material part of any interest it might hold in the Subject Property or Project without written consent of Owner, which consent shall not be unreasonably withheld or delayed. Notwithstanding other provisions of this Agreement to the contrary, Owner approval of an assignment or transfer of this Agreement or conveyance of Developer's leasehold interest in the Subject Property, as applicable, or any part thereof, shall not be required in connection with any of the following (Permitted Transfers):

(a) The granting of temporary easements or permits to facilitate the construction and development of the Project.

(b) A transfer by and/or to the Subject Property, as applicable, as to such Developer's rights under this Agreement to enter into a Ground Lease for the Subject Property, as applicable, and thereafter develop and operate the Project in accordance with this Agreement as follows:

(c) A transfer of a limited partnership interest in either Developer entity to the approved Investor Limited Partner and subsequent transfers of such interests to an entity controlled by such Investor Limited Partner.

(d) Subject to the restrictions of Section 400, *et seq.*, including the Ground Lease and the Regulatory Agreement, the rental or lease for occupancy of each of the Housing Units to qualified Very Low-Income and Low-Income Households.

(e) Assignment for approved financing purposes, subject to such financing being considered and approved by Owner pursuant to Section 310 hereof.

In the event of an assignment or transfer by Developer pursuant to this Section 604.2 not requiring Owner's prior approval, Developer nevertheless agrees that at least 10 days prior to such pre-approved assignment or transfer it shall give written notice to Owner of such assignment or transfer along with a true and complete copy of the assignment or transfer document conforming to the requirements of this Agreement as to the Project.

604.3 Owner Consideration of Requested Transfer. Owner agrees that it will not unreasonably withhold approval of a request for an assignment or transfer made pursuant to this Section 604.3, provided (a) Developer delivers written notice to Owner requesting such approval, (b) the proposed assignee or transferee possesses a reasonable level of operational experience and capability with respect to the operation of similar first quality affordable rental housing projects, (c) the proposed assignee or transferee possesses a reasonable level of net worth and resources as necessary to develop, operate, and manage the Project, and (d) the assignee(s) or transferee(s) completely and fully assume(s) the obligations of Developer under this Agreement pursuant to an assignment and assumption agreement(s) in a form which is reasonably acceptable to Owner and its legal counsel(s). Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable Owner to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 604.3 and other criteria as reasonably determined by Owner. Owner shall approve or disapprove the request within 30 days of its receipt of Developer's notice and submittal of complete information and

materials required herein. Owner approval shall not be required for transfers or assignments for Owner approved financing purposes including foreclosure or deed in lieu of foreclosure; provided, there shall be no deemed approval of a transfer or assignment for financing that will increase the outstanding principal amount of or extend the term of a monetary lien against the Subject Property. In no event, however, shall Owner be obligated to approve the assignment or transfer of the Ground Lease, Regulatory Agreement, or Owner Covenants pursuant to this Section 604.3, except to an approved transferee or assignee of Developer's rights in and to the Subject Property, based on Owner's reasonable determination that such transferee or assignee has the experience, financial strength, knowledge, and overall capability to own, operate and manage the Project in accordance with the terms, conditions, and restrictions contained in this Agreement. In addition, Owner shall not be required to grant its approval of any proposed transfer or assignment unless all information reasonably requested by Owner relating to the proposed transferee or assignee entity and all general and limited partners of such entity, including true and correct copies of an executed Partnership Agreement, if the proposed assignee/transferee is a partnership, true and correct copies of articles of incorporation if the proposed assignee/transferee is a corporation, plus current certified financial statements of the entity and financial statements relating to other affordable rental housing projects developed and/or operated by such entity(ies) and reporting and compliance documentation for such projects submitted for public entities providing funding to such projects, etc., as applicable.

(a) Addition of Limited Partner(s) to Developer Entity as Tax Credits Investment Entity. Owner acknowledges that Developer anticipates that one of the limited partner(s) to be added to each Developer entity will be the Investor Limited Partner for the Project. As of the Date of Agreement, Developer has not solicited bids for or selected its Investor Limited Partner for the Project.

604.4 Approval of Refinancing of Primary Loan. City Manager and Executive Director shall have the right to review all documents related to and to approve or disapprove any refinancing of the Primary Loan or any other debt secured by Developer's leasehold interest in the Subject Property, as applicable, which refinancing will increase the interest rate or increase the outstanding principal amount of such debt or cause or require the release or withdrawal of cash or equity from any part of the Project. City Manager and Executive Director shall reasonably consider any such proposed refinancing based on an economic evaluation conducted by Owner's economic consultant that analyzes the effect of the proposed refinancing on (i) the ability of Developer to repay in full the Primary Loan and any other debt or other liens against the Subject Property as such payment becomes due. Owner shall not unreasonably withhold its consent and shall work with Developer in good faith while negotiating the proposed refinance and related loan documents.

605. Successors and Assigns. This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon Developer and the permitted successors and assigns of Developer. Whenever the term "Developer" is used in this Agreement, such term shall include any of Developer's approved Affiliate assignee(s) or transferee(s), or any other permitted successors and assigns as herein provided.

606. Non-Liability of Officials and Employees of Owner. No member, elected or appointed official, or employee of the City shall be personally liable to Developer or any successor in interest in the Event of Default or other breach by Owner or for any amount

which may become due to Developer or its successors, or for performance of any obligations under the terms of this Agreement.

607. Relationship between Owner and Developer. It is hereby acknowledged and agreed that the relationship between Owner and Developer is not that of a partnership or joint venture or other investor partner and that Owner and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided in this Agreement, Owner shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project.

608. City Manager and Executive Director; Owner Approvals and Actions. Owner shall maintain authority of this Agreement and the authority to implement this Agreement through the City Manager and Executive Director . The City Manager and Executive Director shall have the authority to make approvals, issue interpretations, waive provisions, request issuance of warrants and make payments authorized hereunder, make and execute further agreements (including Implementation Agreements) and/or enter into amendments of this Agreement on behalf of Owner so long as such actions do not materially or substantially change or modify the uses or development permitted on the Subject Property, or materially or substantially add to the costs, responsibilities, or liabilities incurred or to be incurred by Owner as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance attached hereto and the Schedule of Performance attached to each Implementation Agreement for the Project. All material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council. Further, City Manager and Executive Director shall maintain the right to submit to the City Council for consideration and action any non-material or non-substantive interpretation, waiver or amendment, if in her reasonable judgment she desires to do so.

609. Counterparts. This Agreement may be signed in multiple counterparts all of which together shall constitute an original binding agreement. This Agreement is executed in three originals, each of which is deemed to be an original.

610. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement constitutes the entire understanding of the parties, notwithstanding any previous negotiations, approved terms and conditions, or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

611. Real Estate Brokerage Commission. Owner and Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with this transaction, and Developer and Owner agree to defend and hold harmless each other from any claim to any such commission or fee resulting from any action on its part.

612. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to Section and Paragraph numbers are to sections and paragraphs

in this Agreement, unless expressly stated otherwise.

613. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

614. No Waiver. A waiver by any party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement or the Attachments hereto.

615. Intentionally Omitted

616. Developer's Payment and Reimbursement of Owner's Post-Date of Agreement Third Party Costs.

616.1 Third Party Costs Defined; Obligation. Developer shall pay for and reimburse Owner for all costs reasonably incurred by Owner for any and all out of pocket, third party costs, fees, and expenses incurred by Owner (but not in-house staff time) for attorneys, economic consultants, appraisers, engineers, affordable housing consultants, escrow company fees, title company fees, and other consulting and/or professional services incurred by Owner arising from and/or related in any respect to the implementation of this Agreement or the Project from the period of time commencing upon the Closing for the Project through the term of the Affordability Period for the Project (together, "Third Party Costs"). The Third- Party Costs may include costs incurred in connection with (a) drafting, negotiation, and execution of post-Closing Implementation Agreements, if any, (b) post-Closing enforcement of the Regulatory Agreement, Ground Lease, or other documents for the Project (collectively, "Project Documents"), including the following: (i) commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Project Documents, and (ii) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which Owner are indemnified under the Project Documents, provided as to defense of any action which Owner have tendered the defense to Developer and Developer fails to defend any such action; and (c) other costs incurred related to requests for or provision of estoppel certificates, subordination agreements, affordable housing documents, escrow instructions, advisory assistance, any other documentation, legal advice, redevelopment/affordable housing advice, or other third party contracts for consulting or professional services necessitated by Owner's or Developer's post-Closing implementation of this Agreement, and/or requested by Developer, and/or its Lender or other independent contractor or consultant to Developer post-Closing arising from or related in any manner to this Agreement.

616.2 Payment of Third Party Costs. Within 15 days of the submittal by Owner of copies of invoices or billings for Third Party Costs incurred, it is and shall be the obligation of Developer to reimburse and pay to Owner 100% of these Third Party Costs.

(a) This reimbursement obligation shall bear interest from the date occurring ten (10) days after Owner gives written demand to Developer at the lesser rate of five percent (5%), or the maximum rate then permitted by law.

(b) This reimbursement obligation shall survive the issuance of the final Release of Construction Covenants, and termination of this Agreement.

616.3 Exception to Payment of Post-Date of Agreement Third Party Costs. Notwithstanding Section 616, 616.1, and 616.2 above, Developer shall not be responsible to pay and reimburse for Third Party Costs if the costs incurred are attributable to one or more of the following events:

(a) City Council, Planning Commission, Zoning Administrator, or other Owner official with discretionary approval and/or disapproval rights over the Project or the implementation of this Agreement disapproves, denies, or refuses to take action on an application for a permit or other discretionary application necessary to commence and complete the Project; or

(b) Default by Owner under this Agreement.

617. Implementation of Agreement. The parties acknowledge that, due to the long term nature of the Project and the implementation of the Project under this Agreement, it may be necessary and/or appropriate at some time in the future, or from time to time, for Owner and Developer (or Affiliates of Developer) to enter into various Implementation Agreements or to otherwise execute additional documentation to clarify and implement the provisions of this Agreement and provide for the incorporation of additional or different funding and/or financing sources for the development and operation of the Project, as may become necessary or appropriate for the successful development of the Project and implementation of this Agreement. Each party agrees to cooperate in good faith to negotiate and enter into such various Implementation Agreement for the Project as may be determined to be reasonably necessary and/or appropriate by Developer or City Manager and Executive Director in their reasonable discretion.

618. Amendments. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed by a duly authorized representative on behalf of each party.

619. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances or Project shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

620. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

621. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice

from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

622. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, Implementation Agreements, releases or other agreements.

623. Conflicts of Interest. No member elected or appointed public official or Owner employee shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, elected or appointed public official or employee participate in any decision relating to the Agreement which affects his personal interests, his economic interests, or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

624. Non-recourse Liability of Developer. Notwithstanding anything to the contrary in this Agreement or any other Project Document, neither Developer nor any of its partners shall be personally liable for any default, loss, claim, damage, expense or liability to any person and the sole remedy against Developer hereunder shall be limited to its interest in the Project.

[Agreement continues on next page]

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

CITY OF FRESNO,
A California municipal corporation

By: _____
Georgeanne A. White,
City Manager

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

By: _____
Marlene Murphey
Executive Director

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

Signed by:
By: Tracy Parvanian 4/7/2025
C20B3D38494F4C1...
Tracy N. Parvanian Date
Assistant City Attorney

ATTEST:
TODD STERMER, MMC
City Clerk

By: _____
Date
Deputy

Corporation for Better Housing,
a California nonprofit public benefit corporation

DocuSigned by:
By: Lori Koester
ED1B7E4432AD485...

Name: Lori Koester

Title: Executive Director

By: _____

Name: _____

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

ATTACHMENT NO. 1
LEGAL DESCRIPTION

APN: 470-052-01T, 470-052-02T, 470-052-03T

All that certain real property situated in the County of Fresno, State of California, described as follows:

Parcel 1:

Lots 1, 2 and 3 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-01T

Parcel 2:

Lots 5, 6 and 7 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-03T

Parcel 3:

All of Lots numbered 4, 5, 6, 7.8, 9,10, 11, 12, 13, 14, 15, 16. 17. 18, 19, 20, 21.22 and 23, in Block 2 of the Lincoln Hill Addition to the Town, (now City) of Fresno, County of Fresno, State of California, according to the map recorded in Book 1, Page 71 of Plats, in the office of the County Recorder of said County.

APN: portion of 470-052-02T Parcel 4:

Lots 1 and 2 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 5:

Lots 3 and 4 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 6:

Lots 1 and 2 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 7:

Lots 3 and 4 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

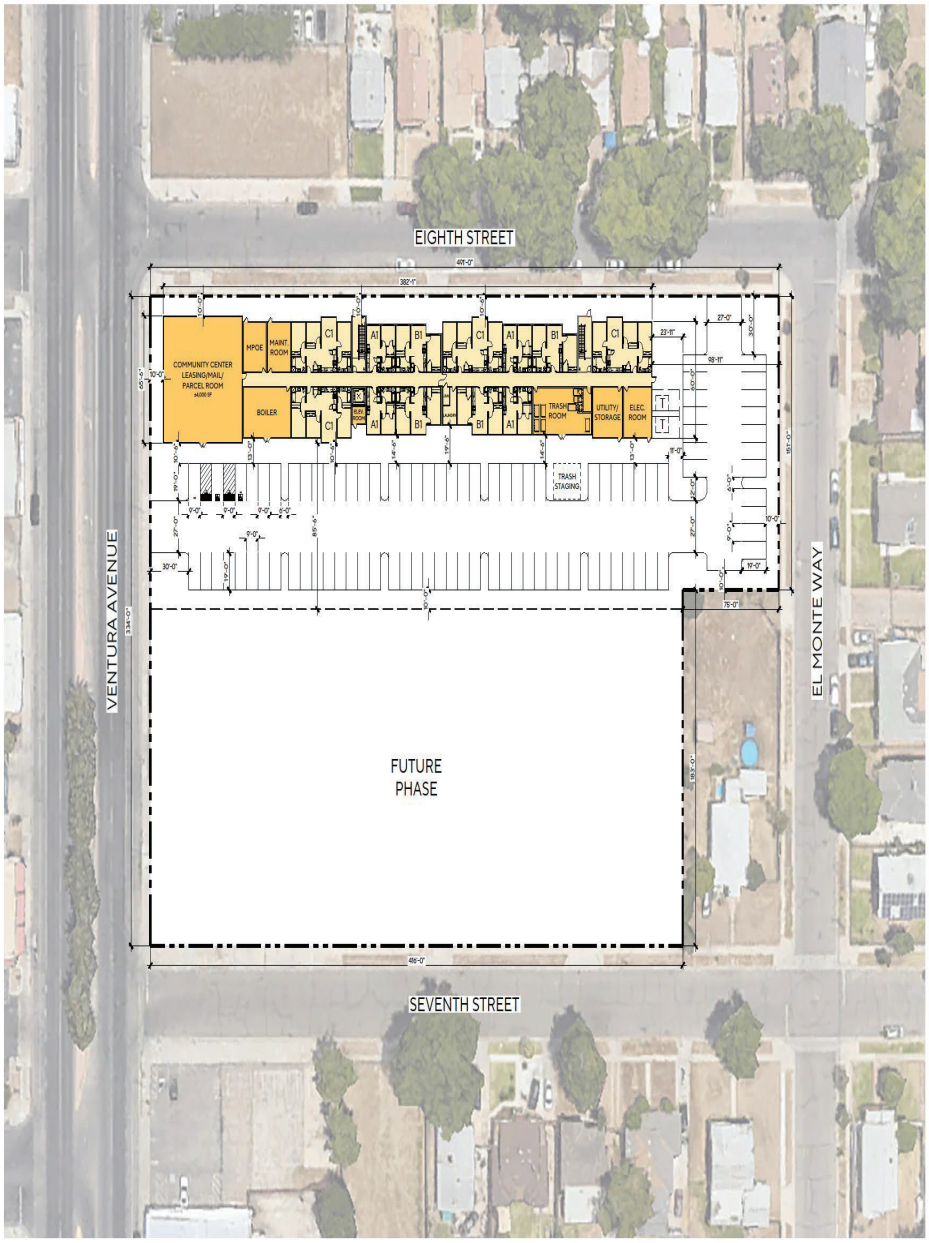
APN: portion of 470-052 02T

Parcel 8:

Lots 4, 5, 6, 7, 8, 9 and 10 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

ATTACHMENT NO. 2
SITE MAP

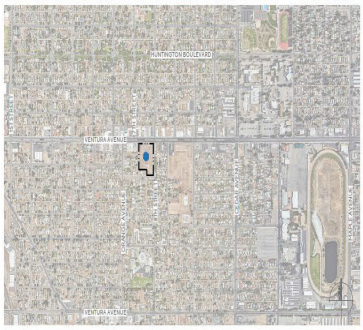


PROJECT DATA

LOCATION	3754 E. VENTURA AVENUE FRESNO, CA 93702
EXISTING USE	VACANT
A.P.N.	47005201, 47005202, 47005203
NO. OF STORIES	4 STORIES
CONSTRUCTION	TYPE V
SITE AREA	± 3.39 ACRE (147,668 SQ.FT.)
DENSITY	± 15.9 DU/AC
OVERALL F.A.R.	± 0.48
TOTAL UNIT COUNT	± 54 UNITS
1-BDRM	± 16 UNITS (30%)
2-BDRM	± 19 UNITS (35%)
3-BDRM	± 19 UNITS (35%)
PARKING PROVIDED	± 90 STALLS
RESIDENTIAL FLOOR AREA	± 61,845 SQ. FT.
NON-RESIDENTIAL FLOOR AREA*	± 8,601 SQ. FT.
TOTAL FLOOR AREA	± 70,446 SQ. FT.

*NON-RESIDENTIAL FLOOR AREA INCLUDES COMMUNITY CENTER, LEASING, MAIL ROOM, BOILER, MPOE, ELECTRICAL/MECHANICAL/MAINTENANCE ROOMS

VICINITY MAP (N.T.S)



Integrated Community Development

VENTURA & 7TH
FRESNO, CA

CONCEPTUAL SITE PLAN

0 30' 60' 90' 120'

AO

A1.0

JOB NO. 2024-0528
DATE 07-01-2024

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

SECTION 5 - PROJECT SCHEDULE

Provide a detailed timeline for completion of major milestones related to the project. Identify all key aspects as well as the dates when all funding sources will be secured. If awarded, prepare to enter into an agreement by October 2025.

The project schedule should indicate that all proposed and conditional funds will be committed within 10 months of the award of City funding and that the project **must** commence construction within one year of the City funding agreement execution and **must** be completed within four years of the agreement execution.

List each task in chronological order, the projected completion date, and the responsible party to complete the task. At a minimum, show the projected dates for commitment of all funding sources, any land use approvals, and date of property acquisition and construction commencement.

Schedule of Milestones		
Task	**Projected Completion Date**	**Responsible Party**
Sample: submit City application for funding	July 14, 2023	Developer
City Funding Commitment	4/24/2025	City
Land Use Entitlements	8/2025	Developer & City
Submit for Tax Credits and any additional funding	5/2025 - 12/2025	Developer
City funding Agreement Execution, awarded	12/2025	Developer & City
Close Construction Financing	12/2025	Developer / Lenders / City
Commence Construction	12/2025	Developer
Construction Completion	6/2027	Developer
100% Leased	9/2027	Developer
Perm Loan Conversion	1/2028	Developer / City

Describe any aspects of the project that may lead to delays and how the schedule will be adapted to respond.

All affordable housing finance in California is extremely competitive. We believe that the Tax Credit program is the most expeditious funding source currently. We have structured an application with the highest probability for success; however, the process is competitive, and we do not have data on all the potential competition. It is possible that we are unsuccessful in the first round of tax credit applications. If this occurs, we would respond by re-applying in the second round of tax credit applications delaying the project by approximately four months. If unsuccessful in the second round we will apply in the third round which would be awarded in November 2025. All dates would need to be pushed out according to the actual TCAC award date.

ATTACHMENT NO. 3A

PRELIMINARY BUDGET

PROJECT BUDGET

Ventura Family Apartments Project

	Total Development Costs	Funding Sources						
		City Land Lease (Assumed Value)	City LHTF	City ARPA	USDA	LIHTC	Permanent Loan	Def Dev Fee
Acquisition Costs:	$ -	$ -			$ -	$ -	$ -	$ -
Purchase Price	$ 1,130,000.00	$ 1,130,000.00			$ -	$ -	$ -	$ -
Liens	$ -	$ -			$ -	$ -	$ -	$ -
Closing, Title & Recording Costs	$ 80,000.00	$ -			$ -	$ 80,000.00	$ -	$ -
SUBTOTAL	$ 1,210,000.00	$ 1,130,000.00	$ -		$ -	$ 80,000.00	$ -	$ -
Construction								
Basic Construction Contract	$ 22,140,097.00	$ -	$ 4,000,000.00	$ 1,000,000.00	$ 5,000,000.00	$ 10,797,497.00	$ 1,342,600.00	$ -
Bond Premium	$ -	$ -			$ -	$ -	$ -	$ -
Infrastructure Improvements	$ -	$ -			$ -	$ -	$ -	$ -
Hazardous Abate. & Monitoring		$ -			$ -	$ -	$ -	$ -
Construction Contingency (5%)	$ 1,107,005.00	$ -			$ -	$ 1,107,005.00	$ -	$ -
Sales Taxes	$ -	$ -			$ -	$ -	$ -	$ -
Other Construction Costs: Security	$ 50,000.00	$ -			$ -	$ 50,000.00	$ -	$ -
Other Construction Costs: Furnishings	$ 50,000.00	$ -			$ -	$ 50,000.00	$ -	$ -
SUBTOTAL	$ 23,347,102.00	$ -	$ 4,000,000.00	$ 1,000,000.00	$ 5,000,000.00	$ 12,004,502.00	$ 1,342,600.00	$ -
Development								
Appraisal	$ 20,000.00	$ -			$ -	$ 20,000.00	$ -	$ -
Architect/Engineer	$ 583,200.00	$ -			$ -	$ 583,200.00	$ -	$ -
Environmental Assessment	$ 45,000.00	$ -			$ -	$ 45,000.00	$ -	$ -
Geotechnical Study	$ -	$ -			$ -	$ -	$ -	$ -
Boundary & Topographic Survey	$ 75,000.00	$ -			$ -	$ 75,000.00	$ -	$ -
Legal	$ 150,000.00	$ -			$ -	$ 150,000.00	$ -	$ -
Developer Fee	$ 2,500,000.00	$ -			$ -	$ 2,500,000.00	$ -	$ -
Project Management	$ -	$ -			$ -	$ -	$ -	$ -
Technical Assistance	$ -	$ -			$ -	$ -	$ -	$ -
Other:	$ -	$ -			$ -	$ -	$ -	$ -
SUBTOTAL	$ 3,373,200.00	$ -	$ -		$ -	$ 3,373,200.00	$ -	$ -
Other Development								
Real Estate Tax	$ -	$ -			$ -	$ -	$ -	$ -
Insurance	$ 425,000.00	$ -			$ -	$ 425,000.00	$ -	$ -
Relocation	$ -	$ -				$ -	$ -	$ -
Permits, Fees & Hookups	$ 500,000.00	$ -			$ -	$ 500,000.00	$ -	$ -
Impact/Mitigation Fees	$ 459,000.00	$ -			$ -	$ 459,000.00	$ -	$ -
Development Period Utilities	$ -	$ -			$ -	$ -	$ -	$ -
Construction Loan Fees	$ 220,000.00	$ -			$ -	$ 220,000.00	$ -	$ -
Construction Interest	$ 2,722,500.00	$ -			$ -	$ 2,305,031.00	$ -	$ 417,469.00
Other Loan Fees (State HF, etc.)	$ -	$ -			$ -	$ -	$ -	$ -
LIHTC Fees	$ 128,410.00	$ -			$ -	$ 128,410.00	$ -	$ -
Accounting/Audit	$ 35,000.00	$ -			$ -	$ 35,000.00	$ -	$ -
Marketing/Leasing Expenses	$ 54,000.00	$ -			$ -	$ 54,000.00	$ -	$ -
Carrying Costs at Rent Up	$ 216,000.00	$ -			$ -	$ 216,000.00	$ -	$ -
Operating Reserves	$ 163,300.00	$ -				$ 163,300.00	$ -	$ -
Soft Cost Contingecy	$ 326,000.00	$ -			$ -	$ 326,000.00	$ -	$ -
SUBTOTAL	$ 5,249,210.00	$ -	$ -		$ -	$ 4,831,741.00	$ -	$ 417,469.00
Total Development Costs	$ 33,179,512.00	$ 1,130,000.00	$ 4,000,000.00	$ 1,000,000.00	$ 5,000,000.00	$ 20,289,443.00	$ 1,342,600.00	$ 417,469.00

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

Cesar Chavez Apartments

The Cesar Chavez Apartments will fulfill the goals of the General Plan and the One Fresno Housing Strategy by redeveloping a portion of a 3.39-acre, urban infill site owned by City of Fresno (APN: 470-052-02T, 470-052-03T) and the Housing Successor to the Redevelopment Agency (APN: 470-052-01T), located South of E. Cesar Chavez Blvd, between Seventh Street and Eighth Street, Fresno, CA. The Cesar Chavez Apartments will be developed under a long-term land lease with the City of Fresno, ensuring long-term affordability and stability for farm-working families. This 100% affordable housing development will provide low-income families with incomes between 30% - 60% of the Area Median Income (AMI), new housing opportunities within a pedestrian-oriented neighborhood with access to transportation, job centers, retail, entertainment, schools, and community services.

This four-story development will be prominently positioned along Cesar Chavez Boulevard, featuring a 2,500-square-foot ground-floor community center and 54 apartments, accessible via an elevator. The unit mix consists of sixteen (16) one-bedroom units (approximately 554 square feet), nineteen (19) two-bedroom units (approximately 806 square feet), and nineteen (19) three-bedroom units (approximately 1,254 square feet), with one three-bedroom unit designated for an on-site manager. The unit mix was carefully planned based on input from the farm-working community through surveys and workshops conducted by the Corporation for Better Housing (CBH).

The development’s ground-floor community center will incorporate large moment-frame windows and an attractive contemporary façade. Residents will have access to a computer lab, laundry facilities, bicycle parking, a community kitchen, and spaces designated for service programs and educational classes. The development will also provide approximately 90 parking spaces, including handicap-accessible spaces and bicycle parking. Covered parking will feature a solar array atop the carport structures, contributing to energy efficiency and aiming for a Net Zero Energy designation.

The project’s open space will include a gated entry, a tot lot, recreational areas for adults and children, barbecue and picnic areas, and bicycle storage. Each apartment unit will feature modern amenities, including a range, frost-free refrigerator, dishwasher, garbage disposal, central heating and air conditioning, granite countertops, coat closets, mini blinds, vinyl flooring in kitchens and bathrooms, carpeting in living rooms, and CAT 5 wiring. All units will be designed for energy efficiency and equipped with energy-efficient appliances.

The on-site clubhouse will include management offices, a computer lab, a laundry facility with six (6) washers and six (6) dryers, and multifunctional rooms designated for resident services.

ATTACHMENT NO. 5

RELEASE OF CONSTRUCTION COVENANTS

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: _____ _____ _____ Attention: _____	This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

RELEASE OF CONSTRUCTION COVENANTS

This **RELEASE OF CONSTRUCTION COVENANTS** (Release) is hereby made as of _____, 20__, by the **City of Fresno**, a municipal corporation (City), and **the City of Fresno, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno (HSA)** in favor of _____ (Developer). The City and HSA are collectively referred to herein as **Owner**.

RECITALS

A. Owner and Developer have entered into an Affordable Housing Agreement dated as of _____ (Agreement), (as amended and implemented by that certain Implementation Agreement by and between Owner and Developer, dated as of _____, 20__), which Agreement provides for the development of an affordable rental housing project, consisting of an 54 unit rental apartment units, in which all but one of the Housing Units will be made available to Very Low-Income and Low-Income Households at an Affordable Rent and one Housing Unit will be an unrestricted unit rented to on-site manager who shall not be required to qualify as Low or Very Low-Income but who will pay an Affordable Rent calculated for a Low-Income Household, on certain real property (Subject Property) generally located at E. Cesar Chavez Boulevard (formerly E. Ventura Street) between S. Seventh Street and S. Eighth Street in the City of Fresno, California.

B. The Project consists of the construction of fifty-four (54) Housing Units (sixteen (16) of which shall be one-bedroom Housing Units, nineteen (19) shall be two-bedroom Housing Units, and the remaining nineteen (19) shall be three-bedroom Housing Units, inclusive of one unrestricted manager unit), a community room, management office, central laundry facilities, elevators, on-site covered parking, and passive recreational areas, on that portion of the Subject Property which is legally described on Exhibit "A" attached hereto and made a part hereof by this reference (Subject Property). As required in the Agreement, Owner shall furnish Developer with a Release of Construction Covenants upon completion of the Development of the Project, which Release shall be in such form as to permit it to

be recorded in the Official Records of Fresno County, California.

C. Owner has conclusively determined that the Project as required by the Agreement has been satisfactorily completed at the Subject Property.

NOW, THEREFORE, Owner hereto certifies as follows:

1. As provided in the Agreement, Owner does hereby certify that the development of the Project has been fully and satisfactorily performed and completed in accordance with the Agreement.

2. After the recordation of this Release, any person or entity then owning or thereafter purchasing, or otherwise acquiring any interest in the Subject Property will not (because of such ownership, purchase, or acquisition) incur any obligation or liability under the Agreement, except that such party shall be bound by any and all of the covenants, conditions, and restrictions which survive such recordation, including without limitation, the Ground Lease, and the Regulatory Agreement; provided the recordation of this Release shall not alter in any way the order of priority of any liens or encumbrances against the Subject Property, including the Primary Loan for the Subject Property, which shall not in any event have priority over Owner's fee interest in the Subject Property.

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

4. The recitals above are incorporated in full as part of the substantive text of this Release.

[Signatures appear on following page.]

IN WITNESS WHEREOF, Owner has executed this Release of Construction Covenants as of the date first set forth above.

OWNER:

CITY OF FRESNO,
a municipal corporation

By:_____
Georgeanne A. White
City Manager

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

By:_____
Marlene Murphey
Executive Director

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Tracy N. Parvanian Date
Assistant City Attorney

ATTEST:
TODD STERMER, MMC
City Clerk

By: _____
Date
Deputy

EXHIBIT A TO ATTACHMENT NO. 5

LEGAL DESCRIPTION

APN: 470-052-01T, 470-052-02T, 470-052-03T

All that certain real property situated in the County of Fresno, State of California, described as follows:

Parcel 1:

Lots 1, 2 and 3 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-01T

Parcel 2:

Lots 5, 6 and 7 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-03T

Parcel 3:

All of Lots numbered 4, 5, 6, 7.8, 9,10, 11, 12, 13, 14, 15, 16. 17. 18, 19, 20, 21.22 and 23, in Block 2 of the Lincoln Hill Addition to the Town, (now City) of Fresno, County of Fresno, State of California, according to the map recorded in Book 1, Page 71 of Plats, in the office of the County Recorder of said County.

APN: portion of 470-052-02T Parcel 4:

Lots 1 and 2 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 5:

Lots 3 and 4 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County,

APN: portion of 470-052-02T

Parcel 6:

Lots 1 and 2 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 7:

Lots 3 and 4 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052 02T

Parcel 8:

Lots 4, 5, 6, 7, 8, 9 and 10 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

ATTACHMENT NO. 6

OWNER REGULATORY AGREEMENT/DECLARATION OF RESTRICTIONS

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Housing Successor Agency:
Marlene Murphey, Executive Director
848 M Street, 3rd floor
Fresno, California 93721

This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

REGULATORY AGREEMENT

This **REGULATORY AGREEMENT** (Regulatory Agreement) is entered into as of _____, 202_, by and between the **CITY OF FRESNO**, a municipal corporation (City), the City of Fresno, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno (HSA), and Corporation for Better Housing(Developer). Unless separately identified, the City and HSA shall be collectively referred to herein as Owner.

RECITALS

A. City is the owner of certain real property located at the Southeast corner of E. Cesar Chavez (formerly Ventura Street) and S. Seventh Street in the City of Fresno (APNs 470-052-02T and 470-052-03T) , which is described in the Legal Description attached hereto as Exhibit A. HSA is the fee owner of the land located at the Northwest corner of S. Eighth Street and E. El Monte Way in the City of Fresno (APN 470-052-01T) which is described in the Legal Description attached hereto as Exhibit A. Together, the properties listed in Exhibit A. Together the real property owned by City and HSA and described herein and in Exhibit A is incorporated herein by reference and is the subject of this Regulatory Agreement (Subject Property).

B. Developer, and Owner entered into that certain "Affordable Housing Agreement" dated as of _____; in implementation of the Affordable Housing Agreement, Owner and Developer entered into that certain Ground Lease dated as of _, 20 (together, the Affordable Housing Agreement and the Ground Lease are referred to as the "AHA.") Subject to the terms and conditions therein, Owner has agreed to ground lease the Subject Property to Developer, respectively, pursuant to a Ground Lease and construct an affordable rental housing project (Project) and operate the Project as a 54 unit affordable

apartment complex on the Subject Property to be made available to Low-Income Households, and Very Low-Income Households, and one on-site manager unit to be made available to and occupied by on-site property manager whose income shall not be restricted, although the monthly housing payment for the on-site manager units shall be restricted to an Affordable Rent as determined for a Low-Income Household (collectively, Housing Units).

C. Pursuant to the AHA, Owner agreed to ground lease the Subject Property to Developer pursuant to the Ground Lease and Developer agreed to develop and operate the Project thereon.

D. The Project will consist of 54 Housing Units, eleven (11) which will be made available to Low-Income Households, forty-two (42) which will be made available to Very Low-Income Households, and one (1) of which will be made available to and occupied by an on-site property manager.

E. The execution and recording of this Regulatory Agreement is a requirement of the AHA. Terms used herein have the meanings set forth in the AHA unless otherwise specifically defined herein.

NOW, THEREFORE, in exchange for the mutual covenants, restrictions, and agreements set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Development of the Project. Developer agrees to develop the Subject Property subject to the terms and in accordance with the provisions of the AHA, the Scope of Development which is attached to the Affordable Housing Agreement as Attachment No. 4, the Ground Lease, the Entitlement as approved by the Owner, the Fresno Municipal Code, and all other applicable federal, state and local codes, regulations, and ordinances.

2. Housing Units.

a. Number of Housing Units. Developer covenants and agrees to make available, restrict occupancy to, and rent:

(i) Three (3) of the one-bedroom Housing Units to 30% AMI Very Low-Income Households at an Affordable Rent.

(ii) Two (2) of the one-bedroom Housing Units to 45% AMI Very Low-Income Households at an Affordable Rent.

(iii) Eight (8) of the one-bedroom Housing Units to 50% AMI Very Low-Income Households at an Affordable Rent.

(iv) Three (3) of the one-bedroom Housing Units to 60% AMI Low-Income Households at an Affordable Rent.

(v) Three (3) of the two-bedroom Housing Units to 30% AMI Very Low-Income Households at an Affordable Rent.

(vi) Two (2) of the two-bedroom Housing Units to 45% AMI Very Low-Income Households at an Affordable Rent.

(vii) Ten (10) of the two-bedroom Housing Units to 50% AMI Very Low-

Income Households at an Affordable Rent.

(viii) Four (4) of the one-bedroom Housing Units to 60% AMI Low-Income Households at an Affordable Rent.

(ix) Three (3) of the three-bedroom Housing Units to 30% AMI Very Low-Income Households at an Affordable Rent.

(x) Two (2) of the three-bedroom Housing Units to 45% AMI Very Low-Income Households at an Affordable Rent.

(xi) Nine (9) of the three-bedroom Housing Units to 50% AMI Very Low-Income Households at an Affordable Rent.

(xii) Four (4) of the three-bedroom Housing Units to 60% AMI Low-Income Households at an Affordable Rent.

b. Affordable Rent. Affordable Rent shall be charged for all Housing Units for the applicable Affordability Period. The maximum Affordable Rent chargeable for the Housing Units shall be annually determined by Owner (and as charged and implemented by Developer) in accordance with the following requirements:

(i) The Affordable Rent for the Housing Units to be rented to 30% AMI Very Low-Income Households shall not exceed thirty percent (30%) of 30% of AMI for Fresno County as determined and published by TCAC for a family of a size appropriate to the Housing Unit.

(ii) The Affordable Rent for the Housing Units to be rented to 45% AMI Very Low-Income Households shall not exceed thirty percent (30%) of 45% of AMI for Fresno County as determined and published by TCAC for a family of a size appropriate to the Housing Unit.

(iii) The Affordable Rent for the Housing Units to be rented to 50% AMI Very Low-Income Households shall not exceed thirty percent (30%) of 50% of AMI for Fresno County as determined and published by TCAC for a family of a size appropriate to the Housing Unit.

(iv) The Affordable Rent for the Housing Units to be rented to 60% AMI Low-Income Households shall not exceed thirty percent (30%) of 60% of AMI for Fresno County as determined and published by TCAC for a family of a size appropriate to the Housing Unit.

Developer shall, and shall cause its Property Manager to, operate the Project and cause occupancy of the Project and all Housing Units thereon in conformity with these covenants and this Agreement.

For purposes of this Regulatory Agreement, “Affordable Rent” means the total of monthly payments for (a) use and occupancy of each Housing Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not

included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, or cable TV or internet services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. No additional charge shall be assessed against tenant households of the Housing Units for any social or supportive services provided at the Subject Property and/or as a part of Developer's compliance with the legal requirements imposed in connection with any Project Based Section 8 assistance pursuant to Section 4 below.

c. Duration of Affordability Requirements; Affordability Period. The Project and all the Housing Units thereon shall be subject to the requirements of this Section 2, *et seq*. for the full term of not less than fifty-five (55) years from the date that the Release of Construction Covenants – is recorded against the Subject Property in the Official Records. The duration of these covenants and this requirement shall be known as the "Affordability Period."

d. Selection of Tenants. Developer shall be responsible for the selection of tenants for the Housing Units in compliance with all lawful and reasonable criteria, and shall adopt a tenant selection system which shall be approved by City Manager and Executive Director in her reasonable discretion, which establishes a chronological waiting list system for selection of tenants, which shall be set forth in the Marketing Program and the Property Management Plan, both of which are required to be submitted by Developer and approved by Owner pursuant to Sections 408 and 411 of the Affordable Housing Agreement. Subject to applicable Fair Housing Laws, the Owner shall be afforded a first right of refusal in referring eligible tenants to Housing Units, in the following order of priority (in accordance with all applicable laws):

(i) Low-Income Households or Very Low-Income Households, as applicable, who have been displaced from their residences due to programs or projects implemented by the Fresno Planning & Development Department;

(ii) Low-Income Households or Very Low-Income Households, as applicable, who have applied for and have received rental vouchers from Fresno Housing Authority;

(iii) Low-Income Households or Very Low-Income Households, as applicable, who are listed on Fresno Housing Authority's waiting list for affordable housing and who live and/or work in Fresno; and

(iv) Low-Income Households or Very Low-Income Households, as applicable, who live and/or work in Fresno.

Developer shall not refuse to lease to a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a program pursuant to the HOME Investment Partnership Act, 42 U.S.C. §12701, *et seq*. and the implementing regulations located at 24 CFR part 92, as such now exist and as may hereafter

be amended, a Section 8 voucher program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria (collectively, "Voucher Programs.")

e. Household Income Requirements. On or before 120 days following the end of Developer's fiscal year, commencing the first year after issuance of the first certificate of occupancy for the Project, and annually thereafter, Developer shall prepare and submit to Owner, at Developer's expense, a written summary of the income, household size, and rent payable by each of the tenants of the Housing Units at the Project and, upon the written request of Owner, copies of each and all leases or rental agreements and the current rules and regulations for the Project. At Owner's request, Developer shall also provide to Owner completed income computation and certification forms, all in a form reasonably acceptable to Owner, for each and all tenants at the Project. Developer shall obtain, or shall cause to be obtained by the Property Manager, a certification from each household leasing a Housing Unit at the Project demonstrating that such household is a 30% AMI Very Low-Income Household, 45% AMI Very Low-Income Household, 50% AMI Very Low-Income Household, or 60% AMI Low-Income Household, as applicable and according to the Area Median Income annually determined and published by TCAC for Fresno County, and meets the eligibility and occupancy requirements established for the Housing Unit. Developer shall verify, or shall cause to be verified by the Property Manager, the income and household size certification of the tenant household.

f. [Intentionally omitted.]

g. Affordable Rent; Household Income Categories/Definitions.

"30% AMI Very Low-Income Households" means those households earning not greater than thirty percent (30%) of Fresno County Area Median Income, adjusted for household size, which is set forth annually by regulation of TCAC.

"45% AMI Very Low-Income Households" means those households earning not greater than forty percent (45%) of Fresno County Area Median Income, adjusted for household size, which is set forth annually by regulation of TCAC.

"50% AMI Very Low-Income Households" means those households earning not greater than fifty percent (50%) of Fresno County Area Median Income, adjusted for household size, which is set forth annually by regulation of TCAC.

"60% Low-Income Households" means those households earning not greater than sixty percent (60%) of Fresno County Area Median Income, adjusted for household size, which is set forth annually by regulation of TCAC.

"Very Low-Income" and/or **"Very Low-Income Households"** shall mean and include: (i) Very Low-Income households as defined in the Tax Credit Rules, (ii) 30% AMI Very Low-Income Households, (iii) 45% AMI Very Low-Income Households, and (iv) 50% AMI Very Low-Income Households. Very Low-Income Households include Extremely Low-Income Households, as defined in the Tax Credit Rules.

"Lower Income," "Low-Income," and/or **"Lower Income Households"** shall mean and include both: (i) lower income households as defined in the Tax Credit Rules, and (ii) 60% AMI Low-Income Households. Lower Income Households include Very Low-Income households and Extremely Low-Income households, as defined in the Tax Credit Rules.

h. Occupancy Limits. The maximum occupancy of the Housing Units in the Project shall not exceed more than such number of persons as is equal to two persons per bedroom, plus one. Thus, for the two (2) bedroom Housing Units, the maximum occupancy shall not exceed five (5) persons. For the three (3) bedroom Housing Units, the maximum occupancy shall not exceed seven (7) persons.

3. Marketing Program. Prior to and as a Condition Precedent to a Certificate of Occupancy, Developer shall have prepared and obtained Owner's approval, which approval shall not be unreasonably withheld, of a marketing program for the leasing of the Housing Units at the Project ("Marketing Program"). During the Affordability Period, any material changes to an approved Marketing Program are subject to reasonable review and approval by the City Manager and Executive Director. The rental of the Housing Units, as and when they are vacated by the existing tenants, shall be conducted in accordance with the approved Marketing Program and any affirmative marketing requirements which have been adopted by the Owner prior to the date hereof. The availability of Housing Units shall be marketed in accordance with the Marketing Program as the same may be amended from time to time with Owner's prior written approval, which approval shall not unreasonably be withheld. Developer shall provide Owner with periodic reports with respect to the marketing for lease of the Housing Units. Owner agrees to exercise reasonable efforts to assist Developer in connection with the implementation of the Marketing Program; provided, however, Owner shall not be under any obligation to incur any out-of-pocket expenses in connection therewith.

4. Leases; Rental Agreements for Housing Units. Developer shall submit a standard lease form, which shall comply with the requirements of this Regulatory Agreement, including all applicable provisions of the Act, to Owner for its approval. Owner shall reasonably approve such lease form upon finding that such lease form is consistent with this Regulatory Agreement, including all applicable provisions of the Act. Developer shall enter into a written lease, in the form approved by Owner, with each tenant/tenant household of the Project. During the Affordability Period, any material changes to the lease form are subject to the reasonable review and approval of the City Manager and Executive Director.

5. Maintenance.

a. General Maintenance. Developer shall maintain the Subject Property and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with the terms of the Redevelopment Plan and all applicable provisions of the City of Fresno Municipal Code. Developer shall maintain in accordance with the "Maintenance Standards," as hereinafter defined, the improvements and landscaping on the Subject Property. Such Maintenance Standards shall apply to all buildings, signage, common amenities, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Subject Property and any and all other improvements on the Subject Property. To accomplish the maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Regulatory Agreement.

Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards as to the Project (the "Maintenance Standards"):

(i) The Subject Property shall be maintained in conformance and in compliance with the approved final as-built plans, and reasonable maintenance standards which comply with the industry standard for comparable first quality affordable housing projects in the County, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline.

(ii) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(iii) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

Owner agrees to notify Developer in writing if the condition of the Subject Property does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have 30 days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City, then Developer shall have 48 hours to

rectify the problem. In the event Developer does not maintain the Subject Property in the manner set forth herein and in accordance with the Maintenance Standards, Owner shall have, in addition to any other rights and remedies hereunder, the right to maintain the Subject Property, or to contract for the correction of such deficiencies, after written notice to Developer, and Developer shall be responsible for the payment of all such costs incurred by Owner.

b. Program Maintenance. In addition to the routine maintenance and repair required pursuant to Section 5(a), Developer shall perform the following programmed maintenance on the Improvements:

(i) Interior painting and window covering replacement at least every five (5) years.

(ii) Exterior painting at least every ten (10) years;

(iii) Repair and resurfacing of parking areas and walkways at least every five (5) years.

(iv) Replacement of all deteriorated or worn landscaping and play equipment at least every five (5) years

Upon the request of Developer, the City Manager and Executive Director, at their sole and absolute discretion, may grant a waiver or deferral of any program maintenance requirement. Developer shall keep such records of maintenance and repair as are necessary to prove performance of the program maintenance requirements.

6. Management of the Project.

a. Property Manager. Developer shall manage or cause the Project, and all appurtenances thereto that are a part of the Project, to be managed in a prudent and business-like manner, consistent with good property management standards for other comparable first quality, well-managed affordable rental housing projects in the County. Developer may contract with a property management company or individual property manager to operate and maintain the Project in accordance with the terms of this Section 6.a. (Property Manager); provided, however, the selection and hiring of the Property Manager (and each successor or assignee) is and shall be subject to the prior written approval of City Manager and Executive Director in their sole reasonable discretion and a single Property Manager shall be contracted with for the Project. The Property Manager shall manage the Subject Property in accordance with the definitions of Affordable Rent contained in Section 2.b., the tenant selection requirements contained in Section 2.d., and the definitions relating to income contained in Section 2.g. Any fee paid to the Property Manager for social services provided to the tenants shall be exclusive of the fee paid to the Property Manager relating to the management of the Subject Property. Developer shall conduct due diligence and background evaluation of any potential third party property manager or property management company to evaluate experience, references, credit worthiness, and related qualifications as a property manager. Any proposed property manager shall have significant and relevant prior experience with affordable

housing projects and properties comparable to the Project and the references and credit record of such property manager/company shall be investigated (or caused to be investigated) by Developer prior to submitting the name and qualifications of such proposed property manager to the City Manager and Executive Director for review and approval. A complete and true copy of the results of such background evaluation shall be provided to the City Manager and Executive Director. Approval of a Property Manager by City Manager and Executive Director shall not be unreasonably delayed but shall be in her sole reasonable discretion, and City Manager and Executive Director shall use good faith efforts to respond as promptly as practicable in order to facilitate effective and ongoing property management of the Project by one qualified Property Manager. The replacement of the Property manager by Developer and/or the selection by Developer of any new or different Property Manager during the Term of the Ground Lease shall also be subject to the foregoing requirements.

b. Property Management Plan. Prior to and as a Condition Precedent to the commencement of the Ground Lease, Developer prepared and submitted to the City Manager and Executive Director for review and approval, a management plan which includes a detailed plan and strategy for long term marketing, operation, maintenance, repair and security of the Project, inclusive of social services for the residents of the Housing Units, and the method of selection of tenants, rules and regulations for tenants, and other rental policies for the Project (Property Management Plan). 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 Property Management Plan shall contain copies of all standardized forms associated with the above listed topics. The ongoing management and operation of the Project shall be in compliance with the approved Property Management Plan. During the Affordability Period, Developer and its Property Manager may from time to time submit to the City Manager and Executive Director proposed amendments to the Property Management Plan, the implementation of which shall be subject to the prior written approval of the City Manager and Executive Director.

c. Gross Mismanagement. During the Affordability Period, and in the event of "Gross Mismanagement" (as defined below) of the Project, City Manager and Executive Director shall have and retain the authority to direct and require any condition(s), acts, or inactions of Gross Mismanagement to cease and/or be corrected immediately, and further to direct and require the immediate removal of the Property Manager and replacement with a new qualified and approved Property Manager, if such condition(s) is/are not ceased and/or corrected after expiration of thirty (30) days from the date of written notice from City Manager and Executive Director. If Developer or Property Manager has commenced to cure such Gross Mismanagement

condition(s) on or before the 20th day from the date of written notice (with evidence of such submitted to the City Manager and Executive Director), but has failed to complete such cure by the 30th day (or such longer period if the cure cannot reasonably be accomplished in thirty (30) days as reasonably determined by the non-defaulting party), then Developer and its Property Manager shall have an additional 10 days to complete the cure of Gross Mismanagement condition(s). In no event shall any condition of Gross Mismanagement continue uncured for a period exceeding forty-five (45) days from the date of the initial written notice of such condition(s), except that the conditions described in subdivisions (d) and (e) below may exist for up to, but no longer than, seventy-five (75) days without triggering Owner's right to remove the Property Manager as described in the immediately following sentence as long as Developer is diligently working to cure such conditions of Gross Mismanagement. If such condition(s) do persist beyond such period, City Manager and Executive Director shall have the sole and absolute right to immediately and without further notice to Developer (or to Property Manager or any other person/entity) to remove the Property Manager and replace the Property Manager with a new property manager of the City Manager and Executive Director's selection at the sole cost and expense of Developer. If Developer takes steps to select a new Property Manager that selection is subject to the requirements set forth above for selection of a Property Manager.

For purposes of this Regulatory Agreement, the term "Gross Mismanagement" shall mean management of the Project in a manner which violates the terms and/or intention of this Regulatory Agreement to operate a high quality affordable housing complex, and shall include, but is not limited to, any one or more of the following:

(a) Leasing to tenants who exceed the prescribed income levels;

(b) Allowing tenants to exceed the prescribed occupancy levels without taking immediate action to stop such overcrowding;

(c) Under-funding required reserve accounts;

(d) Failing to timely maintain the Project in accordance with the Property Management Plan and Maintenance Standards;

(e) Failing to submit timely and/or adequate annual reports to Owner as required herein;

(f) Fraud or embezzlement of Project funds, including without limitation funds in the reserve accounts;

(g) Failing to fully cooperate with the Fresno Police Department or other local law enforcement agency(ies) with jurisdiction over the Project, in maintaining a crime- free environment within the Project;

(h) Failing to fully cooperate with the Fresno Fire Department or other local public safety agency(ies) with jurisdiction over the Project, in maintaining a safe and accessible environment within the Project;

(i) Failing to fully cooperate with the Fresno Planning & Building Department, including the Code Enforcement Division, or other local health and

safety enforcement agency(ies) with jurisdiction over the Project, in maintaining a decent, safe and sanitary environment within the Project; and

(j) Spending funds from the Capital Replacement Reserve account for items that are not defined as eligible costs, including eligible capital and/or replacement costs, under the standards imposed by generally accepted accounting principles ("GAAP") (and/or, as applicable, generally accepted auditing principles).

Notwithstanding the requirements of the Property Manager to correct any condition of Gross Mismanagement as described above, Developer is obligated and shall use its best efforts to correct any defects in property management or operations at the earliest feasible time and, if necessary, to replace the Property Manager as provided above. Developer shall include advisement and provisions of the foregoing requirements and requirements of this Agreement within any contract between Developer and its Property Manager for the Project.

d. Code Enforcement. Developer acknowledges and agrees that City and their employees and authorized agents, shall have the right to conduct code compliance and/or code enforcement inspections of the Project and the individual Housing Units, both exterior and interior, at reasonable times and upon reasonable notice (not less than forty-eight (48) hours prior notice, except in an emergency) to Developer and/or an individual tenant. If such notice is provided by Owner to Developer, then Developer (or its Property Manager) shall immediately and directly advise any affected tenant of such upcoming inspection and cause access to the area(s) and/or Housing Units at the Project to be made available and open for inspection. Developer shall include express advisement of such inspection rights within the lease/rental agreements for each Housing Unit in the Project in order for each and every tenant and tenant household to be aware of this inspection right.

7. Capital Reserve Requirements. Commencing upon the closing of the permanent Primary Loan, Developer shall annually set aside an amount of not less than Two Hundred Fifty Dollars ($250.00) per Housing Unit ($13,500 per year or such increased amount by TCAC or Partnership Agreement of Lender under Primary Loan), from the gross rents received from the Project into a separate interest-bearing trust account (Capital Replacement Reserve). Funds in the Capital Replacement Reserve shall be used only for capital repairs, improvements and replacements to the Project, including fixtures and equipment, which are normally capitalized under GAAP. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve or lessen Developer's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to City Manager and Executive Director an accounting for the Capital Replacement Reserve. Capital improvements and repairs to, and replacements at the Project shall include only those items with a long useful life, including without limitation the following: carpet and drapery replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement;

landscape tree replacement; irrigation pipe and controls replacement; sewer line replacement; water line replacement; gas line replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement; and common area repainting. Pursuant to the procedure for submittal of each Annual Budget for the Project to City Manager and Executive Director by Developer, City Manager and Executive Director may evaluate the cumulative amount on deposit in the Capital Replacement Reserve account for the Project and exercise his/her sole, reasonable discretion to determine if existing balance(s) in, proposed deposits to, shortfalls, if any, and/or a cumulative unexpended/unencumbered account balance in such Capital Replacement Reserve account are adequate to provide for necessary capital repairs and improvement to the Subject Property and the Project (provided that required annual deposits thereto are not required to exceed $250/per Housing Unit).

8. Operating Budget. Within twelve (12) months after commencement of construction of the Project, but in no event later than ninety (90) days prior to the completion of construction of the Project, and not less than annually thereafter on or before November 1 of each year following the issuance of the first certificate of occupancy issued by the City's building official for the Project, Developer shall submit to Owner on not less than an annual basis an operating budget for the Project ("Operating Budget" or "Annual Budget"), which budget shall be subject to the written approval of City Manager and Executive Director, which approval shall not be unreasonably withheld. The City Manager and Executive Director's discretion in review and approval of each proposed annual Operating Budget shall include, without limitation, authority to review individual categories, line items, and accounts, such as the following: extent, type, and amount for social services at or associated with the Project; existing balance(s) in and proposed deposits to the Capital Replacement Reserve for the Project to evaluate shortfalls and/or cumulative unexpended/unencumbered deposits (provided that required annual deposits thereto are not required to exceed $250/per unit); conformity of any annual increases in the Partnership Related Fees for the Project with the increases permitted in the definition of "Residual Receipts"; reasonableness and conformity to prevailing market rates in Fresno County and rates and fees for goods and services to be provided Developer or any of its parent, affiliated, or subsidiary entities, etc. for the Project.

Developer shall, or shall cause the Property Manager to, set aside an "Operating Reserve" for the Project in a separate interest bearing trust account a target amount equal to three (3) months of (i) Debt Service on the Primary Loan for the Project and (ii) Operating Expenses for the Project ("Target Amount"), which shall be funded by Tax Credit equity for the Project. The Project Operating Reserve shall thereafter be replenished from Tax Credit equity and from Annual Project Revenue for the Project to maintain the Project Operating Reserve balance at the Target Amount. The Target Amount shall be retained in the Project Operating Reserve to cover shortfalls between Annual Project Revenue and actual Operating Expenses for the Project, but shall in no event be used to pay for capital items or capital costs properly payable from the Capital Replacement Reserve. Developer shall, not less than once per every twelve (12) months, submit to the City Manager and Executive Director evidence reasonably satisfactory to Owner of compliance herewith.

9. Duty to Prevent Hazardous Material Contamination. During the development and operation of the Project, Developer shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Subject Property. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. Developer shall notify Owner, and provide to Owner a copy or copies, of any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Developer shall report to Owner, as soon as possible after each incident, any unusual, potentially important incidents in the event of a release of any Hazardous Materials into the environment.

For purposes of this Section, "Governmental Requirements" shall mean all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the City, or any other political subdivision in which the Subject Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer or the Subject Property.

For purposes of this Section, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the County, including the Fresno County Health Care Agency, the Regional Water Quality Control Board, the State of California (including the Department of Toxic Substances Control), other state, regional or local governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq*. (42 U.S.C. §6903) or (x) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq*. Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Project, including without limitation alcohol,

aspirin, tobacco and saccharine.

10. Compliance With Laws. Developer shall carry out the design, development and operation of the Project in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Fresno Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq*., Government Code Section 4450, *et seq*., Government Code Section 11135, *et seq*., and the Unruh Civil Rights Act, Civil Code Section 51, *et seq*.

(a) **Non-Discrimination Covenants**. Developer covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Subject Property, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Subject Property. The foregoing covenants shall run with the land. Developer shall refrain from restricting the rental or lease of the Subject Property on any of the bases listed above. All leases or contracts relating to the Subject Property shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds. "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

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

"That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the

Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

c. In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

The covenants established in this Section 10 shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and its successors and assigns, and shall remain in effect in perpetuity.

(b) **Monitoring and Recordkeeping**. Throughout the Affordability Period, Developer shall comply with all applicable recordkeeping and monitoring requirements of the Act and shall annually complete and submit to City a Certification of Continuing Program Compliance for the Project in a form provided by City. Representatives of City shall be entitled to enter the Subject Property, upon at least forty-eight (48) hours' notice, to monitor compliance with this Regulatory Agreement, to inspect the records of the Subject Property, and to conduct an independent audit or inspection of such records. Developer agrees to cooperate with Subject Property in making all of its records for the Project and making the Subject Property and all Housing Units thereon available for inspection or audit. Records shall be made available for review and inspection and/or audit in Fresno County, California.

Developer agrees to maintain all records relating to the Project in a businesslike manner, and to maintain such records for the term of this Regulatory Agreement.

(c) **Defaults and Remedies**. Defaults of this Regulatory Agreement and remedies therefore shall be governed by the provisions of Section 500, *et seq*., of the Affordable Housing Agreement.

(d) **Waiver of Terms and Conditions**. Any party may, in its sole discretion, waive in writing any of the terms and conditions of this Regulatory Agreement. Waivers of any

covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

(e) **Non-Liability of City and Employees**. No member, official, employee or agent of City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Regulatory Agreement.

(f) **Time**. Time is of the essence in this Regulatory Agreement.

(g) **Notices**. Any approval, disapproval, demand, document or other notice (Notice) which either party may desire to give to the other party under this Regulatory Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (iii) facsimile transmission, or (iv) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice. Service shall be deemed conclusively made at the time of service if personally served; upon confirmation of receipt if sent by facsimile transmission; the next business day if sent by overnight courier and receipt is confirmed by the signature of an agent or employee of the party served; the next business day after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by express mail; and three (3) days after deposit thereof in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail.

Developer:

With a Copy to:

City: **Georgeanne A. White, City Manager**
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Housing Successor: **Marlene Murphey, Executive Director**
848 M. Street, 3rd floor
Fresno, California, 93721

With Copies To:

Such addresses may be changed by Notice to the other party given in the same manner as provided above.

(h) **Successors and Assigns**. This Regulatory Agreement shall run with the land, and all of the terms, covenants and conditions of this Regulatory Agreement shall be binding upon Developer and City and the permitted successors and assigns of Developer and City. Whenever the term “Developer,” or “City” is used in this Regulatory Agreement, such term shall include any other successors and assigns as herein provided.

(i) **No Third Parties Benefited**. This Regulatory Agreement is made and entered into for the sole protection and benefit of City and their successors and assigns and Developer and its successors and assigns, and no other person or persons shall have any right of action hereon.

(j) **Partial Invalidity**. If any provision of this Regulatory Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

(k) **Governing Law**. This Regulatory Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

(l) **Amendment**. This Regulatory Agreement may not be changed orally, but only by agreement in writing signed by Developer and City.

IN WITNESS WHEREOF, the parties hereto have executed this Regulatory Agreement as of the date and year first set forth below.

DEVELOPER:

[Signatures continue on following page.]

[Signatures continue from previous page]

CITY:

CITY OF FRESNO,
a municipal corporation

By:_____
Georgeanne A. White
City Manager

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

By: _____
Marlene Murphey
Executive Director

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Tracy N. Parvanian Date
Assistant City Attorney

ATTEST:
TODD STERMER, MMC
City Clerk

By: _____
Date
Deputy

EXHIBIT A TO ATTACHMENT NO. 6
LEGAL DESCRIPTION

APN: 470-052-01T, 470-052-02T, 470-052-03T

All that certain real property situated in the County of Fresno, State of California, described as follows:

Parcel 1:

Lots 1, 2 and 3 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-01T

Parcel 2:

Lots 5, 6 and 7 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-03T

Parcel 3:

All of Lots numbered 4, 5, 6, 7.8, 9,10, 11, 12, 13, 14, 15, 16. 17. 18, 19, 20, 21.22 and 23, in Block 2 of the Lincoln Hill Addition to the Town, (now City) of Fresno, County of Fresno, State of California, according to the map recorded in Book 1, Page 71 of Plats, in the office of the County Recorder of said County.

APN: portion of 470-052-02T Parcel 4:

Lots 1 and 2 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 5:

Lots 3 and 4 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County,

APN: portion of 470-052-02T

Parcel 6:

Lots 1 and 2 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 7:

Lots 3 and 4 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052 02T

Parcel 8:

Lots 4, 5, 6, 7, 8, 9 and 10 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

ATTACHMENT NO. 7
NOTICE OF AFFORDABILITY RESTRICTIONS

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Fresno
2600 Fresno Street
Fresno, CA 93721
Attention: City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY

This Notice of Affordability Restrictions on Transfer of Property (or Notice of Affordability Restrictions) is executed and recorded pursuant to Section 33334.3(f)(3)(B) of the California Health and Safety Code as amended by AB 987, Chapter 690, Statutes of 2007 (herein, Chapter 690), and affects a portion of that certain real property generally located at in the City of Fresno, California (City) as legally described in Exhibit "A" hereto (Subject Property).

The City of Fresno, a municipal corporation (City), the City of Fresno, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno (HSA), and _____ , a California limited partnership (Developer) have previously entered into an Affordable Housing Agreement dated as of _____ (Affordable Housing Agreement). The City and HSA are collectively referred to herein as Owner.

1. The AHA provides for affordability restrictions and restrictions on the transfer of the Subject Property, as more particularly set forth in the AHA. A copy of the AHA is on file with City as a public record and is deemed incorporated herein. Reference is made to the AHA with regard to the complete text of the provisions of such agreement and all defined terms therein, which provides for affordability restrictions and restrictions on the transfer of the Subject Property.

2. The AHA provides for Owner to convey a leasehold interest in the Subject Property to Developer and for Developer to (a) construct 54 affordable Housing Units at the Subject Property and (b) rent a specified number of such dwelling units to households of limited income, paying an affordable rent; such restrictions are set forth at greater length in a document entitled the Owner Regulatory Agreement, substantially in the form of Attachment No. 6 to the Affordable Housing Agreement (Regulatory Agreement), which has been entered into by and between City, HSA, and Developer, and which is expected to be recorded substantially concurrently herewith among the Official Records of Fresno County, California. The Regulatory Agreement and the AHA are deemed to be incorporated herein

[1] Note: Health and Safety Code Section 33334.3(f)(3)(B) requires this Notice of Affordability Restrictions to be printed in 14 point type or larger.

by reference.

3. Section 2 of the Regulatory Agreement provides as follows:

a. Number of Housing Units. Developer covenants and agrees to make available, restrict occupancy to, and rent:

(i) Three (3) of the one-bedroom Housing Units to 30% AMI Very Low-Income Households at an Affordable Rent.

(ii) Two (2) of the one-bedroom Housing Units to 45% AMI Very Low-Income Households at an Affordable Rent.

(iii) Eight (8) of the one-bedroom Housing Units to 50% AMI Very Low-Income Households at an Affordable Rent.

(iv) Three (3) of the one-bedroom Housing Units to 60% AMI Low-Income Households at an Affordable Rent.

(v) Three (3) of the two-bedroom Housing Units to 30% AMI Very Low-Income Households at an Affordable Rent.

(vi) Two (2) of the two-bedroom Housing Units to 45% AMI Very Low-Income Households at an Affordable Rent.

(vii) Ten (10) of the two-bedroom Housing Units to 50% AMI Very Low-Income Households at an Affordable Rent.

(viii) Four (4) of the one-bedroom Housing Units to 60% AMI Low-Income Households at an Affordable Rent.

(ix) Three (3) of the three-bedroom Housing Units to 30% AMI Very Low-Income Households at an Affordable Rent.

(x) Two (2) of the three-bedroom Housing Units to 45% AMI Very Low-Income Households at an Affordable Rent.

(xi) Nine (9) of the three-bedroom Housing Units to 50% AMI Very Low-Income Households at an Affordable Rent.

(xii) Four (4) of the three-bedroom Housing Units to 60% AMI Low-Income Households at an Affordable Rent.

b. Affordable Rent. Affordable Rent shall be charged for all Housing Units for the applicable Affordability Period. The maximum Affordable Rent chargeable for the Housing Units shall be annually determined by Owner (and as charged and implemented by Developer) in accordance with the following requirements:

(i) The Affordable Rent for the Housing Units to be rented to 30% AMI Very Low-Income Households shall not exceed thirty percent (30%) of 30% of AMI for Fresno County as determined and published by TCAC for a family of a size appropriate to the Housing Unit.

(ii) The Affordable Rent for the Housing Units to be rented to 45%

[1] Note: Health and Safety Code Section 33334.3(f)(3)(B) requires this Notice of Affordability Restrictions to be printed in 14 point type or larger.

AMI Very Low-Income Households shall not exceed thirty percent (30%) of 45% of AMI for Fresno County as determined and published by TCAC for a family of a size appropriate to the Housing Unit.

(iii) The Affordable Rent for the Housing Units to be rented to 50% AMI Very Low-Income Households shall not exceed thirty percent (30%) of 50% of AMI for Fresno County as determined and published by TCAC for a family of a size appropriate to the Housing Unit.

(iv) The Affordable Rent for the Housing Units to be rented to 60% AMI Low-Income Households shall not exceed thirty percent (30%) of 60% of AMI for Fresno County as determined and published by TCAC for a family of a size appropriate to the Housing Unit.

Developer shall, and shall cause its Property Manager to, operate the Subject Property and cause occupancy of the Subject Property and all Housing Units thereon in conformity with these covenants and this Agreement.

For purposes of this Regulatory Agreement, "Affordable Rent" means the total of monthly payments for (a) use and occupancy of each Housing Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, or cable TV or internet services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. No additional charge shall be assessed against tenant households of the Housing Units for any social or supportive services provided at the Subject Property and/or as a part of Developer's compliance with the legal requirements imposed in connection with any Project Based Section 8 assistance pursuant to Section 4 below.

c. Duration of Affordability Requirements; Affordability Period. the Subject Property and all the Housing Units thereon shall be subject to the requirements of this Section 2, et seq. for the full term of not less than fifty-five (55) years from the date that the Release of Construction Covenants is recorded against the Subject Property in the Official Records. The duration of these covenants and this requirement shall be known as the "Affordability Period."

d. Selection of Tenants. Developer shall be responsible for the selection of tenants for the Housing Units in compliance with all lawful and reasonable criteria, and shall adopt a tenant selection system which shall be approved by City Manager and Executive Director in their reasonable discretion, which establishes a chronological waiting list system for selection of tenants, which shall be set forth in the Marketing Program and the Property Management Plan, both of which are required to be submitted by Developer and approved by Owner pursuant to Sections 408 and 410 of the Affordable Housing Agreement. Subject to applicable Fair Housing Laws, the Owner shall be afforded a first right of refusal in referring eligible tenants to Housing Units, in the following order of priority:

[1] Note: Health and Safety Code Section 33334.3(f)(3)(B) requires this Notice of Affordability Restrictions to be printed in 14 point type or larger.

(i) Low-Income Households or Very Low-Income Households, as applicable, who have been displaced from their residences due to programs or projects implemented by the Fresno Planning & Development Department;

(ii) Low-Income Households or Very Low-Income Households, as applicable, who have applied for and have received rental vouchers from Fresno Housing Authority;

(iii) Low-Income Households or Very Low-Income Households, as applicable, who are listed on Fresno Housing Authority's waiting list for affordable housing and who live and/or work in Fresno; and

(iv) Low-Income Households or Very Low-Income Households, as applicable, who live and/or work in Fresno.

Developer shall not refuse to lease to a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a program pursuant to the HOME Investment Partnership Act, 42 U.S.C. §12701, et seq. and the implementing regulations located at 24 CFR part 92, as such now exist and as may hereafter be amended, a Section 8 voucher program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria (collectively, "Voucher Programs.")

e. Household Income Requirements. On or before one hundred twenty (120) days following the end of Developer's fiscal year, commencing the first year after issuance of the first certificate of occupancy for the Subject Property, and annually thereafter, Developer shall prepare and submit to Owner, at Developer's expense, a written summary of the income, household size, and rent payable by each of the tenants of the Housing Units at the Subject Property and, upon the written request of Owner, copies of each and all leases or rental agreements and the current rules and regulations for the Subject Property. At Owner's request, Developer shall also provide to Owner completed income computation and certification forms, all in a form reasonably acceptable to Owner, for each and all tenants at the Subject Property. Developer shall obtain, or shall cause to be obtained by the Property Manager, a certification from each household leasing a Housing Unit at the Subject Property demonstrating that such household is a 30% AMI Very Low-Income Household, 45% AMI Very Low-Income Household, 50% AMI Very Low-Income Household, or 60% AMI Low-Income Household, as applicable and according to the Area Median Income annually determined and published by TCAC for Fresno County, and meets the eligibility and occupancy requirements established for the Housing Unit. Developer shall verify, or shall cause to be verified by the Property Manager, the income and household size certification of the tenant household.

f. [Intentionally omitted.]

g. Affordable Rent; Household Income Categories/Definitions.

"30% AMI Very Low-Income Households" means those households earning not greater than thirty percent (30%) of Fresno County Area Median

[1] Note: Health and Safety Code Section 33334.3(f)(3)(B) requires this Notice of Affordability Restrictions to be printed in 14 point type or larger.

Income, adjusted for household size, which is set forth annually by regulation of TCAC.

"45% AMI Very Low-Income Households" means those households earning not greater than forty percent (45%) of Fresno County Area Median Income, adjusted for household size, which is set forth annually by regulation of TCAC.

"50% AMI Very Low-Income Households" means those households earning not greater than fifty percent (50%) of Fresno County Area Median Income, adjusted for household size, which is set forth annually by regulation of TCAC.

"60% Low-Income Households" means those households earning not greater than sixty percent (60%) of Fresno County Area Median Income, adjusted for household size, which is set forth annually by regulation of TCAC.

"Very Low-Income" and/or **"Very Low-Income Households"** shall mean and include: (i) Very Low-Income households as defined in the Tax Credit Rules, (ii) 30% AMI Very Low-Income Households, (iii) 45% AMI Very Low-Income Households, and (iv) 50% AMI Very Low-Income Households. Very Low-Income Households include Extremely Low-Income Households, as defined in the Tax Credit Rules.

"Lower Income," "Low-Income," and/or **"Lower Income Households"** shall mean and include both: (i) lower income households as defined in the Tax Credit Rules, and (ii) 60% AMI Low-Income Households. Lower Income Households include Very Low-Income households and Extremely Low-Income households, as defined in the Tax Credit Rules.

4. **Occupancy Limits.** The maximum occupancy of the Housing Units in the Project shall not exceed more than such number of persons as is equal to two persons per bedroom, plus one. Thus, for the two (2) bedroom Housing Units, the maximum occupancy shall not exceed five (5) persons. For the three (3) bedroom Housing Units, the maximum occupancy shall not exceed seven (7) persons. The restrictions contained in the Regulatory Agreement expire fifty-five (55) years following the date the Release of Construction Covenants is recorded against the Subject Property in the Official Records of Fresno County, California. The Regulatory Agreement is being submitted for recordation contemporaneously with this Notice of Affordability Restrictions.

5. The Subject Property is located on E. Cesar Chavez Boulevard between S. Seventh Street and S. Eighth Street in the City of Fresno.

6. The Assessor's parcel number for the Subject Property is 470-052-01T, 470-052-02T and 470-052-03T; such numbers are subject to change.

7. The legal description for the Subject Property is attached hereto as Exhibit A and is incorporated herein by reference.

8. The Regulatory Agreement, which includes the affordability restrictions

[1] Note: Health and Safety Code Section 33334.3(f)(3)(B) requires this Notice of Affordability Restrictions to be printed in 14 point type or larger.

referenced above, is expected to be submitted for recordation in the Office of the Fresno County Recorder contemporaneously with this Notice of Affordability Restrictions.

9. The AHA and the Regulatory Agreement both remain in full force and effect and are not amended or altered in any manner whatsoever by this Notice of Affordability Restrictions.

10. Capitalized terms shall have the meaning established under the AHA (including all Attachments thereto) excepting only to the extent as otherwise expressly provided under this Notice of Affordability Restrictions.

11. Persons having questions regarding this Notice of Affordability Restrictions, the AHA or the Attachments thereto (including the Regulatory Agreement) should contact Owner at its offices (City - 2600 Fresno Street, Fresno, California 93721, HAS – 848 M Street, 3rd floor, Fresno, California 93721, or such other address as may be designated by Owner from time to time).

[Signatures appear on following pages.]

[1] Note: Health and Safety Code Section 33334.3(f)(3)(B) requires this Notice of Affordability Restrictions to be printed in 14 point type or larger.

DEVELOPER:

[1] Note: Health and Safety Code Section 33334.3(f)(3)(B) requires this Notice of Affordability Restrictions to be printed in 14 point type or larger.

CITY:
CITY OF FRESNO,
A California municipal corporation

By: _____
Georgeanne A. White,
City Manager

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

By: _____
Marlene Murphey
Executive Director

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Tracy N. Parvanian Date
Assistant City Attorney

ATTEST:
TODD STERMER, MMC
City Clerk

By: _____
Date
Deputy

[1] Note: Health and Safety Code Section 33334.3(f)(3)(B) requires this Notice of Affordability Restrictions to be printed in 14 point type or larger.

EXHIBIT A TO ATTACHMENT NO. 7
LEGAL DESCRIPTION

APN: 470-052-01T, 470-052-02T, 470-052-03T

All that certain real property situated in the County of Fresno, State of California, described as follows:

Parcel 1:

Lots 1, 2 and 3 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-01T

Parcel 2:

Lots 5, 6 and 7 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-03T

Parcel 3:

All of Lots numbered 4, 5, 6, 7.8, 9,10, 11, 12, 13, 14, 15, 16. 17. 18, 19, 20, 21.22 and 23, in Block 2 of the Lincoln Hill Addition to the Town, (now City) of Fresno, County of Fresno, State of California, according to the map recorded in Book 1, Page 71 of Plats, in the office of the County Recorder of said County.

APN: portion of 470-052-02T Parcel 4:

Lots 1 and 2 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 5:

Lots 3 and 4 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County,

APN: portion of 470-052-02T

Parcel 6:

Lots 1 and 2 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 7:

Lots 3 and 4 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052 02T

Parcel 8:

Lots 4, 5, 6, 7, 8, 9 and 10 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

ATTACHMENT NO. 8
REQUEST FOR NOTICE OF DEFAULT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Fresno
2600 Fresno Street
Fresno, CA 93721
Attention: City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

REQUEST FOR NOTICE UNDER CIVIL CODE SECTION 2924B

In accordance with California Civil Code Section 2924b request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deeds of Trusts recorded as Instrument Nos. _____ and _____ on _____, 202___ in the Official Records of Fresno County, California, and describing land therein as set forth in the legal description Exhibit A attached hereto and incorporated herein, executed by _____, a California limited partnership, as Trustor/Borrower in which _____, a _____ is/are named as Beneficiary (ies), an _____, _____, is named as Trustee, be mailed to: City of Fresno, a municipal corporation, 2600 Fresno Street, Fresno, California 93721, Attention: City Manager and City of Fresno, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno, 848 M. Street, 3rd floor, Fresno, California 93721, Attention: Executive Director.

[Request continues on following page]

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

DEVELOPER:

[Signatures continue on following page.]

[Signatures continue from previous page.]

CITY:
CITY OF FRESNO,
A California municipal corporation

By: _____
Georgeanne A. White,
City Manager

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

By: _____
Marlene Murphey
Executive Director

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Tracy N. Parvanian Date
Assistant City Attorney

ATTEST:
TODD STERMER, MMC
City Clerk

By: _____
Date
Deputy

EXHIBIT A TO ATTACHMENT NO. 8
LEGAL DESCRIPTION

APN: 470-052-01T, 470-052-02T, 470-052-03T

All that certain real property situated in the County of Fresno, State of California, described as follows:

Parcel 1:

Lots 1, 2 and 3 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-01T

Parcel 2:

Lots 5, 6 and 7 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-03T

Parcel 3:

All of Lots numbered 4, 5, 6, 7.8, 9,10, 11, 12, 13, 14, 15, 16. 17. 18, 19, 20, 21.22 and 23, in Block 2 of the Lincoln Hill Addition to the Town, (now City) of Fresno, County of Fresno, State of California, according to the map recorded in Book 1, Page 71 of Plats, in the office of the County Recorder of said County.

APN: portion of 470-052-02T Parcel 4:

Lots 1 and 2 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 5:

Lots 3 and 4 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County,

APN: portion of 470-052-02T

Parcel 6:

Lots 1 and 2 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 7:

Lots 3 and 4 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052 02T

Parcel 8:

Lots 4, 5, 6, 7, 8, 9 and 10 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

ATTACHMENT NO. 9

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Fresno
2600 Fresno Street
Fresno, CA 93721
Attention: City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

MEMORANDUM OF AFFORDABLE HOUSING AGREEMENT

This **MEMORANDUM OF AFFORDABLE HOUSING AGREEMENT** (Memorandum) is hereby entered into as of _____, 20__ by and between the **CITY OF FRESNO**, a municipal corporation (City), the **CITY OF FRESNO**, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno (HSA), and _____ (Developer). The City and HSA shall be collectively referred to as **Owner**.

RECITALS

A. Owner and Developer have entered into that certain "Affordable Housing Agreement," dated as of _____; in implementation of the Affordable Housing Agreement, Owner and Developer entered into that certain Ground Lease each dated as of _____ (together, the "AHA"). Pursuant to the AHA, Owner agreed to convey a ground leasehold interest in that certain parcel of real property, which is legally described in Exhibit A attached hereto and incorporated herein by reference (Subject Property). Developer has agreed to lease the Subject Property from Owner therefor and to construct, develop and operate an affordable rental project thereon. Copies of the Affordable Housing Agreement are available for public inspection at City's office at 2600 Fresno Street, Suite _____, Fresno, California. The Affordability Period (defined in the AHA) for the Project commences the date the Memorandum of Ground Lease for the Project is recorded in the Official Records of Fresno County, California, and expires on the fifty-fifth (55th) anniversary of the recordation of the Certificate of Completion for the Project against the Subject Property according to Section 305 of the Affordable Housing Agreement.

B. The AHA provides that a short form memorandum of the AHA shall be executed and recorded in the Official Records of Fresno County, California.

NOW, THEREFORE, the parties hereto certify as follows:

Pursuant to the AHA, the parties have certain rights and obligations relating to the development and operation of an affordable rental project on the Subject Property by Developer in the AHA for a term of over 55-years. This Memorandum is not a complete summary of the AHA and shall not be used to interpret the provisions of the AHA.

CITY:

CITY OF FRESNO, a municipal corporation

By: _____
Georgeanne A. White
City Manager

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

By: _____
Marlene Murphey
Executive Director

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By:_____
Tracy N. Parvanian Date
Assistant City Attorney

ATTEST:
TODD STERMER, MMC
City Clerk

By: _____
Date
Deputy

[Signatures continue on following page.]

[Signatures continue from previous page.]

DEVELOPER:

EXHIBIT A TO ATTACHMENT NO. 9
LEGAL DESCRIPTION

APN: 470-052-01T, 470-052-02T, 470-052-03T

All that certain real property situated in the County of Fresno, State of California, described as follows:

Parcel 1:

Lots 1, 2 and 3 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-01T

Parcel 2:

Lots 5, 6 and 7 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: 470-052-03T

Parcel 3:

All of Lots numbered 4, 5, 6, 7.8, 9,10, 11, 12, 13, 14, 15, 16. 17. 18, 19, 20, 21.22 and 23, in Block 2 of the Lincoln Hill Addition to the Town, (now City) of Fresno, County of Fresno, State of California, according to the map recorded in Book 1, Page 71 of Plats, in the office of the County Recorder of said County.

APN: portion of 470-052-02T Parcel 4:

Lots 1 and 2 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 5:

Lots 3 and 4 in Block 8 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County,

APN: portion of 470-052-02T

Parcel 6:

Lots 1 and 2 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

Parcel 7:

Lots 3 and 4 in Block 9 of Kenmore Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052 02T

Parcel 8:

Lots 4, 5, 6, 7, 8, 9 and 10 in Block 10 of Kenmore Park, in the City of Fresno, County of Fresno State of California, according to the map thereof recorded in Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

APN: portion of 470-052-02T

ATTACHMENT NO. 10
Federal Requirements

False Information

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

Access to Project Site and Records

Bidder will provide access to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Contractor will retain all required records for three years after final payments are made and all other pending matters are closed.
Bidder will provide suitable access to the project site at all reasonable times during construction to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives. Contractor shall also meet all reporting requirements to allow City to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282).

Equal Employment Opportunity

Bidder shall abide by all Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor. All contracts and subcontracts entered into will contain the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:
(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Reporting Requirements

Bidder and any proposed subcontractor shall comply with the filing requirements of 41 CFR §60-1.7 by filing Standard Form 100 (EEO-1) ***only if*** (1) the bidder has 50 or more employees; and (2) the contract value will be greater than $50,000.

Bidder and any proposed subcontractor shall complete the Affirmative Action Program Certification of Compliance ***only if*** (1) the bidder has 50 or more employees; (2) the work is for non-construction supply or service; and (2) the contract value will be greater than $50,000.

Elimination of Segregated Facilities

Bidder shall ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term “facilities,” as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

Suspension and Debarment

By submitting a bid/proposal under this solicitation, the Bidder certifies that neither it nor any person or firm who has an interest in the Bidder’s firm is a person or firm ineligible to be awarded Government contracts, contracts or participate in programs pursuant to 2 CFR Part 180.

The Bidder agrees that no part of this work shall be subcontracted to any person or parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235). In addition, bidders shall ensure that contractual language in third party contracts enforce this provision.

Subcontracting

The Bidder shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms described in Executive Orders 11625, 12432 and 12138, and 2 CFR part 200:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

5. Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

Definitions:

Disadvantaged business enterprise (DBE) means an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.

Labor surplus area firm (LSAF) means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

Minority business enterprise (MBE) means a business enterprise that is at least 51 percent owned by a minority group or groups including: a Disadvantaged Business Enterprise (DBE) other than a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF), a Small Business in Rural Areas (SBRA), or a Women's Business Enterprise (WBE).

Small business, small business concern or small business enterprise (SBE) means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

Women's business enterprise (WBE) means a business concern which is at least 51% owned or controlled by women. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband's 50 percent interest in her share. Similarly, a business concern which is more than 50 percent owned by a married man will not become a qualified WBE by virtue of his wife's 50 percent interest in his share.

PROCUREMENT OF RECOVERED MATERIALS

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

ENERGY EFFICIENCY

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

ATTACHMENT NO. 11
TCAC Standstill Agreement