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**Regular Council Meeting  
March 10, 2022**

2022 MAR -8 P 1:00  
CITY OF FRESNO  
CITY CLERK'S OFFICE

**FRESNO CITY COUNCIL**



**Information Packet**

**ITEM(S)**

**File ID 22-383, 1-O**

Actions pertaining to construction of 78 affordable multifamily apartments at 1538 E. Clinton Avenue in Central Fresno (District 7)

**Contents of Supplement:**

Owner Participation Agreement

**Item(s)**

**Supplemental Information:**

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

**Americans with Disabilities Act (ADA):**

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

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

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

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

CITY OF FRESNO, a municipal  
corporation

By: \_\_\_\_\_  
Georgeanne White

Its: City Manager

Dated: \_\_\_\_\_

#### OWNER PARTICIPATION AGREEMENT

by and among

CITY OF FRESNO,  
a municipal corporation

and

1538 E. CLINTON AVE., L.P., a California limited partnership

## ATTACHMENTS

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

## **OWNER PARTICIPATION AGREEMENT**

THIS OWNER PARTICIPATION AGREEMENT (Agreement) is entered as of the Effective Date (defined in this Agreement), by and among the CITY OF FRESNO, a municipal corporation (City), and 1538 E. CLINTON AVE. L.P., a California limited partnership (Owner).

### **RECITALS**

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

A. Owner owns, or will acquire, all rights, title, and interest in fee to the certain real property described in Exhibit "A" attached hereto and incorporated herein (the Property), including improvements located thereon which shall be improved by Owner as contemplated by this Agreement located at 1538 E. Clinton Avenue, Fresno, California (the Project). The Property and Project are located within the territorial jurisdiction of the City.

B. Owner proposes to develop an affordable multi-family housing project on the Property consisting of seventy-eight (78) residential rental units (Affordable Units).

C. On June 24, 2021, the City adopted Resolution 2021-181 regarding Owner's submission of a low-income housing tax credit (LIHTC) application for the construction of affordable housing at the southwest corner of Blackstone and Clinton and expressing the City's intent to enter into a Funding Agreement and contribute to the Project upon full award of tax credit funding for the Project and concurrently appropriated \$3,000,000 to assist Owner's ability to obtain and leverage funding for the Project; and

D. Owner received its fully funded LIHTC award on October 20, 2021; and

E. City is willing to assist Owner's construction of the Affordable Units by making available to Owner as a loan certain funds in the amount of up to \$3,000,000 (the "Loan") upon the terms and conditions specified in this Agreement. The Parties agree that the Affordable Units are to be rented and preserved as Affordable Rental Housing for a period of fifty-five (55) years and subject to the terms and conditions of the Owner's LIHTC award; and

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

G. Owner agrees to undertake improvements in accordance with the combined Performance and Payment Schedule described in Exhibit "B" attached hereto and incorporated herein (the Performance and Payment Schedule); and

H. The Property and associated on-site and off-site improvements are collectively referred to in this Agreement as the "Improvements" or the "Project," all of which will directly benefit the Property and the Affordable Units, the surrounding neighborhood, and the City as a whole.

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

### **AGREEMENT**

1. DEFINITIONS. Besides definitions contained elsewhere in this Agreement, the definitions in this Section will govern the construction, meaning, application and interpretation of the various terms used in this Agreement.
  - 1.1 "ADA" means the Americans with Disabilities Act of 1990.
  - 1.2 "Affordability Period" means a period of fifty-five (55) years commencing from the date City records the Certificate of Completion.
  - 1.3 "Affordable Rental Housing" or "Affordable Units" means the seventy-eight (78) Units available at affordable rent, subject to the terms and conditions of the Owner's LIHTC award.
  - 1.4 "Agreement" means this Owner Participation Agreement.
  - 1.5 "Budget" means the Budget/Financial Plan for the Project attached hereto and incorporated herein as Exhibit "C" (the Budget).
  - 1.6 "Certificate of Completion" means that Certificate issued in the form attached as Exhibit "D" to Owner by City evidencing completion of the Project for purposes of this Agreement.
  - 1.7 "City" shall mean the City of Fresno, California, a municipal corporation.
  - 1.8 "City Manager" shall mean the City Manager of the City of Fresno, or his or her designee.
  - 1.9 "Conditions Precedent of City" means the conditions precedent to the effectiveness of this Agreement against the City.
  - 1.10 "Day" whether or not capitalized, means a calendar day, unless stated otherwise.
  - 1.11 "Deed of Trust" shall mean the Deed of Trust recorded against the Property securing the Loan, as shown in Exhibit "G" of this Agreement.
  - 1.12 "Default" means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.
  - 1.13 "Entitlements" mean all permits and fees that the City, County of Fresno, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.

- 1.14 "Effective Date" means the date of complete execution of the Agreement following City approval thereof.
- 1.15 "Environmental Laws" means any federal, state, or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials or waste including, without limitation, any state or federal lien or "super lien" law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.
- 1.16 "Funding Source" means the Loan and other funding sources secured by Owner to construct the Improvements.
- 1.17 "Financing Plan" means the Budget including sources and uses of funds sufficient and secured for Owner to complete the Improvements according to the Performance and Payment Schedule.
- 1.18 "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated biphenyls, (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (i) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*, or (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.*); provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential rental housing or associated buildings and grounds, or typically used in household activities, in a manner typical of other residential rental housing developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Sections 25249.8 *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the

Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine.

- 1.19 "Household" means one or more persons occupying an Affordable Unit.
- 1.20 "Improvements" mean the construction of the Affordable Units and other units that Owner will complete on the Property as part of the Project.
- 1.21 "Loan" means the principal sum of \$3,000,000, provided by City to Owner as a loan, upon the terms and conditions set forth in the Loan Agreement attached hereto as Exhibit "H" and evidenced by the Promissory Note attached hereto as Exhibit "F" to be secured by a second position deed of trust lien against the Property in the form of Deed of Trust attached hereto as Exhibit "G". If the Deed of Trust securing the Promissory Note is recorded prior to the recordation of the deed or deeds of trust securing the other Funding Sources consistent with the Financing Plan, the City shall subordinate such Deed of Trust to such other deed(s) of trust, so long as the City Deed of Trust is no worse than second position.
- 1.22 "Loan Agreement" shall mean the Loan Agreement between City and Owner pursuant to which the Loan shall be made, in the form of Loan Agreement attached hereto as Exhibit "G".
- 1.23 "Loan Documents" are collectively this Agreement and all exhibits and attachments thereto any deed of trust given as security, as they may be amended, modified, or restated from time to time.
- 1.24 "Material Change" means a change, modification, revision or alteration to the Loan Documents that significantly deviates from those previously approved by the City, provided that fully funded change(s) which do not result in a change in the number or type (i.e., residential, affordable) of Units and/or an increase in the total Loan funding provided in this Agreement shall not constitute Material Change(s).
- 1.25 "Owner" means 1538 E. Clinton Ave., L.P., or an affiliate company in which it is a Member, Managing Member, Principal, or General Partner.
- 1.26 "Project" means the mixed-use development including seventy- eight (78) residential Affordable Units on the Property and any associated on-site and off-site improvements.
- 1.27 "Project Completion Date" means the date that City shall have determined the Project has reached completion in accordance with the plans and specifications in the Performance and Payment Schedule, as evidenced by City's issuance of a Certificate of Completion.
- 1.28 "Property" means the real property described in Exhibit "A," attached hereto.
- 1.29 "Performance and Payment Schedule" means the schedule attached as Exhibit "B," setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may

revise the Performance and Payment Schedule from time to time on mutual written agreement of Owner and City, but any delay or extension of the Completion Date is subject to the requirements in this Agreement.

1.30 "Security Financing Interest" means a security interest which Owner grants in the Property and the Improvements thereon before the City issues and records a Release of Restrictions.

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

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

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

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

2.3 Owner has submitted evidence that the combined monies from the Funding Sources are not less than the greater of a total approximate development cost of \$28,808,657 or the amount which City determines is necessary to complete the Project, including evidence of a loan commitment for such Funding Sources acceptable to the City. If City determines that said funds are not sufficient to complete the Project, Owner may satisfy this condition as agreed to by Owner and City in writing. The City shall not disburse any portion of the Loan prior to confirmation that all of Owner's funding sources are secured and sufficient to complete the Project.

2.4 Owner will submit its Financing Plan to the City, pursuant to the timeline set forth in Exhibit B, for review and acceptance provided that the purpose of City's review is solely to confirm Owner has sufficient funds available to complete the Improvements and maintain Project as this Agreement requires. Owner shall also provide interim Financing Plans upon City's request.



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

- 2.5 Owner, at Owner's expense, shall have investigated and determined all environmental, soil, seismic, and other surface and subsurface conditions of the Property and the suitability of such conditions for the Project. Owner's responsibility and due diligence includes, but is not limited to, determining the presence of Hazardous Materials. Both Owner and City will promptly give the other copies of all reports and test results. Owner will indemnify, defend, and hold City harmless from any damages or claims arising out of Owner's inspections and tests.
- 2.6 Should Owner's property assessment/inspection reveal any Hazardous Materials or environmental conditions requiring remediation, Owner will promptly notify City. Not later than ten (10) days from and after such notice, Owner shall, at its sole cost and expense, commence to make required submittals, develop required remedial action plans, and thereafter pursue remediation activities as to such Hazardous Materials or environmental conditions and to diligently prosecute such to completion as required by applicable federal, state and local law and in a manner and according to a reasonable time frame agreeable to City. Without limiting the foregoing, any remediation will be performed pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction and will be performed according to applicable environmental laws and governmental requirements.
- 2.7 Owner shall not be in default of this Agreement and all representations and warranties of Owner contained herein shall be true and correct in all material respects.
  - 2.7.1 Owner will have signed and delivered all documents required hereunder.
  - 2.7.2 Owner will have received all land use and development approvals, variances, permits and the like required for development of the Project.
  - 2.7.3 Owner shall be in full compliance with the Performance and Payment Schedule.
- 2.8 Owner will have provided proof of insurance as required by this Agreement.
- 2.9 This Agreement and the executed Deed of Trust shall have been recorded with the Fresno County Recorder's Office.

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

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

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

- 3.3 From the Effective Date of this Agreement, Owner shall indemnify, hold harmless and defend City, City and each of their officers, officials, employees, agents and volunteers from any and all claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), arising out of (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to any use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property. This indemnity will include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic

loss, damage to the natural resource or the environment, nuisance, contamination leak, spill, release or other adverse effect on the environment. Owner's obligations under the preceding sentence shall apply regardless of whether City, City or any of their officers, officials, employees, agents or volunteers are negligent, but shall not apply to any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense caused solely by the gross negligence, or caused by the willful misconduct, of City, City or any of their officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

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

#### 4. DEVELOPMENT OF THE PROPERTY.

- 4.1 Except as set forth in this Agreement, before Owner begins constructing the Improvements or undertakes any other work of improvement on the Property, Owner, at its own cost and expense, will secure all land use and other entitlements, permits, and approvals that City or any other governmental agency with jurisdiction over the Project requires for construction of the Project. The City shall not disburse any portion of the Loan prior to confirmation that Owner has secured all land use and other

entitlements, permits and approvals required for construction and completion of the Project. Without waiver or limitation, Owner will secure and pay all costs, charges and fees associated with, the following:

- 4.1.1 All permits and fees that the City, County of Fresno, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.
- 4.1.2 ADA/Barriers to the Disabled. The Project shall comply with all applicable federal, state and local accessibility requirements.
- 4.2 Scope of Development and Project Design. Owner has submitted a general or basic concept drawing to City, and a copy of which is attached as Exhibit "E" (the "Scope of Development and Project Design"). Owner will complete the Improvements on the Property in one phase, according to the Scope of Development and Project Design, and the plans, drawings, and documents that Owner submits to City. Owner shall carry out construction of the Project including the Improvements in accordance with all applicable local, state and federal laws, codes, ordinances and regulations, including without limitation all applicable state and federal labor standards.
- 4.3 Books and Records. Owner shall make available for examination at reasonable intervals and during normal business hours, all books, accounts, reports, files and other papers or property with respect to all matters covered by this Agreement, and shall permit City to audit, examine and make excerpts or transcripts from such records. City may audit any conditions relating to this Agreement at City's expense, unless such audit shows a materially significant discrepancy in information reported by Owner to City in which case Owner shall bear the cost of such audit. This section shall survive for a period of four years after the expiration or termination of this Agreement.
- 4.4 Audit. Owner shall be accountable to City for all Loan funds disbursed to Owner pursuant to this Agreement. Owner will cooperate fully with City in connection with any interim or final audit relating to the Project that may be performed. Owner will maintain accurate and current books and records for the Project using generally accepted accounting principles. Owner agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with Loan funds and to keep all invoices, receipts and other documents related to expenditures financed with Loan funds for not less than four (4) years after the fiscal year in which such expenditures are incurred. For purposes of this section, "books, records and documents" include, without limitation, plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda and electronically stored versions of the foregoing. This section shall survive

for a period of four years after the expiration or termination of this Agreement.

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

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

As a condition precedent to any extension requested by Owner, Owner will give the City notice within ten (10) days after any cause for delay occurs, stating the cause and the additional time Owner anticipates needed to complete the Project. Any extension by City must be in writing and signed by the City Manager or the City Manager's designee, which approval shall not be unreasonably withheld, delayed or conditioned.

- 4.6 All Loan funds and any further financial assistance shall be used solely for costs of the Project and Improvements. In the event Owner does not complete construction of the Project by the Construction Completion Date, as may be extended pursuant to Sections 4.5.1, or otherwise does not go forward with the Project, then, subject to the notice and cure periods set forth in Article 9 of this Agreement, any portion of the Loan advanced to the Owner shall be immediately due and payable upon the written demand of City.
- 4.7 Certificate of Completion. Owner will notify City when Owner deems the Project complete. Within ten (10) business days after such notice, City will inspect the Improvements. When City reasonably determines Owner has completed the Improvements as required in this Agreement and the Law, City will furnish Owner with the Certificate of Completion. City will not unreasonably delay, condition or refuse to issue the Certificate of

Completion. The recorded Certificate of Completion will be a conclusive determination that Owner has satisfactorily completed the Improvements required under this Agreement. Any parties then owning or subsequently purchasing, leasing or otherwise acquiring any interest in the Property will not (because of that ownership, purchase, lease or acquisition) after the recording, incur any obligation or liability under this Agreement for constructing the Improvements, but will take such interest in the Property subject to the continuing covenants set forth in this Agreement.

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

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

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

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

4.10 If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners

or businesses, Owner shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. Owner shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

- 4.11 Annual Proof of Insurance. Annually, beginning in the year following City's issuance of the Certificate of Completion, and continuing until the expiration of the Agreement, Owner shall submit proof of insurance as required by this Agreement.
- 4.12 Except to any extent otherwise provided in this Agreement, Owner is specifically responsible for all management functions with respect to the Affordable Units including, without limitation, the selection of tenants, certification and re-certification of Household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. City shall have no responsibility for management of the Affordable Units of the Project.
- 4.13 Owner covenants and agrees the Affordable Units shall constitute Affordable Rental Housing during the entire Affordability Period. If Owner fails to comply the requirement to lease the Affordable Units only to qualified Households during the Affordability period, City shall be entitled to enjoin Owner from leasing the Affordable Units in the Project, as Owner acknowledges that damages are not an adequate remedy at law for such breach.

## 5. INDEMNITY; INSURANCE

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

If Owner should subcontract all or any portion of the work to be performed under this Agreement, Owner shall require each subcontractor to

indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

5.2 Throughout the life of this Agreement, the following is required:

### **INSURANCE REQUIREMENTS**

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

(b) If at any time during the life of the Agreement for the construction phase or any extension, OWNER 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 OWNER shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve OWNER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by OWNER shall not be deemed to release or diminish the liability of OWNER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by OWNER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of OWNER, vendors, suppliers, invitees, contractors, sub-contractors, consultants, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

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). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Builders Risk (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

#### **MINIMUM LIMITS OF INSURANCE**

OWNER 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, its 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) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 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. **BUILDERS RISK** (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.
5. **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 OWNER pursuant to the Agreement.

#### **UMBRELLA OR EXCESS INSURANCE**

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

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

OWNER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and OWNER shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) OWNER shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

#### **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, except ten (10) days for nonpayment of premium. OWNER is also responsible for providing written notice to the CITY 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, OWNER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, OWNER 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 and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) If OWNER maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by OWNER.
- (iv) 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 policies will be twice the above stated limits.
- (v) For any claims related to this Agreement, OWNER'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the OWNER'S insurance and shall not contribute with it.
- (vi) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as a Loss Payee.

The Commercial General, Automobile and Pollution Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. OWNER shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. The Commercial General, Pollution and Automobile Liability insurance

shall contain, or be endorsed to contain, that the OWNERS' insurance shall be primary to and require no contribution from the City. The Commercial General and Owners Pollution policies are required to include primary and non-contributory coverage in favor of the City for both the ongoing and completed operations coverage. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of OWNER'S insurance and shall not contribute with it. OWNER shall establish primary and non-contributory status for both ongoing and completed operations coverage under the Commercial General by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation, Commercial General, Automobile and Pollution insurance policy are to contain, or be endorsed to contain, the following provision: OWNER and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

**PROVIDING OF DOCUMENTS** - OWNER shall furnish CITY 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'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, OWNER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of OWNER shall also be required to provide all documents noted herein.

**CLAIMS-MADE POLICIES** - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by OWNER.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, OWNER must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.

- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

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

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

(b) Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve OWNER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by OWNER shall not be deemed to release or diminish the liability of OWNER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by OWNER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of OWNER, vendors, suppliers, invitees, contractors, sub-contractors, consultants, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

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). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. COMMERCIAL PROPERTY insurance which shall be as broad as the most current version of Insurance Service Office (ISO) commercial Property Form CP 10 30 (Cause of Loss – Special Form), with limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of the Improvements with no coinsurance penalty provisions. Such insurance shall include coverage for business income, including "rental value", in an amount equal to the two (2) years of the annual rent generated by the Improvements. Coverage for business income, including "rental value," shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 00 30.

#### **MINIMUM LIMITS OF INSURANCE**

OWNER shall procure and maintain for the duration of the contract insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its 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**

- (v) \$1,000,000 per occurrence for bodily injury and property damage;
- (vi) \$1,000,000 per occurrence for personal and advertising injury;
- (vii) \$2,000,000 aggregate for products and completed operations; and,

- (viii) \$2,000,000 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. **COMMERCIAL PROPERTY INSURANCE:** Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of LESSEE'S business property, including insurance coverage for business income, including "rental value", in an amount equal to the two (2) years of the annual rent generated by the Improvements.

**UMBRELLA OR EXCESS INSURANCE**

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

**DEDUCTIBLES AND SELF-INSURED RETENTIONS**

OWNER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and OWNER shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) OWNER shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

**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, except ten (10) days for nonpayment of premium. OWNER is also responsible for providing written notice to the CITY 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, OWNER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, OWNER 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 and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) If OWNER maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by OWNER.
- (iv) 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 policies will be twice the above stated limits.
- (v) For any claims related to this Agreement, OWNER'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the OWNER'S insurance and shall not contribute with it.

The Commercial Property Insurance shall have the policy endorsed to provide the City of Fresno to be named as a Loss Payee.

The Commercial General and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. OWNER shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.



3. The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that the OWNERS' insurance shall be primary to and require no contribution from the City. The Commercial General policy is required to include primary and non-contributory coverage in favor of the City for both the ongoing and completed operations coverage. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of OWNER'S insurance and shall not contribute with it. OWNER shall establish primary and non-contributory status for both ongoing and completed operations coverage under the Commercial General by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation, Commercial General Liability and Automobile Liability insurance policy are to contain, or be endorsed to contain, the following provision: OWNER and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

**PROVIDING OF DOCUMENTS** - OWNER shall furnish CITY 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'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, OWNER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of OWNER shall also be required to provide all documents noted herein.

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

- 5.4 Owner will obtain and deliver payment and performance bonds issued by an insurance company admitted in California in good standing as a surety and meeting the criteria for Owner's other insurance under this Agreement, each bond in an amount at least equal to 100% of Owner's estimated construction costs, provided that the City hereby waives any

requirement for said bonds at all time during which Owner is in full compliance with this Agreement and the Project remains fully funded.

- 5.5 Until City issues the Certificate of Completion City will have access to the Property, after reasonable notice to the Owner (except in emergencies), without charge or fee, during normal construction hours, for purposes of assuring compliance with this Agreement. City representatives will comply with all safety rules while on the Project or the Property.

- 5.6 Owner will design and construct the Improvements, and after that, prior to any allowable transfer or sale thereof, Owner will maintain the Property according to all applicable laws including, without limitation, all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, all provisions of the Fresno Municipal Code and all applicable access requirements. City makes no representation about which, if any, of such laws, ordinances, regulations or standards apply to development of the Project.

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

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

5.7.1 Pay and discharge the same; or

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

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

6. SECURITY FINANCING AND RIGHTS OF HOLDERS

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

7. CONTINUING OWNER OBLIGATIONS

- 7.1 In its performance of this Agreement, Owner covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person, including contractors, subcontractors, bidders and vendors, on account of race, color, religion, ancestry, national origin, sex, sexual preference, age, pregnancy, childbirth or related medical condition, medical condition (e.g., cancer related) or physical or mental disability, and in compliance with all applicable federal, state and local laws, regulations and rules including without limitation Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Owner will allow City representatives access to its employment records related to this Agreement during regular business hours and upon reasonable notice to verify compliance with these provisions when so requested by the City.
- 7.2 Owner will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Owner's right to contest in good faith any such taxes. Owner will remove any levy or attachment on the Property or any part of it or assure the satisfaction of the levy or attachment within a reasonable time. Owner will notify City prior to applying for or receiving any exemption from the payment of property taxes or assessments on any interest in or to the Property or the Improvements. Owner further agrees that the prior consent of City shall be required if the basis for such exemption is other than for qualified property held by a nonprofit entity that has been determined to be exempt

from federal and state income taxation, which consent shall not be unreasonably withheld.

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

8.1 Owner covenants for itself, its successors, assigns, and every successor in interest to the Property or any part of it that, after closing of any applicable escrow, during construction, and after completing the Improvements, the Owner shall devote the Affordable Units on the Property to the uses specified in this Agreement for the Affordability Period. All uses of the Affordable Units including, without limitation, all activities Owner undertakes pursuant to this Agreement, shall conform with this Agreement and the Law. Without waiver or limitation, each of the Affordable Units to be constructed pursuant to this Agreement shall be maintained as Affordable Rental Housing pursuant to this Agreement and the Restrictions.

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

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

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

8.3 From the Effective Date until the expiration of the Affordability Period, Owner covenants to use and operate the Affordable Units on the Property as Affordable Rental Housing pursuant to this Agreement.

8.4 Owner covenants for itself and any successors in interest and all persons claiming by, through or under them, in perpetuity, that there shall be no discrimination against or segregation of any person or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Affordable Units, nor shall Owner itself or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Affordable Units.

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

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

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

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

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

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

## 9. DEFAULTS AND REMEDIES

- 9.1 Subject to the extensions of time permitted under this Agreement, either party's failure to perform any material action or material covenant as required by this Agreement, following notice and failure to cure, is a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of, and the cure demanded. Except as otherwise expressly provided in this Agreement, the noticing party shall not begin any proceeding against the other party until the other party is given an opportunity to cure the Default. The other party will have 30 calendar days after receiving the notice to cure the Default, or, if the party cannot reasonably cure the Default within such 30 days, the other party must

begin to cure within the 30 days and diligently pursue the cure to completion, whereupon there shall be no event of Default.

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

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

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

9.6 The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

10. GENERAL PROVISIONS

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

To City:  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721  
Attn: City Manager

With a Copy To:  
City Attorney's Office  
2600 Fresno Street  
Fresno, CA 93721

To Owner:  
  
1538 E Clinton Ave., L.P.  
20750 Ventura Boulevard, Suite 155  
Woodland Hills, CA 91364  
Attention: Executive Director

With a copy to:  
  
Chernove & Associates, Inc.  
16027 Ventura Boulevard, Suite 515  
Encino, CA 91436  
Attention: Sheldon B. Chernove, Esq.

To Investor:  
  
Alliant Capital, Ltd.  
26050 Mureau Road, Suite 110  
Calabasas, CA 91302  
Attention: General Counsel

With a copy to:  
  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102



Attention: Shane Deaver, Esq.

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

- 10.2 All of the terms, covenants and conditions of this Agreement shall be binding upon the Owner and its permitted successors and assigns. Whenever the term "Owner" is used in this Agreement, such term shall include Owner's successors and assigns as permitted under this Agreement.
- 10.3 The City may assign or transfer any of its interests, rights, or obligations hereunder at any time to any public agency without the consent of the Owner.
- 10.4 No member, official or employee of the City shall be personally liable to the Owner, or any successor in interest to Owner, for any Default or breach by the City.
- 10.5 The relationship between the City and the Owner is that of a city and developer respectively, as permitted by law, and not that of a partnership or joint venture. City and Owner shall not be deemed or construed for any purpose to be the agent of the other.
- 10.6 Whenever this Agreement references an action or approval required or permitted by the City, the Director or his or her designee is authorized to act for the City as agent of the City unless this Agreement, the Law, Constitutional and/or local law provide otherwise, or the context otherwise requires.
- 10.7 This Agreement may be signed in multiple counterparts which, when signed by all parties, will be one binding agreement. The parties will sign three copies of this Agreement, each of which is deemed to be original.
- 10.8 This Agreement includes the exhibits and attachments referenced and incorporated in it. This Agreement contains the entire agreement between the parties relating to the transaction contemplated by this Agreement and supersedes all prior or contemporaneous agreements, understanding, representation and statements, whether oral or written.
- 10.9 If either party begins a lawsuit or arbitration proceeding, in law or equity, to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees, court costs, and legal expenses as determined by the court or tribunal having jurisdiction.
- 10.10 Any waiver, alteration, change or modification of or to this Agreement, to be effective, must be in writing, and signed by each party.

- 10.11 If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances is held invalid or unenforceable, the remainder of this Agreement and its application to persons or circumstances, other than those about whom or which it is held invalid or unenforceable, shall not be affected, and shall remain valid and enforceable to the fullest extent permitted by law.
- 10.12 Each party represents and warrants to the other that (a) each has read this Agreement, and (b) is signing this Agreement with full knowledge of any rights and obligations each may have, and (c) each has received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel, and (d) has signed this Agreement without relying on any agreement, promise, statement or representation by or for the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.
- 10.13 No member, official or employee of City has or shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. Owner represents and warrants that it has not paid or given, and will not pay or give, to any third party any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys.
- 10.14 The parties will execute such other and further documents, and will take any other steps, necessary, helpful, or appropriate to carry out the provisions of this Agreement.
- 10.15 No contractor, subcontractor, mechanic, material man, laborer, vendor, or other person hired or retained by with Owner shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, rather each such person shall be deemed to have agreed (a) that they shall look to Owner as their sole source of recovery if not paid, and (b) except as otherwise agreed to by City and any such person in writing, they may not enter any claim or bring any such action against City under any circumstances. Except as provided by law, or as otherwise agreed to in writing between City and such person, each such person shall be deemed to have waived in writing all right to seek redress from City under any circumstances whatsoever.
- 10.16 Owner hereby covenants and warrants that it is a duly authorized and existing California limited liability company, in good standing; that it shall remain in good standing; that it has the full right, power and authority to

enter into this Agreement and to carry out all actions on its part contemplated by this Agreement; that the execution and delivery of this Agreement were duly authorized by proper action of the Owner and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions of the Owner's part contemplated by this Agreement, except as have been obtained and are in full force and effect; and that this Agreement constitutes the valid, binding and enforceable obligation of the Owner.

- 10.17 In the event of any conflict between the body of this Agreement and any exhibit or attachment to it, the terms and conditions of the body of this Agreement will control.

[SIGNATURES APPEAR ON NEXT PAGE]

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

CITY OF FRESNO,  
A California municipal corporation

1538 E. Clinton Ave., L.P.  
a California limited partnership

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

By: \_\_\_\_\_  
Name: Lori Koester  
Title: Executive Director

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: Tracy N. Parvarian  
Tracy N. Parvarian Date  
Senior Deputy City Attorney 3-8-22

REVIEWED BY: \_\_\_\_\_

ATTEST:  
TODD STERMER, CMC  
City Clerk

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

Attachments to Owner Participation Agreement (Clinton Avenue):

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

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

CITY OF FRESNO,  
A California municipal corporation

1538 E. Clinton Ave., L.P.  
a California limited partnership

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

By: \_\_\_\_\_  
Name: Lori Koester

Title: Executive Director

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Tracy N. Parvarian                      Date  
Senior Deputy City Attorney

  
Name: Rob Tidd  
Title: Secretary

ATTEST:  
TODD STERMER, CMC  
City Clerk

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

Attachments to Owner Participation Agreement (Clinton Avenue):

- Exhibit A: Legal Description of Property
- Exhibit B: Performance and Payment Schedule
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- Exhibit G: Form of Deed of Trust
- Exhibit H: Form of Loan Agreement

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION OF PROPERTY**

The land referred to is situated in the County of Fresno, City of Fresno, State of California, and is described as follows:

#### **PARCEL ONE:**

The East 60 feet of the West 120 feet of the North 130 feet of Lot 19 of Poppy Colony, according to the map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, Fresno County Records.

Excepting therefrom that portion thereof which may lie within the exterior boundaries of East Clinton Avenue, as widened.

APN: 444-092-04

#### **PARCEL TWO:**

That portion of Lot 19 of Poppy Colony according to the map thereof filed for record June 10, 1902, in Book 2 Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:

Commencing at the Southwest corner of said Lot 19; thence East along the South line of said Lot 19, 300 feet to the true point of beginning; thence North and parallel with the West line of said Lot 19 a distance of 149.99 feet to a point; thence East and parallel with the South line of said Lot 19 a distance of 60 feet to a point; thence South and parallel with the East line of said Lot 19 a distance of 149.93 feet to a point on the South line of said Lot 19; thence West along the South line of said Lot 19 a distance of 60 feet to the true point of beginning.

APN: 444-092-05

#### **PARCEL THREE:**

Parcel D of Lot Line Adjustment No. 2018-40, as Document Number 2019-0060832 of Official Records of Fresno County, and more particularly described as follows:

Lot 19 of Poppy Colony, according to the map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, Fresno County Records;

EXCEPTING THEREFROM the East 60 feet of the West 120 feet of the North 130 feet of said Lot;

ALSO EXCEPTING THEREFROM the following: Commencing at the Southwest corner of said Lot 19; thence East along the South line of said Lot 19, 300 feet to the true point of beginning, thence North and parallel with the West line of said Lot 19, a distance of 149.99 feet to a point; thence East parallel with the South line of said Lot 19, a distance of 60 feet to a point; thence South and parallel with the East line of said Lot 19, a distance of 149.93 feet to a point

on the South line of said Lot 19; thence West along the South line of said Lot 19 a distance of 60 feet to the true point of beginning;

ALSO EXCEPTING THEREFROM that portion of Lot 19 of Poppy Colony according to the Map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:

BEGINNING at the Southeast corner of said Lot 19, thence North  $89^{\circ}58'31''$  West along the South line of said Lot 19, a distance of 96.98 feet; thence North  $00^{\circ}35'35''$  East, a distance of 128.47 feet; thence South  $89^{\circ}22'31''$  East, a distance of 66.44 feet; thence South  $53^{\circ}21'23''$  East, a distance of 6.88 feet; thence South  $89^{\circ}22'31''$  East, a distance of 25.00 feet to the East line of said Lot 19; thence South  $00^{\circ}36'27''$  West along the East line of said Lot 19, a distance of 123.40 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM that portion of Lot 19 of Poppy Colony according to the Map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:

Commencing at the Southeast corner of said Lot 19, thence North  $00^{\circ}36'27''$  East along the Eastline of said Lot 19, a distance of 169.00 feet to the TRUE POINT OF BEGINNING; thence North  $89^{\circ}19'39''$  West, a distance of 35.50 feet; thence Southwesterly along a tangent curve, concave Southerly, having a radius of 215.00 feet, through a central angle of  $17^{\circ}18'28''$ , a distance of 64.95 feet; thence North  $00^{\circ}35'35''$  East, a distance of 88.54 feet; thence Northwesterly along a tangent curve, concave Southwesterly, having a radius of 14.00 feet, through a central angle of  $94^{\circ}00'23''$ , a distance of 22.97 feet; thence North  $89^{\circ}22'31''$  West, a distance of 90.16 feet; thence North  $00^{\circ}35'35''$  East, a distance of 35.98 feet to the North line of said Lot 19; thence South  $89^{\circ}53'08''$  East, along the North line of said Lot 19, a distance of 204.66 feet to the Northeast corner of said Lot 19; thence South  $00^{\circ}36'27''$  West along the East line of said Lot 19, a distance of 130.65 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM that portion of Lot 19 of Poppy Colony according to the Map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:

Commencing at the Southeast corner of said Lot 19, thence North  $00^{\circ}36'27''$  East, along the East line of said Lot 19, a distance of 169.00 feet to the TRUE POINT OF BEGINNING; thence North  $89^{\circ}19'39''$  West, a distance of 35.50 feet; thence Southwesterly along a tangent curve, concave Southerly, having a radius of 215.00 feet, through a central angle of  $17^{\circ}18'28''$ , a distance of 64.95 feet; thence North  $00^{\circ}35'35''$  East, a distance of 88.54 feet; thence Northwesterly along a tangent curve, concave Southwesterly, having a radius of 14.00 feet, through a central angle of  $94^{\circ}00'23''$ , a distance of 22.97 feet; thence North  $89^{\circ}22'31''$  West, a distance of 90.16 feet; thence North  $00^{\circ}35'35''$  East, a distance of 35.98 feet to the North line of said Lot 19; thence North  $89^{\circ}53'08''$  West, along the North line of said Lot 19, a distance of 79.43; thence South  $00^{\circ}35'35''$  West, a distance of 64.11 feet; thence South  $89^{\circ}22'31''$  East, a distance of 79.43 feet; thence South  $00^{\circ}35'35''$  West, a distance of 235.15 feet to the South line of said Lot 19; thence South  $89^{\circ}58'31''$  East, along the South line of said Lot 19, a distance of 107.61 feet; thence North  $00^{\circ}35'35''$  East, a distance of 128.47 feet; thence South  $89^{\circ}22'31''$  East a distance of 66.44 feet; thence South  $53^{\circ}21'23''$  East, a distance of 6.88 feet; thence South  $89^{\circ}22'31''$  East, a distance of 25.00 feet to the East line of said Lot 19; thence

North 00°36'27" East along the East line of said Lot 19, a distance of 45.60 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM the Northerly 10 feet thereof.

APN: 444-092-28



**EXHIBIT "B"**  
**Performance and Payment Schedule**  
**SCHEDULE OF PERFORMANCE**

<u>Items Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>
Commencement of Construction	At construction loan closing, within 180 days of receipt of tax credits	April 15, 2022
Completion of Construction	Within 18 months after commencement of construction (includes receipt of TCO)	October 15, 2023
Issuance of Certificate of Completion	Promptly after completion of construction and upon written request of Owner	October 15, 2023
Loan Disbursement	Within 10 days of receiving certificate of occupancy.	October 25, 2023

# Exhibit "C "

## Budget/Financial Plan

### TOTAL SOURCES & USES

TRANSACTION: Clinton Avenue Apartments

MASTER BUDGET LINE ITEM	ORIGINAL BUDGET
Land Acquisition	1,650,000.00
Construction Costs of Improvements	18,040,604.00
<b>SUB TOTAL CONTRACT SUM</b>	<b>18,040,604.00</b>
Hard Cost Contingency	902,031.00
<b>TOTAL HARD COSTS</b>	<b>18,942,635.00</b>
Interest Reserve	1,630,021.84
Fees/Permits	1,509,172.42
Soils/Field Testing & Inspections/Survey	125,000.00
Architect and Engineering	815,750.00
Security	135,000.00
Title/Recording - Construction	60,000.00
Title/Recording - Deferred To Conversion	15,000.00
Insurance - Gen Liability/Bldrs Risk	315,000.00
Real Estate Taxes	15,000.00
Legal Costs - Partnership/Syndication	130,000.00
Professional Services Contingency	75,000.00
Bank Construction Loan Fee	262,500.00
Bank Fund Control	25,000.00
Bank Construction Loan Legal	45,000.00
Appraisal	20,000.00
Bank Inspection Fees/Review	18,800.00
Financing Contingency	30,000.00
Audit/Cost Certification	40,000.00
Partnership Expenses/Market Study	125,000.00
Furnishings	75,000.00
Marketing & Lease-Up Costs	78,000.00
Operating Reserve - Deferred To Conversion	164,105.00
TCAC/CDLAC Fees	195,900.00
Debt Service Reserve	36,773.00
Developer Fee - At Construction Closing	205,000.00
Developer Fee - At Construction Completion	150,000.00
Developer Fee - Deferred to Conversion	1,845,000.00
Soft Cost Contingency	75,000.00
<b>TOTAL SOFT COSTS</b>	<b>6,586,000.42</b>
<b>TOTAL COSTS</b>	<b>28,808,657.26</b>
Funding Sources and order of Disbursement:	
Tax Credit Equity 1st Contribution	500,000.00
Construction Loan	26,250,000.00
Pacific Western Bank Perm Loan	3,321,000.00
City of Fresno Loan	3,000,000.00
Remaining Equity	20,456,183.00
Bank Construction Loan Payoff @ Perm	(26,250,000.00)
Deferred Developer Fee	1,531,474.26
<b>TOTAL:</b>	<b>28,808,657.26</b>



**EXHIBIT "D"**  
**Certificate of Completion**

**CERTIFICATE OF COMPLETION**

**RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:**

City of Fresno  
2600 Fresno Street  
Fresno, Ca. 93721  
Attention: City Manager

---

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

City of Fresno,  
a municipal corporation

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

Georgeanne White

Its: City Manager

Dated: \_\_\_\_\_

Certificate of Completion  
1538 E. Clinton Avenue Rental Project

RECITALS:

- A. By an Owner Participation Agreement (the Agreement) dated [\_\_\_\_], 202\_\_ between 1538 E. Clinton Ave., L.P., a California limited partnership (Owner) and the City of Fresno, a municipal corporation, (City), Owner agreed to construct certain residential units on the premises legally described in Attachment "1" hereto (the Property) and preserve the Affordable Units, as defined in the Agreement for a fifty-five (55) year Affordability Period according to the terms and conditions of the Agreement.
- B. The Agreement was recorded on [\_\_\_\_], 202\_\_ in the Official Records of Fresno County, California as Instrument No. \_\_\_\_\_.
- C. Under the terms of the Agreement, after Owner completes the construction on the Property, Owner may ask City to record a Certificate of Completion.
- D. Owner has asked City to furnish Owner with a recordable Certificate of Completion.
- E. City's issuance of this Certificate of Completion is conclusive evidence that Owner has completed the construction on the Property as set forth in the Agreement.

NOW THEREFORE:

1. City certifies that Owner commenced the construction work on the Project on [\_\_\_\_], 20\_\_, and completed the construction work on the Project on \_\_\_\_\_, 20\_\_, and has done so in full compliance with the Agreement.
2. This Certificate of Completion is not evidence of Owner's compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project.
3. This Certificate of Completion is not a notice of completion as referred to in California Civil Code section 3093.
4. Nothing contained herein modifies any provision of the Agreement.

IN WITNESS WHEREOF, the City has executed this Certificate of Completion as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

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

Dated: \_\_\_\_\_, 20\_\_

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

ATTEST:  
CITY CLERK

APPROVED AS TO FORM:  
CITY ATTORNEY

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

## **EXHIBIT 1 to CERTIFICATE OF COMPLETION**

### **LEGAL DESCRIPTION**

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

The land referred to is situated in the County of Fresno, City of Fresno, State of California, and is described as follows:

#### **PARCEL ONE:**

The East 60 feet of the West 120 feet of the North 130 feet of Lot 19 of Poppy Colony, according to the map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, Fresno County Records.

Excepting therefrom that portion thereof which may lie within the exterior boundaries of East Clinton Avenue, as widened.

APN: 444-092-04

#### **PARCEL TWO:**

That portion of Lot 19 of Poppy Colony according to the map thereof filed for record June 10, 1902, in Book 2 Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:

Commencing at the Southwest corner of said Lot 19; thence East along the South line of said Lot 19, 300 feet to the true point of beginning; thence North and parallel with the West line of said Lot 19 a distance of 149.99 feet to a point; thence East and parallel with the South line of said Lot 19 a distance of 60 feet to a point; thence South and parallel with the East line of said Lot 19 a distance of 149.93 feet to a point on the South line of said Lot 19; thence West along the South line of said Lot 19 a distance of 60 feet to the true point of beginning.

APN: 444-092-05

#### **PARCEL THREE:**

Parcel D of Lot Line Adjustment No. 2018-40, as Document Number 2019-0060832 of Official Records of Fresno County, and more particularly described as follows:

Lot 19 of Poppy Colony, according to the map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, Fresno County Records;

EXCEPTING THEREFROM the East 60 feet of the West 120 feet of the North 130 feet of said Lot;

ALSO EXCEPTING THEREFROM the following: Commencing at the Southwest corner of said Lot 19; thence East along the South line of said Lot 19, 300 feet to the true point of beginning, thence North and parallel with the West line of said Lot 19, a distance of 149.99 feet to a point; thence East parallel with the South line of said Lot 19, a distance of 60 feet to a point; thence South and parallel with the East line of said Lot 19, a distance of 149.93 feet to a point on the South line of said Lot 19; thence West along the South line of said Lot 19 a distance of 60 feet to the true point of beginning;

ALSO EXCEPTING THEREFROM that portion of Lot 19 of Poppy Colony according to the Map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:

BEGINNING at the Southeast corner of said Lot 19, thence North  $89^{\circ}58'31''$  West along the South line of said Lot 19, a distance of 96.98 feet; thence North  $00^{\circ}35'35''$  East, a distance of 128.47 feet; thence South  $89^{\circ}22'31''$  East, a distance of 66.44 feet; thence South  $53^{\circ}21'23''$  East, a distance of 6.88 feet; thence South  $89^{\circ}22'31''$  East, a distance of 25.00 feet to the East line of said Lot 19; thence South  $00^{\circ}36'27''$  West along the East line of said Lot 19, a distance of 123.40 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM that portion of Lot 19 of Poppy Colony according to the Map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:

Commencing at the Southeast corner of said Lot 19, thence North  $00^{\circ}36'27''$  East along the East line of said Lot 19, a distance of 169.00 feet to the TRUE POINT OF BEGINNING; thence North  $89^{\circ}19'39''$  West, a distance of 35.50 feet; thence Southwesterly along a tangent curve, concave Southerly, having a radius of 215.00 feet, through a central angle of  $17^{\circ}18'28''$ , a distance of 64.95 feet; thence North  $00^{\circ}35'35''$  East, a distance of 88.54 feet; thence Northwesterly along a tangent curve, concave Southwesterly, having a radius of 14.00 feet, through a central angle of  $94^{\circ}00'23''$ , a distance of 22.97 feet; thence North  $89^{\circ}22'31''$  West, a distance of 90.16 feet; thence North  $00^{\circ}35'35''$  East, a distance of 35.98 feet to the North line of said Lot 19; thence South  $89^{\circ}53'08''$  East, along the North line of said Lot 19, a distance of 204.66 feet to the Northeast corner of said Lot 19; thence South  $00^{\circ}36'27''$  West along the East line of said Lot 19, a distance of 130.65 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM that portion of Lot 19 of Poppy Colony according to the Map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:



Commencing at the Southeast corner of said Lot 19, thence North 00°36'27" East, along the East line of said Lot 19, a distance of 169.00 feet to the TRUE POINT OF BEGINNING; thence North 89°19'39" West, a distance of 35.50 feet; thence Southwesterly along a tangent curve, concave Southerly, having a radius of 215.00 feet, through a central angle of 17°18'28", a distance of 64.95 feet; thence North 00°35'35" East, a distance of 88.54 feet; thence Northwesterly along a tangent curve, concave Southwesterly, having a radius of 14.00 feet, through a central angle of 94°00'23", a distance of 22.97 feet; thence North 89°22'31" West, a distance of 90.16 feet; thence North 00°35'35" East, a distance of 35.98 feet to the North line of said Lot 19; thence North 89°53'08" West, along the North line of said Lot 19, a distance of 79.43; thence South 00°35'35" West, a distance of 64.11 feet; thence South 89°22'31" East, a distance of 79.43 feet; thence South 00°35'35" West, a distance of 235.15 feet to the South line of said Lot 19; thence South 89°58'31" East, along the South line of said Lot 19, a distance of 107.61 feet; thence North 00°35'35" East, a distance of 128.47 feet; thence South 89°22'31" East a distance of 66.44 feet; thence South 53°21'23" East, a distance of 6.88 feet; thence South 89°22'31" East, a distance of 25.00 feet to the East line of said Lot 19; thence North 00°36'27" East along the East line of said Lot 19, a distance of 45.60 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM the Northerly 10 feet thereof.

APN: 444-092-28

**EXHIBIT "E"**  
**SCOPE OF DEVELOPMENT AND PROJECT DESIGN**

Design, finance, construct and operate an affordable housing development consisting of 78 residential units. The project design shall make use of the frontage along Clinton Avenue in Fresno, California to present a vertical mixed use feel, with the ground floor space being occupied by management offices and community facilities. The four-story building shall provide seventy-eight (78) residential apartment units situated in a U-shape design around approximately 135,000 square foot common area courtyard. The ground floor facilities along Clinton Avenue will be presented with large moment frame windows and an attractive contemporary façade. The residential development will consist of 30 one-bedroom units (557 sq. feet in size), 21 two-bedroom units (770 sq. feet in size), 21 three-bedroom units (1,017 sq. feet in size) and 6 four-bedroom units (1,316 sq. feet in size). The approximately 3,400 square foot community/clubhouse space shall provide computer labs, bicycle parking, community kitchen and space for residential service programs and classes. Laundry rooms with washers and dryers will be provided and there will be bicycle parking spaces throughout.

**EXHIBIT "F"**  
**PROMISSORY NOTE**  
**SECURED BY DEED OF TRUST**

\$3,000,000

as of \_\_\_\_\_, 2022

**FOR VALUE RECEIVED**, the undersigned, 1538 E. CLINTON AVE., L.P., a California limited partnership (**Maker**) promises to pay to the order of the CITY OF FRESNO, a municipal corporation (**Payee**; Payee and any subsequent holder(s) hereof, being hereinafter referred to collectively as **Holder**) at 2600 Fresno Street, Room 2084, Fresno, California 93721 or at such other place as the Holder of this Promissory Note (**Note**) may designate to Maker in writing from time to time, the principal sum of Three Million and No/100th Dollars (\$3,000,000.00) or as much as may be advanced pursuant to the terms hereof, with interest thereon at the annual rate specified herein, in lawful money of the United States of America, such principal and any interest thereon to be paid as provided herein. Holder is making the loan pursuant to the terms of that certain Loan Agreement between Maker and Holder dated \_\_\_\_\_, 2022 (the **Loan Agreement**).

1. **Deed of Trust:** This Note is secured by that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (**Deed of Trust**) of even date herewith given by the Maker, as Trustor, to a title company approved by Holder as Trustee, for the benefit of Holder, as the Beneficiary, which Deed of Trust is to be recorded against that certain property owned by Maker in the City of Fresno, County of Fresno, State of California and more particularly described in the Deed of Trust (the **Property**).

2. **Definitions:** The following terms as used in this Note shall have the meanings given herein unless expressly provided to the contrary. In addition, terms used herein and not otherwise defined herein shall have the meanings specified in the Partnership Agreement.

**"Cash Flow"** means the excess of Cash Receipts over Expenditures. Cash Flow shall be determined separately for each Fiscal Year or portion thereof.

**"Cash Receipts"** means all cash receipts of Maker from whatever source derived, including, without limitation, all rents (at the required low-income rates as provided in Section 42 of the Code and the Project Documents), cash from business or rental interruption insurance recoveries and other cash revenues of a recurring nature from normal operation of the Project, including, without limitation, laundry machine revenue or similar amounts paid by tenants for goods or services, and any amounts actually received in a month for which cash receipts are being calculated from housing assistance payments under the United States Housing Act of 1937 or equivalent government subsidy program and the net reduction in any year in the amount of any escrow account or reserve maintained by or for Maker. Notwithstanding the foregoing, "Cash Receipts" shall exclude Capital Contributions, tenant security deposits (until

forfeited), prepaid rent (until the month to which such prepaid rent relates), the proceeds of loans obtained by or for the benefit of Maker (including, without limitation, Operating Loans and Voluntary Loans), insurance recoveries other than for business and rental interruption insurance and Sale or Refinancing Transaction Proceeds. With respect to tenants who have been granted rent concessions, rebates and other rental incentives, rental receipts shall be adjusted to reflect the average monthly rent over the term of such tenant's lease, with the concessions, rebates and other incentives (in excess of one month's rent at the commencement of their initial lease) being spread ratably over the term of the lease. For purposes hereof, Cash Receipts shall be calculated on the cash basis of accounting. Notwithstanding the foregoing, Cash Receipts received within thirty (30) days prior to the close of a Fiscal Year and intended for use in meeting Maker's obligations (including the cost of acquiring assets or paying debts or expenses) in the subsequent Fiscal Year may, in the discretion of the Administrative Limited Partner, be deemed to be received in such subsequent Fiscal Year. For purposes of determining whether Break-Even or Rental Achievement has occurred, and the applicable Debt Service Coverage Ratio at any time, Cash Receipts shall not exceed the amount of Cash Receipts that could have been achieved with a 5% vacancy rate and shall specifically exclude non-recurring or unpredictable sources of income such as late fees, penalties, turnover deposits, interest income on security deposits, tenant application fees, interest or other income earned on investment of Partnership funds, and rents paid by (a) any commercial space tenant whose then remaining lease is less than thirty-six (36) months, (b) any tenant in a Tax Credit Unit who does not qualify as low income under the requirements of Section 42 of the Code and the Project Documents, and (c) any tenant in a unit which is not a Tax Credit Unit to the extent such rent is in excess of the lesser of the actual rent paid or the maximum rent which would apply if such unit were a Tax Credit Unit.

**"City Loan"** means the Loan made by Holder to Maker evidenced by this Note.

**"City Loan Documents"** means this Note, the Deed of Trust, the Loan Agreement, and all other documents and instruments evidencing, securing or relating to the indebtedness evidenced by this Note and the obligations of Maker.

**"Code"** shall mean the Internal Revenue Code of 1986, as amended.

**"Construction-Permanent Lender"** means Pacific Western Bank, a California state-chartered bank.

**"Construction-Permanent Loan"** means the construction-to-permanent loan to the Maker by the Construction-Permanent Lender in the original amount of \$\_\_\_\_\_, the proceeds of which are to be used by the Maker to finance a portion of the cost of acquiring, constructing and developing the Project.

**"Expenditures"** means all disbursements of cash incidental to the operation of Maker and the ownership and operation of the Project, determined on an accrual basis during the Fiscal Year, including, without limitation, real estate taxes in an amount which reflects the full assessment of the Project following Completion, insurance premiums, operating expenses, debt service of Maker's indebtedness (excluding indebtedness payable from Cash Flow and repayments of Voluntary Loans and Operating Loans),

mortgage and bond insurance premiums (if any), the cost of repair, replacement and restoration of the Project to the extent not paid from insurance proceeds, which is not paid from reserves, amounts allocated to reserves by the General Partner with the Consent of the Administrative Limited Partner or as required by any Lender or any Credit Agency or the Partnership Agreement, reserves for all taxes or payments in lieu of taxes, capital expenditures to the extent not covered by insurance proceeds or releases from reserves, compliance monitoring fees charged by the Credit Agency or any other governmental agency relating to allocation of the Housing Tax Credits and the payment of the fees set forth in the Partnership Agreement and all other costs, expenses, and payments by Maker (whether or not subject to reimbursement by tenants) in connection with the ownership, management, leasing, operation, and administration of the Project and/or any other assets of Maker in accordance with provisions of the Partnership Agreement. Expenses which are to be paid in a subsequent Fiscal Year of Maker but which on an accrual basis are accruable to the current Fiscal Year (e.g., real property taxes) shall be treated as having been paid in the current Fiscal Year. In addition, the net increase during the year in any escrow account or reserve maintained by or for Maker shall be considered a cash expenditure during the year. Notwithstanding the foregoing, "Expenditures" shall exclude any amounts payable to Partners and/or their Affiliates under Section 9.2A of the Partnership Agreement or otherwise, all of which amounts shall be paid after Expenditures payable to third parties. Real estate taxes, insurance premiums, accounting fees and all material costs and expenses which are seasonal, including, but not limited to, fuel or other utility costs, shall be annualized so as to reflect on a monthly basis the average of expenses so incurred.

**"Net Cash Flow"** means Cash Flow minus all of the following (i) payments made to Maker's Investor Limited Partner to repay any Housing Tax Credit Shortfall Payment [and any Solar Credit Shortfall Payment], (ii) payments to replenish funds from the Operating Deficit Reserve Account pursuant to Section 4.4 of the Partnership Agreement, (iii) payments made on any loans (excluding Operating Loans and Deferred Development Fee) made by Maker's Partners or their Affiliates as provided in the Partnership Agreement, (iv) payments of any Asset Management Fees, (v) payments of any Deferred Development Fee, (vi) payments of any Operating Loans, and (vii) payments of any Partnership Management Fees.

**"Partnership Agreement of Maker"** means that certain Amended and Restated Agreement of Limited Partnership of 1538 E. Clinton Ave., L.P., as amended from time to time.

**"Project"** means the Property and the proposed development of the Property as a 78-unit affordable apartment project.

**"Senior Lenders"** means the lenders of any of the Senior Loans.

**"Senior Loans"** means the Construction-Permanent Loan.

3. **Interest Rate:** Commencing upon the disbursement of the City Loan funds and continuing until the Maturity Date (defined below), the outstanding principal balance hereunder shall accrue interest at the annual rate of three percent (3%). After a default

hereunder, interest shall accrue on the outstanding balance at the rate per annum of the **Prime Rate** (as such term is herein defined) plus five percent (5%) (the **Default Rate**). For purposes of this Note, the term "**Prime Rate**" shall mean and refer to the rate of interest announced by the San Francisco office of Union Bank of California to its commercial customers.

4. **Payments:** If not sooner paid and commencing on the first day of the first calendar month in which there is Net Cash Flow (the **Initial Payment Date**), and annually thereafter on the anniversary of the Initial Payment Date for the remaining term of this Note, there shall be due and payable an amount equal to \_\_\_\_ percent (\_\_\_\_%) of the Net Cash Flow of the Project. The payments made pursuant to this Paragraph 4 shall first be applied to accrued interest and the remainder to principal.

5. **Maturity Date:** The entire outstanding principal balance plus all accrued but unpaid interest shall be due and payable in full on the fifty-fifth (55th) anniversary of the date of the Project's receipt of certificates of occupancy (the **Maturity Date**).

6. **Use of Loan Proceeds:** The Maker covenants and agrees that the entire proceeds of the City Loan evidenced by this Note are being used by the Maker in connection with the payment of certain acquisition and development costs and expenses incurred in connection with the development of a multifamily affordable apartment project consisting of 78 units located in the City of Fresno, and the County of Fresno, in the State of California. Any failure to apply such funds for such purpose or to provide evidence thereof as required herein shall be deemed to be a default on the part of Maker hereunder, and Holder shall have the right to enforce any and all rights and remedies on account of such default, including without limitation acceleration of the entire principal amount of this Note and interest thereon.

7. **Repayment:** The entire principal balance outstanding on the Note, together with all interest accrued and unpaid thereon calculated in the manner hereinafter set forth and all other sums due under this Note, shall be due and payable on the Maturity Date; provided, however, that Holder, in its sole discretion, may elect to not require payment under this Section 7 on the Maturity Date if no default or breach has occurred and is continuing under this Note. The amount due and payable under this Note and the Deed of Trust is payable at the principal office of the Holder set forth above, or at such other place or places as the Holder hereof may designate to the Maker in writing from time to time, in any coin or currency of the United States of America which on the respective date of payment thereof shall be legal tender for the payment of public and private debts.

8. **Conditions of Default.** All covenants, conditions and agreements contained in the City Loan Documents are hereby made a part of this Note. If any installment under this Note is not paid when due or any default occurs in the agreements contained in this Note or the City Loan Documents, in each case, beyond any applicable notice and cure periods, the entire principal amount outstanding and any accrued interest thereon shall become due and payable immediately at the option of the Holder. All amounts past due shall bear interest at the Default Rate. The date specified for payment shall not be less than thirty days from the date such notice is mailed. The Holder may exercise this option to accelerate during any default by Maker which has continued beyond any

applicable notice and cure periods regardless of any prior forbearance. In the event of default which has continued beyond any applicable notice and cure periods, the Holder may at its option, exercise all of its rights and remedies enumerated herein, which rights are in addition to and not in limitation of any other rights the Holder may have under applicable law. If suit is brought to collect this Note, the Holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorneys' fees. The following shall also constitute default under this Note: occurrence of (a) the Maker's becoming insolvent or bankrupt or being unable or admitting in writing its inability to pay its debts as they mature or making a general assignment with creditors; (b) proceedings for the appointment of a receiver, trustee, or liquidator of the assets of the Maker or a substantial part thereof, being authorized or instituted by or against the Maker which proceedings are not dismissed within 60 days of institution; (c) proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction being authorized or instituted against the Maker which proceedings are not dismissed within 60 days of institution; or (d) dissolution of the corporate or partnership structure of the Maker.

9. **Prepayment:** The indebtedness evidenced by this Note may be prepaid in whole or in part, at any time and from time to time without penalty or premium.

10. **Acceleration of Indebtedness:** In the event of the failure of the Maker to pay, when due, any amount due under this Note, or upon the occurrence of any other default hereunder beyond any applicable notice and cure periods, the entire indebtedness evidenced hereby, including principal balance, and all other sums paid or advanced by Holder to or on behalf of Maker pursuant to the terms of this Note, together with all unpaid interest thereon and all other applicable late charges, shall at the option of Payee become immediately due and payable without further notice or demand and Holder may forthwith exercise the remedies available to Holder at law and in equity as well as those remedies set forth in this Note and one or more executions may forthwith issue on any judgment or judgments obtained by virtue thereof. Upon exercise of this option by Holder, the entire principal balance and any other amounts owed to Holder hereunder shall bear interest until paid at the Default Rate.

11. **Non-recourse:** Neither Maker nor any partner of Maker shall have any personal liability under this Note or any City Loan Document and Holder's recovery against Maker or any partner of Maker under this Note and the City Loan Documents shall be limited solely to the collateral given to Holder as security for Maker's performance under this Note and the City Loan Documents and to the general assets of Maker itself and no deficiency judgment shall be entered against Maker or any partner of Maker. Such recovery shall not be a lien, or the basis of a claim of lien or levy of execution, against the general assets of any general or limited partner of Maker.

12. **Cure Rights:** Notwithstanding anything to the contrary in this Note or the Deed of Trust:

(a) Maker shall have the right to cure any defaults and Holder agrees to accept cures tendered by Maker within 30 days of written notice to Maker of such default, plus such additional time as is reasonably necessary to cure the default

provided Maker has commenced the cure within such 30 day period and is diligently prosecuting the cure.

(b) Holder shall give Maker's tax credit investor, if any ("**Investor**"), the same written notice of default given to the Maker as required herein; provided, that Holder's failure to give separate written notice to Investor shall not impair or invalidate any notice of default given to Maker or give rise to any liability on the part of Holder to Investor or any other third party. Investor shall have the right to cure defaults within the time periods provided to Maker herein, and performance of a cure by Investor or an affiliate of Investor shall have the same effect as would like performance by Maker. Investor's address for notice purposes is:

c/o Alliant Asset Management Company LLC  
26050 Mureau Road, Suite 110  
Calabasas, CA 91302  
Attention: General Counsel

or such other address provided Holder by Investor from time to time.

13. **Waivers:** Presentment for payment, protest and notice of demand, protest and non-payment are hereby waived by Maker. No indulgences granted from time to time shall be construed as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of the right of Holder thereafter to insist upon strict compliance with the terms of this Note. This Note may be not changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.

14. **Usury Savings:** If from any circumstances whatsoever, fulfillment of any provision of this Note or of any other instrument evidencing or securing the indebtedness evidenced hereby, at that time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by an applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Note or under any other instrument evidencing or securing the indebtedness evidenced hereby, that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity.

15. **Governing Law:** This Note is intended as a contract under and shall be construed and enforceable in accordance with the laws of the State of California. Maker consents to the jurisdiction of any State Court within the County of Fresno, State of California having proper venue.

16. **Only Agreement:** This Note embodies and constitutes the entire understanding and agreement between the parties with respect to the matters set forth herein, and all prior agreements, letters of intent understandings, representations and statements, oral or written, are merged into this Note.

SIGNATURE PAGE IS THE NEXT PAGE



**IN WITNESS WHEREOF**, Maker has caused its duly authorized representatives to execute this Note under seal and to deliver this Note to Payee as of the date first above written.

**MAKER:**

**1538 E. CLINTON AVE., L.P.,**  
a California limited partnership

By: Corporation for Better Housing,  
a California nonprofit public benefit  
corporation, its general partner

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

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

Its: \_\_\_\_\_

## EXHIBIT "G"

### RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Fresno  
Fresno City Hall  
2600 Fresno Street, Room 2084  
Fresno, California 93721  
Attention: City Manager

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### DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

The parties to this Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (**Deed of Trust**), made as of \_\_\_\_\_, 2022, are 1538 E. CLINTON AVE., L.P., a California limited partnership (**Trustor**), TICOR TITLE INSURANCE COMPANY (**Trustee**), and the CITY OF FRESNO, a municipal corporation (Beneficiary).

### ARTICLE 1. GRANT IN TRUST

1.1 **Grant.** For the purpose of securing the payment and performance of the Secured Obligations defined and described in Section 2.1, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of the Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to all that certain real property located in the City of Fresno, County of Fresno, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein (the **Land**),

TOGETHER with all buildings and improvements now or hereafter located thereon and all materials intended for construction, reconstruction, alteration and repair of such buildings and improvements (collectively, **Improvements**);

TOGETHER with all existing and future easements, rights, rights of way, franchises, tenements, hereditaments and appurtenances of the Land, and all development rights and credits, air rights, water, water rights, water stock related to the Land and all minerals, oil, gas and other hydrocarbon substances in, on or under the Land and any land lying in the streets, roads or highways, open or proposed, in front of or adjoining the Land and Improvements (collectively, **Appurtenances**);

TOGETHER with all goods, materials, supplies, equipment, appliances, machinery, fixtures, furniture, furnishings and other articles and types of tangible personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Land, Improvements and Appurtenances or any portion thereof, including all

building materials and equipment now or hereafter delivered to the Land, Improvements and Appurtenances and intended to be installed in or about the same;

TOGETHER with all inventory, accounts, deposit accounts, accounts receivable, contract rights, development and use rights, permits, licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary) arising from or relating to the Land, Improvements and Appurtenances and any business conducted thereon by Trustor and any other intangible personal property and rights relating to the Land, Improvements and Appurtenances or any part thereof or to the operation thereof or used in connection therewith, including goodwill, trademarks and tradenames;

TOGETHER with all rents, issues, revenues, income, royalties and profits and all leases, rental agreements and other contracts and agreements relating to the use or possession of or otherwise derived from any of the Land, Improvements, Appurtenances or any of the other property described above, together with all guarantees thereof and all deposits (to the full extent permitted by law) and other security therefore;

TOGETHER with all proceeds of, additions and accretions to, substitutions and replacements of any of the foregoing (including, but not limited to, all claims to or demands thereto) from the voluntary or involuntary conversion of the Land, Improvements, Appurtenances or any of the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments in lieu thereof made by any public body or decree by court of competent jurisdiction for taking or for degradation of the value in any condemnation or eminent domain proceeding, and all causes of action and the proceeds thereof of all types for any damage or injury to the Land, Improvements, Appurtenances or any of the other property described above or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact (collectively **Proceeds**); together with all books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory.

All property, both real and personal, described above and conveyed to Trustee under this Deed of Trust shall hereinafter be collectively referred to as the "**Property**." The listing of specific rights or property shall not be interpreted as a limit of general terms.

1.2 **Address**. The address of the real property described herein is 1538 E. Clinton Avenue, Fresno, California. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Property as described on Exhibit A. Trustor is the owner of the real property described in Exhibit A attached hereto and Beneficiary is the lender making the loan secured by this Deed of Trust.

## **ARTICLE 2. OBLIGATIONS SECURED**

2.1 **Obligations Secured.** Trustor makes this grant and assignment for the purpose of securing the following obligations (**Secured Obligations**):

(a) Payment to Beneficiary of all sums at any time owing under that certain Promissory Note Secured By Deed of Trust (**Note**) of even date herewith, in the principal amount of Three Million and No/100th Dollars (\$3,000,000.00) executed by Trustor and payable to the order of Beneficiary; and

(b) Payment and performance of all covenants and obligations on the part of Trustor under this Deed of Trust; and

(c) Performance of all covenants and obligations on the part of Trustor under the Note, this Deed of Trust, and all other documents and instruments evidencing, securing or relating to the indebtedness evidenced by the Note and the obligations of Trustor (the **Loan Documents**); and

(d) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(e) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 **Obligations.** The term "**obligations**" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 **Incorporation.** All terms of the Secured Obligations, and any documents evidencing the Secured Obligations are incorporated herein by this reference.

### **ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS**

3.1 **Assignment.** Subject to any prior assignment, Trustor hereby irrevocably assigns to Beneficiary (a) all of Trustor's right, title and interest in, to and under all leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether now existing or entered into after the date hereof (**Leases**); and (b) all rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases (**Rents**). The term "Leases" shall also include all security deposits, guarantees and other security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto. This is a present and absolute

assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Rents is not contingent upon possession of the Property and may be exercised without possession of the Property.

3.2 **Grant of License.** Subject to any prior rights, Beneficiary confers upon Trustor a license (**License**) to collect and retain the Rents as they become due and payable, until the occurrence and continuation of a Default (as hereinafter defined). Upon a Default following the expiration of all applicable notice and cure periods, the License shall be automatically revoked and Beneficiary may collect and apply the Rents pursuant to Section 6.5 without taking possession of the Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary. Subject to the License granted to Trustor hereunder, Trustor irrevocably appoints Beneficiary as its true and lawful attorney-in-fact, at the option of Beneficiary, to demand, receive and enforce all Leases and Rents, to give receipts, releases and satisfactions and to sue, in the name of Trustor or Beneficiary, in order to enforce all such Leases and apply all litigation proceeds to the Secured Obligations.

3.3 **Effect of Assignment.** The foregoing irrevocable Assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Lessee, licensee, employee, invitee or other person. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

3.4 **Representations and Warranties.** Except as previously disclosed to Beneficiary, Trustor represents and warrants that as of the date hereof, no Leases have been entered into.

3.5 **Covenants.** Trustor covenants and agrees at Trustor's sole cost and expense after completion of the Improvements on the Property to: (a) exercise Trustor's best efforts to keep all portions of the Property leased at all times at rental amounts permitted under the Regulatory Agreement; (b) if requested by Beneficiary, deliver to Beneficiary fully executed, counterpart original(s) or copies of each and every Lease and a certified rent roll for the prior month containing the names of all lessees of the Property, the date and term of their respective Leases, the apartment units occupied, the rent payable thereunder and the security deposit held; (c) execute and

record such additional assignments of any Lease, in form and substance acceptable to Beneficiary, as Beneficiary may request; (d) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases. Trustor shall not, without Beneficiary's prior written consent: (i) execute any other assignment relating to any of the Leases except as required by other loan documents senior to this deed of trust (including documents evidencing and/or securing the Mortgage Loans, as such term are defined in the Note); (ii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rent two (2) months in advance of the time when it becomes due (exclusive of security deposits); (iii) consent to any assignment or subletting by any lessee; or (iv) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance except as permitted by the Beneficiary. Any such attempted action in violation of the provisions of this Section 3.5 shall be null and void.

#### **ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING**

##### **4.1 Security Interest.**

(a) Subject to the prior interests, if any, of other Senior Lenders (as such term is defined in the Note), Trustor hereby grants and assigns to Beneficiary a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the **Collateral**):

i. All personal property, including, without limitation, all goods, materials, supplies, equipment, appliances, furniture, furnishings, fixtures, machinery, inventory and construction materials which Trustor now or hereafter owns or in which Trustor now or hereafter acquires an interest or right, including, without limitation, those which are now or hereafter located on or affixed to any of the Land or used or useful in the operation, use or occupancy thereof or the construction of any improvements thereon, including, without limitation, any interest of Trustor in and to personal property which is leased or subject to any superior security interest, or which is being manufactured or assembled for later installation into the improvements to be located or constructed on the Land, wherever located, and all books, records, leases and other documents, of whatever kind or character, relating to any of the Property.

ii. All fees, income, rents, issues, profits, earnings, receipts, royalties and revenues may accrue from said goods, fixtures, furnishings, equipment and building materials or any part thereof or from the Land, Improvements or Appurtenances or any part thereof, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, or subleasing thereof;

iii. All of Trustor's present and future rights to receive payments of money, services or property including, without limitation, rights to all deposits from tenants of the, accounts receivable, deposit accounts, chattel paper, notes, drafts, letters of credit, contract rights (including, without limitation, all rights under any interest rate hedging or similar agreement), instruments, general

intangibles and principal, interest and payments due on account of goods sold, services rendered, loans made or credit extended, together with title or interest in all documents evidencing or securing the same;

iv. All other intangible property, permits, consents, approvals, licenses authorizations and other rights relating to the Land, Improvements or Appurtenances or the use thereof, or used in connection therewith, including but not limited to all governmental permits relating to construction or other activities on the Land, all names under or by which the project located on the Land may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to any of the Land, Improvements or Appurtenances, good will in any way relating to the Land, Improvements or Appurtenances, and all licenses and permits relating in any way to, or to the operation of, the project located on the Land;

v. All contracts for and all proceeds from the sale or disposition of the Land, Improvements or Appurtenances or the sale or disposition of the aforesaid collateral;

vi. All right, title and interest of Trustor under all insurance policies covering any loss or damage to all or any part of the Property or any of the aforesaid collateral from any cause whatsoever, regardless of whether such insurance coverage is required by Beneficiary, and all proceeds, loss payments and premium refunds payable in connection with such insurance;

vii. All reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind relating to the Property, and all loan funds held by Beneficiary for the account of Trustor whether or not disbursed;

viii. All water stock relating to the Land or any portion of thereof;

ix. All causes of action, claims, compensation and recoveries for any damage to or condemnation or taking of the Land, Improvements or Appurtenances or the aforesaid collateral, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Property or the aforesaid collateral, or for any loss or diminution in value of the Property or the aforesaid collateral;

x. All architectural, structural, mechanical and engineering plans and specifications prepared for construction of improvements on or extraction of minerals from the Land, Improvements or Appurtenances and all studies, data and drawings related thereto; and also all contracts and agreements of the Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings or to the construction of improvements on or extraction of minerals or gravel from the Land.

xi. All replacements and proceeds of, and all additions and accessions to, any of the foregoing collateral, together with all books, records and files relating to any of the foregoing.

(b) As to all of the above-described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a security agreement and a fixture filing under Sections 9334 and 9502 of the California Uniform Commercial Code (**UCC**), as amended or recodified from time to time, and is acknowledged and agreed to be a "construction mortgage" under such Sections. For purposes of subdivision (h) of Section 9334 of the UCC, "completion" of construction, work or Improvements shall not be deemed to occur prior to completion of all work, and installation or incorporation into the Improvements of all materials, for which sums secured hereby are disbursed by Beneficiary.

(c) Beneficiary shall have no duty or obligation to make or give any presentments, demands for performance, notices of non-performance, notices of protest or notices of dishonor in connection with any of the Collateral. Beneficiary has no responsibility for, and does not assume any of, Trustor's obligations or duties under any agreement or obligation which is part of the Collateral or any obligation relating to the acquisition, preparation, custody, use, enforcement or operation of any of the Collateral.

**4.2 Representations and Warranties.** Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity, except in favor of any Senior Lender; and (c) Trustor's principal place of business is located at the address shown in Section 7.15.

**4.3 Rights of Beneficiary.** In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding any other provision contained herein, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC Section 9621, or other applicable law.

**4.4 Rights of Beneficiary on Default.** Upon the occurrence and continuation of a Default (hereinafter defined) following the expiration of all applicable notice and cure periods under this Deed of Trust, then subject to the rights of other Senior Lenders, in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:

(a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales; and



(b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.

(c) It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9 of the UCC, Beneficiary, upon Default, may proceed under the UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property, as specifically permitted under Section 9604 of the UCC and treat both real and personal property interests as one parcel or package or security.

**4.5 Power of Attorney.** Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

**4.6 Possession and Use of Collateral.**

(a) Except as otherwise provided in this Section, so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business.

(b) Trustor shall not permit any of the Collateral to be removed from the Improvements without the prior written consent of Beneficiary unless (i) the replacements of Collateral are of equivalent value and quality and (ii) Trustor has good and clear title to such replacements free and clear of any and all liens, encumbrances, security interests, ownership interests, claims of title (contingent or otherwise) or charges of any kind or the rights of any such conditional sellers, vendors or any other third parties have been expressly subordinated, at no cost to Beneficiary, to the lien and security interest granted hereby in a manner satisfactory to Beneficiary.

(c) It is understood and agreed that, in order to protect Beneficiary from the effect of Section 9334 of the UCC, in the event that (i) Trustor intends to purchase any goods which may become fixtures attached to the Property, or any part thereof, and (ii) such goods will be subject to a purchase money security interest held by a seller or any other party, Trustor shall, before executing any security agreement or other document evidencing such security interest, obtain the prior written approval of Beneficiary, and all requests for such written approval shall be in writing and contain the

following information: a description of the fixtures to be replaced, added to, installed or substituted; the address at which the fixtures will be replaced, added to, installed or substituted, and the name and address of the proposed holder and proposed amount of the security interest. Any failure of Trustor to obtain such approval shall be a material breach of Trustor's covenants under this Deed of Trust, and shall, at the option of Beneficiary, entitle Beneficiary to all rights and remedies provided for herein upon default. No consent by Beneficiary pursuant to this section shall be deemed to constitute an agreement to subordinate any right of Beneficiary in fixtures or other property covered by this Deed of Trust.

## **ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES**

5.1 **Title**. Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses fee simple title to the Property without limitation on the right to encumber the same, and that this Deed of Trust is a valid lien on the Property subject to no prior lien other than the lien of other Senior Loans (as such term is defined in the Note), taxes and assessments which are a lien not yet due and payable and the exceptions to title that have been previously approved by Beneficiary (**Permitted Exceptions**).

### **5.2 Taxes and Assessments**

(a) Subject to Trustor's rights to contest payment of taxes, if any, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company, including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property or upon any person, property, equipment or other facility used in the operation or maintenance thereof (collectively, **Impositions**) which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income. Upon request by Beneficiary, Trustor shall deliver to Beneficiary, within 30 days after the date upon which any such Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

(b) If requested by Beneficiary, Trustor shall cause to be furnished to Beneficiary a tax reporting service covering the Property of the type, duration and with a company satisfactory to Beneficiary.

5.3 **Insurance**. If required by Beneficiary, Trustor covenants to insure the Property at Trustor's expense against such risks as Beneficiary may require and, at Beneficiary's request, to provide evidence of such insurance and payment of all premiums to Beneficiary, and to comply with the requirements of any insurance companies insuring the Property. All insurance policies shall contain a provision that,

notwithstanding any contrary agreement between Trustor and insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least 30 days prior written notice to Beneficiary. In the event Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Deed of Trust, Beneficiary may (but shall have no obligation to) procure such insurance, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary and until such payment is made by Trustor, the amount of all such premiums shall bear interest at the rate applicable to the principal balance outstanding under the Note.

**5.4 Reserved.**

**5.5 Performance of Secured Obligations.** Trustor shall promptly pay and perform each Secured Obligation when due. All sums payable by Trustor pursuant to this Deed of Trust, shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Land or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

**5.6 Liens, Encumbrances and Charges.** Trustor shall immediately discharge or bond over any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust (excepting the lien of other Senior Loans). Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto.

**5.7 Damages; Insurance and Condemnation Proceeds.**

(a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary but, subject to the prior rights, if any, of Senior Lenders, shall be paid

directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies, whether or not required by the Beneficiary, payable by reason of any loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(a)(iv), Beneficiary may apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim, and may apply the balance to the Secured Obligations in any order, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure. Trustor hereby authorizes and directs any affected insurance company to make payment of all proceeds directly to Beneficiary. If Trustor receives any such proceeds of insurance resulting from any casualty, Trustor shall promptly pay over such proceeds to Beneficiary.

(b) Provided no Default has occurred and is continuing and subject to Section 5.7(d), unless Beneficiary has elected to apply the insurance or condemnation proceeds to the payment of the Secured Obligations pursuant to the immediately preceding paragraph, Beneficiary shall permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary; (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work, the income from the Property will be sufficient to pay all expenses and debt service for the Property; (bb) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; and (cc) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust. Trustor hereby acknowledges that the conditions described above are reasonable.

(c) Nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Property as provided in Section 5.8 hereof or restoring all damage or destruction to the Property, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure

or waive any Default or notice of Default under this Deed of Trust or invalidate any act done pursuant to such notice.

(d) Notwithstanding anything to the contrary contained in this Deed of Trust, in the event of any fire or other casualty to the Property or eminent domain proceedings resulting in condemnation of the Property, or any part thereof, Trustor shall have the right to rebuild the Property, and to use all available insurance or condemnation proceeds therefor, provided that (i) such proceeds are sufficient to keep the Loan in balance and rebuild the Property in a manner that provides adequate security to Beneficiary for repayment of the Loan, or if such proceeds are insufficient then Trustor shall have funded any deficiency, (ii) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (iii) no continuing material default then exists by Trustor under the Loan Documents. If the casualty or condemnation affects only part of the Property and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to Beneficiary, in its reasonable discretion, for repayment of the remaining balance of the Loan.

**5.8 Maintenance and Preservation of the Property.** Trustor covenants: (i) to keep the Property in good condition and repair (reasonable wear and tear excepted); (ii) not to remove or demolish the Property or any part thereof, not to alter, restore or add to the Property without Beneficiary's prior written consent; (iii) to complete or restore promptly and in good and workmanlike manner the Property, or any part thereof which may be damaged or destroyed, without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided herein; (iv) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (v) not to commit or permit intentional waste of the Property; (vi) to do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; and (vii) not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects the Property or any part of it without Beneficiary's prior written consent.

**5.9 Defense and Notice of Losses, Claims and Actions.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee and shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any casualty or damage to

the Property, whether or not covered by insurance, and of any condemnation offer or action.

**5.10 Acceptance of Trust; Powers and Duties of Trustee.** Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Beneficiary and presentation of this Deed of Trust or a certified copy thereof for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Trustee may, without liability therefor and without notice: (i) reconvey all or any part of the Property; (ii) consent to the making of any map or plat thereof; and (iii) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding, including, without limitation, actions in which Trustor, Beneficiary or Trustee shall be a party unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability or expense.

**5.11 Compensation; Exculpation; Indemnification.**

(a) Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property after a Default (hereinafter defined) or from any other act or omission of Beneficiary in managing the Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

(b) Trustor agrees to indemnify and defend Trustee and Beneficiary against, and hold Trustee and Beneficiary harmless from, all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this Deed of Trust or performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Trustor to perform Trustor's obligations. The above obligation of Trustor to indemnify, defend and hold harmless Trustee and Beneficiary shall survive the release and cancellation of the

Secured Obligations and the release and reconveyance or partial release and reconveyance of this Deed of Trust.

(c) Trustor shall pay all amounts and indebtedness arising under this Section 5.11 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.

**5.12 Substitution of Trustees.** From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.12 shall be conclusive proof of the proper substitution of such new Trustee.

**5.13 Due on Sale or Encumbrance.**

(a) If the Property or any part thereof or any interest therein is sold, transferred, conveyed, encumbered, mortgaged, or hypothecated in any manner, whether voluntary or involuntary or by operation of law, without the prior written consent of Beneficiary, or if any general partnership interest in Trustor or any interest in any general partner of Trustor is assigned, transferred, hypothecated, pledged or disposed of in any manner, whether voluntary or involuntary or by operation of law, without the prior written consent of Beneficiary, then, Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable.

(b) **Removal of General Partner.** Notwithstanding anything to the contrary contained in the Loan Documents, removal, or withdrawal in lieu of removal, of Trustor's general partner(s) for cause in accordance with Trustor's Amended and Restated Agreement of Limited Partnership (as amended from time to time, the **Partnership Agreement**) shall not require the consent of the Beneficiary and shall not constitute a default under the Loan Documents or accelerate the maturity of the Loan. If such general partner is removed, or withdraws in lieu of removal, Beneficiary shall not unreasonably withhold its consent to the admission of a substitute general partner; provided that if the Administrative Limited Partner (as defined in the Partnership Agreement) designates itself or an affiliate as a substitute general partner, Beneficiary consents to the admission of such substitute general partner shall not be required. Any amendment to Trustor's Partnership Agreement to effectuate such removal and or/withdrawal and such admission of the substitute general partner shall not require Beneficiary consent.

(c) **Assignment of Limited Partner Interests.** Notwithstanding anything to the contrary contained in the Loan Documents, the respective interests of Trustor's Administrative Limited Partner and Investor Limited Partner (as defined in the Partnership Agreement) shall be freely transferable and any amendment to Trustor's Partnership Agreement to effectuate such transfers shall not require Beneficiary consent.

(d) Purchase Option/First Refusal Right. Notwithstanding anything to the contrary contained in the Loan Documents, the execution and delivery of a purchase option agreement shall not constitute a default under any documents evidencing the Loan or accelerate the maturity of the Loan thereunder. Any requisite consent of Beneficiary to (a) the exercise of such purchase option agreement by the optionee thereunder and (b) the assumption without penalty of the Loan obligation by the optionee thereunder, and the release of Trustor from such obligations, shall not be unreasonably withheld. Subject to any such consent requirement, the exercise of the rights under such purchase option agreement shall not constitute a default or accelerate the maturity of the Loan.

(e) Extended Use Agreement. Beneficiary acknowledges that Trustor and the California housing credit agency (the **Credit Agency**) intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the **Code**). As of the date hereof Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Code Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or by instrument in lieu of foreclosure. In the event the extended use agreement required by the Credit Agency is recorded against the Project, the Beneficiary agrees to comply with the provisions set forth in Code Section 42(h)(6)(E)(ii).

5.14 Releases, Extensions, Modifications and Additional Security. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations (**Interested Parties**), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Property and other security for the Secured Obligations, provided, in each case, that an Interested Party's consent shall be required to the extent that any such action would materially alter such Interested Party's rights or obligations under the Loan Documents. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Property.

5.15 Reconveyance. Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully



reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.

5.16 **Subrogation**. Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.

5.17 **Right of Inspection**. Beneficiary, its agents and employees, may enter the Property upon three days' prior written notice and during normal business hours for the purpose of inspecting the Property and ascertaining Trustor's compliance with the terms hereof.

## **ARTICLE 6. DEFAULT PROVISIONS**

6.1 **Default**. For all purposes hereof, the term "**Default**" shall mean (a) at Beneficiary's option, the failure of Trustor to make any payment of principal or interest on the Note or to pay any other amount due hereunder or under the Note within ten days after the same is due and payable, whether at maturity, by acceleration or otherwise following the expiration of all applicable notice and cure periods; (b) the failure of Trustor to perform any other obligation hereunder and does not cure that failure either within 30 days (**Initial Cure Period**) after written notice from Beneficiary or Trustee, or within 90 days after such written notice, so long as Trustor begins within the Initial Cure Period and diligently continues to cure the failure, and Beneficiary, exercising reasonable judgment, determines that the cure cannot reasonably be completed at or before expiration of the Initial Cure Period; (c) the failure to be true of any representation or warranty of Trustor contained herein and the continuance of such failure for any grace period, if any, allowed for such failure, or (d) the existence of any Default.

6.2 **Rights and Remedies**. At any time after Default and the expiration of all applicable notice and cure periods, Beneficiary and Trustee shall each have all the following rights and remedies:

(a) To declare all Secured Obligations immediately due and payable;

(b) Without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons.

(c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such

covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subsection, Trustor waives the defense of laches and any applicable statute of limitations;

(d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;

(e) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, to enter upon, possess, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Property, to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;

(f) To execute a written notice of such Default and of its election to cause the Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, upon proper notice to Trustor as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary may purchase at the sale;

(g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion.

(h) Upon sale of the Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i)

appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Property.

(i) Notwithstanding anything to the contrary contained in the Loan Documents, Beneficiary hereby agrees that any cure of any default made or tendered by the Administrative Limited Partner and/or Investor Limited Partner shall be deemed to be a cure by Trustor and shall be accepted or rejected on the same basis as if made or tendered by Trustor. Copies of all notices which are sent to Trustor under the terms of the Loan Documents shall also be sent to Trustor's Administrative Limited Partner at c/o Alliant Asset Management Company, LLC, 26050 Mureau Road, Suite 110, Calabasas, California 91302, Attention: General Counsel.

Beneficiary agrees that, notwithstanding its rights to invoke the remedies permitted by any Loan Document, Beneficiary shall not, so long as the Investor Limited Partner has a continuing ownership interest in Trustor, conduct a foreclosure sale of the Property or receive a deed-in-lieu of foreclosure, until such time as the Investor Limited Partner has first been given 30 days written notice of such default and has failed, within such 30-day period to cure such default; provided, however, that Beneficiary shall be entitled, during such 30-day period, to continue to accelerate the Note and to pursue its remedies; and provided, further, that if curing such default requires the Investor Limited Partner to remove Trustor's general partner, then such 30-day period shall be extended to 60 days.

**6.3 Remedies Not Exclusive.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any of the Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations

secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy of the Trustee or Beneficiary, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

6.4 **Application of Foreclosure Sale Proceeds.** After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (i) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (ii) to payment of all other Secured Obligations; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

6.5 **Application of Other Sums.** All sums received by Beneficiary under Section 6.2 or Section 3.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 6.2 or Section 3.2, including, without limitation, attorneys' fees, may be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.

6.6 **No Cure or Waiver.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.

6.7 **Payment of Costs, Expenses and Attorney's Fees.** Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by

Trustee and Beneficiary pursuant to subsections (a) through (g) inclusive of Section 6.2 (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any reasonable attorneys' fees.

**6.8 Power to File Notices and Cure Defaults.** Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Leases and Rents in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.

**6.9 Limitation on Partners' Liability.** Neither Trustor nor any partner of Trustor shall have any personal liability hereunder and Beneficiary's recovery against any partner of Trustor shall be limited solely to the collateral given to Beneficiary as security for Trustor's performance and to the general assets of Trustor itself and no deficiency judgment shall be entered against Trustor or any partner of Trustor. Such recovery shall not be a lien, or the basis of a claim of lien or levy of execution, against the general assets of any general or limited partner of Trustor.

## **ARTICLE 7. MISCELLANEOUS PROVISIONS**

**7.1 Reserved.**

**7.2 Financial Statements.** Trustor shall deliver to Beneficiary copies of such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in reasonable detail and at the times required by Beneficiary. All such statements shall be prepared in accordance with the requirements of the Beneficiary and Beneficiary shall have the right to audit and inspect all books and records relating thereto.

**7.3 Trade Names.** At the request of Beneficiary, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names or fictitious business names under which Trustor intends to operate the Property or any business located thereon and representing and warranting that Trustor does business under no other trade names or fictitious business names with respect to the Property. Trustor shall

immediately notify Beneficiary in writing of any change in said trade names or fictitious business names, and will, upon request of Beneficiary, execute any additional financing statements and other certificates necessary to reflect the change in trade names or fictitious business names.

7.4 **Merger.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.

7.5 **Obligations of Trustor, Joint and Several.** If more than one person has executed this Deed of Trust as "**Trustor**", the obligations of all such persons hereunder shall be joint and several.

7.6 **Trustor Waiver of Rights.** Trustor waives to the extent permitted by law, (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale of any portion of the Property, and, (ii) all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created, and (iii) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties; provided, however, nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924c of the California Civil Code.

7.7 **Waiver of Marshalling Rights.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation (**Other Property**) marshalled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.

7.8 **Statements by Trustor.** Trustor and Beneficiary shall, at any time and from time to time upon not less than 30 days prior written notice from the other, execute, acknowledge and deliver to the requesting party a statement (i) stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest; (ii) certifying that this Deed of Trust and the other Secured Obligations are unmodified and in full force and effect or, if modified, stating the nature thereof and certifying that each Secured Obligation, as so modified, is in full force and effect and the date to which principal, interest and other sums secured hereby have been paid and (iii) acknowledging that there are no uncured Default under this Deed of Trust or any other Secured Obligation or specifying such Defaults, if any are claimed. Any such certificate may be conclusively relied upon by the party requesting it and any prospective purchaser or assignee of any Secured Obligation. Either party's failure to deliver such certificate within such time shall be conclusive upon such party that (i) the Secured

Obligations are in full force and effect, without modification, and (ii) there are no uncured Defaults hereunder.

7.9 **Rules of Construction.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term “**Property**” means all and any part of the Property and any interest in the Property.

7.10 **Further Assurances.** Trustor shall promptly make, execute, acknowledge and deliver, in form and substance reasonably satisfactory to Beneficiary, all such additional instruments, agreements and other documents, and Trustor shall do all other acts as may at any time hereafter be requested by Beneficiary, to effectuate and carry out the purposes of this Deed of Trust and each of the Secured Obligations; provided, however, that no such additional instruments, agreements or other documents shall change the economic terms of the transactions described herein or expand the liability of the parties hereunder.

7.11 **Successors in Interest.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.11 does not waive or modify the provisions of Section 5.13.

7.12 **Execution in Counterparts.** This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered to Beneficiary, will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

7.13 **Governing Law.** This Deed of Trust shall be construed in accordance with the laws of the State of California, except to the extent that Federal laws apply and preempt the laws of the State of California.

7.14 **Incorporation.** All Exhibits attached hereto are incorporated into this Deed of Trust by this reference.

7.15 **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by commercial courier service, charges prepaid. Notices so sent shall be deemed given when actually received at the addresses set forth below. For purposes of notice, the addresses of the parties shall be:

Trustor:

1538 E. Clinton Ave., L.P.  
20750 Ventura Boulevard, Suite 155  
Woodland Hills, California 91364  
Attention: Executive Director

With copy to:

c/o Alliant Asset Management Company LLC  
26050 Mureau Road, Suite 110  
Calabasas, CA 91302  
Attention: General Counsel  
And a copy to:

Chernove & Associates, Inc.  
16027 Ventura Boulevard, Suite 515  
Woodland Hills, California 91436  
Attention: Sheldon B. Chernove, Esq.

Beneficiary:

City of Fresno  
Fresno City Hall  
2600 Fresno Street, Room 2084  
Fresno, California 93721  
Attention: City Manager

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 30 days' notice to the other party in the manner set forth hereinabove. Trustor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Property or to Trustor naming Beneficiary, "Lender" or the "Construction Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Trustor to perform its obligations to Beneficiary under the Note.

[SIGNATURE ON NEXT PAGE]



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

TRUSTOR:

**1538 E. CLINTON AVE., L.P.,**  
a California limited partnership

By: Corporation for Better Housing,  
a California nonprofit public benefit corporation,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

State of California

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## **EXHIBIT A to DEED OF TRUST**

### **LEGAL DESCRIPTION**

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

The land referred to is situated in the County of Fresno, City of Fresno, State of California, and is described as follows:

#### **PARCEL ONE:**

The East 60 feet of the West 120 feet of the North 130 feet of Lot 19 of Poppy Colony, according to the map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, Fresno County Records.

Excepting therefrom that portion thereof which may lie within the exterior boundaries of East Clinton Avenue, as widened.

APN: 444-092-04

#### **PARCEL TWO:**

That portion of Lot 19 of Poppy Colony according to the map thereof filed for record June 10, 1902, in Book 2 Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:

Commencing at the Southwest corner of said Lot 19; thence East along the South line of said Lot 19, 300 feet to the true point of beginning; thence North and parallel with the West line of said Lot 19 a distance of 149.99 feet to a point; thence East and parallel with the South line of said Lot 19 a distance of 60 feet to a point; thence South and parallel with the East line of said Lot 19 a distance of 149.93 feet to a point on the South line of said Lot 19; thence West along the South line of said Lot 19 a distance of 60 feet to the true point of beginning.

APN: 444-092-05

#### **PARCEL THREE:**

Parcel D of Lot Line Adjustment No. 2018-40, as Document Number 2019-0060832 of Official Records of Fresno County, and more particularly described as follows:

Lot 19 of Poppy Colony, according to the map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, Fresno County Records;

EXCEPTING THEREFROM the East 60 feet of the West 120 feet of the North 130 feet of said Lot;

ALSO EXCEPTING THEREFROM the following: Commencing at the Southwest corner of said Lot 19; thence East along the South line of said Lot 19, 300 feet to the true point of beginning, thence North and parallel with the West line of said Lot 19, a distance of 149.99 feet to a point; thence East parallel with the South line of said Lot 19, a distance of 60 feet to a point; thence South and parallel with the East line of said Lot 19, a distance of 149.93 feet to a point on the South line of said Lot 19; thence West along the South line of said Lot 19 a distance of 60 feet to the true point of beginning;

ALSO EXCEPTING THEREFROM that portion of Lot 19 of Poppy Colony according to the Map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:

BEGINNING at the Southeast corner of said Lot 19, thence North  $89^{\circ}58'31''$  West along the South line of said Lot 19, a distance of 96.98 feet; thence North  $00^{\circ}35'35''$  East, a distance of 128.47 feet; thence South  $89^{\circ}22'31''$  East, a distance of 66.44 feet; thence South  $53^{\circ}21'23''$  East, a distance of 6.88 feet; thence South  $89^{\circ}22'31''$  East, a distance of 25.00 feet to the East line of said Lot 19; thence South  $00^{\circ}36'27''$  West along the East line of said Lot 19, a distance of 123.40 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM that portion of Lot 19 of Poppy Colony according to the Map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:

Commencing at the Southeast corner of said Lot 19, thence North  $00^{\circ}36'27''$  East along the East line of said Lot 19, a distance of 169.00 feet to the TRUE POINT OF BEGINNING; thence North  $89^{\circ}19'39''$  West, a distance of 35.50 feet; thence Southwesterly along a tangent curve, concave Southerly, having a radius of 215.00 feet, through a central angle of  $17^{\circ}18'28''$ , a distance of 64.95 feet; thence North  $00^{\circ}35'35''$  East, a distance of 88.54 feet; thence Northwesterly along a tangent curve, concave Southwesterly, having a radius of 14.00 feet, through a central angle of  $94^{\circ}00'23''$ , a distance of 22.97 feet; thence North  $89^{\circ}22'31''$  West, a distance of 90.16 feet; thence North  $00^{\circ}35'35''$  East, a distance of 35.98 feet to the North line of said Lot 19; thence South  $89^{\circ}53'08''$  East, along the North line of said Lot 19, a distance of 204.66 feet to the Northeast corner of said Lot 19; thence South  $00^{\circ}36'27''$  West along the East line of said Lot 19, a distance of 130.65 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM that portion of Lot 19 of Poppy Colony according to the Map thereof filed for record June 10, 1902, in Book 2, Page 22 of Record of Surveys, in the Office of the County Recorder of said County, described as follows:

Commencing at the Southeast corner of said Lot 19, thence North 00°36'27" East, along the East line of said Lot 19, a distance of 169.00 feet to the TRUE POINT OF BEGINNING; thence North 89°19'39" West, a distance of 35.50 feet; thence Southwesterly along a tangent curve, concave Southerly, having a radius of 215.00 feet, through a central angle of 17°18'28", a distance of 64.95 feet; thence North 00°35'35" East, a distance of 88.54 feet; thence Northwesterly along a tangent curve, concave Southwesterly, having a radius of 14.00 feet, through a central angle of 94°00'23", a distance of 22.97 feet; thence North 89°22'31" West, a distance of 90.16 feet; thence North 00°35'35" East, a distance of 35.98 feet to the North line of said Lot 19; thence North 89°53'08" West, along the North line of said Lot 19, a distance of 79.43; thence South 00°35'35" West, a distance of 64.11 feet; thence South 89°22'31" East, a distance of 79.43 feet; thence South 00°35'35" West, a distance of 235.15 feet to the South line of said Lot 19; thence South 89°58'31" East, along the South line of said Lot 19, a distance of 107.61 feet; thence North 00°35'35" East, a distance of 128.47 feet; thence South 89°22'31" East a distance of 66.44 feet; thence South 53°21'23" East, a distance of 6.88 feet; thence South 89°22'31" East, a distance of 25.00 feet to the East line of said Lot 19; thence North 00°36'27" East along the East line of said Lot 19, a distance of 45.60 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM the Northerly 10 feet thereof.

APN: 444-092-28

## EXHIBIT "H"

### Form of Loan Agreement

#### **LOAN AGREEMENT**

THIS AGREEMENT (this Agreement) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2022, between 1538 E. CLINTON AVE., L.P., a California limited partnership (the Owner) and the CITY OF FRESNO, a municipal corporation (the City).

#### **RECITALS**

A. Pursuant to Resolution No. 2021-181 of the Council of the City of Fresno, California adopted on June 24, 2021, the City has approved an award to Owner in the sum of \$3,000,000 (the Funds) for the purpose of acquiring and developing a 78-unit affordable rental housing development to be known as Clinton Avenue Apartments (the Project).

B. The City wishes to loan, and Owner wishes to borrow, the Funds for the Project upon the terms and conditions contained herein.

NOW, THEREFORE, the City and Owner agree as follows:

1. Loan. The City agrees to loan the proceeds of the Funds to Owner, and Owner agrees to borrow the proceeds of the Funds, subject to the following terms and conditions:

(a) The City shall loan the proceeds of the Funds to Owner pursuant to the form promissory note and secured deed of trust attached hereto as Exhibits A and B, respectively.

(b) Owner shall not use the Funds in a manner or for purposes other than the acquisition and development of the Project.

(c) The City shall not disburse any proceeds of the Funds to Owner until Owner has executed documents in substantially similar form and substance as Exhibits A and B hereto.

2. DISBURSEMENTS. The City shall fully disburse the Funds to Owner within 10 days upon issuance of a certificate of occupancy for the Project; provided, however, if a temporary certificate of occupancy is issued for the Project, then the City shall hold back an amount equal to ten percent (10%) of the Funds until such time as a final certificate of occupancy for the Project is issued. Owner shall use such disbursed Funds only for purposes in connection with the payment of certain acquisition, development and construction costs and expenses incurred in connection with the acquisition and development of the Project.

3. INDEMNIFICATION. Owner covenants that Owner shall defend, indemnify and hold harmless the City and all officers, trustees, agents, elected officials, and employees of the same (the Indemnitees), from and against any and all claims, losses, costs, damages, or liabilities of any kind or nature, whether direct or indirect, arising from or relating to the loan of the proceeds described herein.

4. OWNER COOPERATION WITH THE CITY. Owner covenants to cooperate with the City and respond promptly to all requests by the City in connection with the development of the Project as provided hereunder. Owner shall develop the Project as affordable housing at the affordability levels approved by the California Tax Credit Allocation Committee for a term of fifty-five (55) years from initial occupancy. This Agreement binds Owner to provide a low-income housing program in substantial compliance with Exhibit C.

5. OWNER'S DEFAULT AND RIGHT TO CURE. Upon receipt of written notice from the City of any default hereunder, Owner shall cure such default within 30 calendar days, provided, that so long as Owner has commenced to cure within the allotted time above, Owner shall have a reasonable period thereafter within which to fully cure the default. The parties hereby further agree that any cure tendered or made by a third party on behalf of a party shall be accepted or rejected on the same basis as if tendered or made by a party.

6. THE CITY'S REMEDIES. Should Owner fail to cure a default under this Agreement pursuant to Section 5 above, in addition to other rights and remedies permitted by the Agreement or applicable law, the City, in its sole discretion, may proceed with any or all of the following remedies in any order or combination:

- (a) Bring an action in equitable relief seeking specific performance by Owner of the terms and conditions of this Agreement;
- (b) Enjoin, abate, or prevent any violation of said terms and conditions of the Agreement;
- (c) Seek declaratory relief;
- (d) Bring an action for return of any funds disbursed to Owner that Owner has not used pursuant to the terms of this Agreement;
- (e) Terminate this Agreement and cease to disburse funds;
- (f) Pursue any other remedy allowed at law or in equity.

7. GOVERNING LAW AND VENUE. This Agreement shall be interpreted under and governed by the laws of the State of California. A party must bring any legal action in the Superior Court of Fresno, in an appropriate municipal court in Fresno County, or in the United States District Court serving Fresno County.

8. NO WAIVER. Any waiver by either the City or Owner of any obligation in this Agreement must be in writing. No waiver shall be implied from any delay or failure of the City or Owner to take action on any default by the other party or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City or Owner to any act or omission by the other party shall not be construed to be consent to any other act or omission or to waive the requirement for the City or Owner's written consent to future waivers.

9. NOTICES. All notices, requests and demands given to or made upon the respective parties shall be deemed to have been given or made when upon deposit with

any overnight delivery service, or three days after deposit with certified mail, return receipt requested, and addressed as follows:

Owner: 1583E. Clinton Ave., L.P.  
c/o Corporation for Better Housing  
20750 Ventura Boulevard, Suite 155  
Woodland Hills, California 91364  
Attention: Executive Director

With a copy to:

Chernove & Associates, Inc.  
16027 Ventura Boulevard, Suite 515  
Encino, California 91436  
Attention: Sheldon B. Chernove, Esq.

And a copy to:

Alliant Asset Management Company LLC  
26050 Mureau Road, Suite 110  
Calabasas, California 91302  
Attention: General Counsel

Grantor: City of Fresno  
Fresno City Hall  
2600 Fresno Street, Room 2084  
Fresno, California 93721  
Attention: City Manager

10. BINDING UPON SUCCESSORS. All provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this Agreement by Owner without the City's consent. The term "Owner" as used in this Agreement shall include all assigns, successors-in-interest, and transferees of Owner.

11. RELATIONSHIP OF PARTIES. The relationship of the City and Owner under this Agreement is and shall remain solely that of a lender and borrower under a loan agreement and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. The City neither undertakes nor assumes any responsibility or duty to Owner (except as provided herein) or to any third party with respect to the matters described herein. Owner shall have no authority to act as an agent of the City or to bind the City to any obligation.

12. AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Agreement must be in writing and shall be effective only if executed by both the City and Owner.



13. TIME. Time is of the essence in this Agreement.
14. INTEGRATION. This Agreement contains the entire agreement of the parties and supersedes any and all prior negotiations.
15. SEVERABILITY. If any provision of this Agreement shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired by such holding.
16. EXECUTION OF COUNTERPARTS. This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; provided, however, that only the counterpart delivered to the City shall be deemed the original.

[SIGNATURE PAGE IS THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first hereinabove written.

THE CITY:  
CITY OF FRESNO,  
a California municipal corporation

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

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Tracy N. Parvanian                      Date  
Senior Deputy City Attorney

ATTEST:  
TODD STERMER, CMC  
City Clerk

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

OWNER:  
1538 E. CLINTON AVE., L.P., a  
California limited partnership

By: Corporation for Better Housing, a  
California nonprofit public benefit  
corporation,  
Its General Partner

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

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

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

Attachments:  
Exhibit A – Form of Promissory Note  
Exhibit B – Form of Deed of Trust  
Exhibit C – TCAC Staff Report