

Agenda Item: ID#17-1603 (1:30 P.M.)

Date: 12/7/17

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Item(s) – ID#17-1603 (1:30 P.M.)

Contents of Supplement:

- Amended Staff Report
- Amended Resolution Approving Interfund Loan Agreement
- Amended 37th Amendment to the AAR
- Amended First Amended and Restated OPA

JOINT MEETING OF THE CITY OF FRESNO, THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, AND FRESNO REVITALIZATION CORPORATION

Actions pertaining to the Owner Participation Agreement with 1501 N. Blackstone Avenue, L.P.:

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.

**JOINT MEETING OF THE CITY OF FRESNO, THE SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, AND FRESNO REVITALIZATION
CORPORATION**

December 7, 2017

FROM: ESMERALDA SORIA, Vice President
City Council Offices

BY: MARLENE MURPHEY, Executive Director

SUBJECT

..Title

Actions pertaining to the Owner Participation Agreement with 1501 N. Blackstone Avenue, L.P.:

- 1.***RESOLUTION – Approving an Interfund Loan Agreement between the Transportation Department (FAX) and the Low and Moderate Income Housing Asset Fund (Requires 5 affirmative votes) (Subject to Mayor's veto) (Council and FRC action)
- 2.***RESOLUTION – 37th amendment to the Annual Appropriation Resolution (AAR) No. 2017-165 to appropriate \$600,000 for the project at 1501 N. Blackstone Avenue, L.P. (Requires 5 affirmative votes) (Subject to Mayor's veto) (Council and FRC action)
- 3.***RESOLUTION – 38th amendment to the Annual Appropriation Resolution (AAR) No. 2017-165, to appropriate \$500,000 to fund the Project at 1501 N. Blackstone Avenue, L.P. (Requires 5 affirmative votes) (Subject to Mayor's veto) (Council action)
4. Approve the First Amended and Restated Owner Participation Agreement with 1501 N. Blackstone Avenue, L.P. (Council and FRC action)

..Body

RECOMMENDATION

The City of Fresno and City in its capacity as Housing Successor to the Redevelopment Agency recommend approval of a Resolution of an Interfund Loan Agreement between the Transportation Department (FAX) and the Low and Moderate Income Housing Asset Fund; Amendment to the Annual Appropriation Resolution (AAR) No 2017-165 to appropriate \$600,000; Amendment to the Annual Appropriation Resolution (AAR) No 2017-165 to appropriate \$500,000; and, approval of the First Amended and Restated Owner Participation Agreement with 1501 N Blackstone Avenue, L. P. .

EXECUTIVE SUMMARY

The First Amended and Restated Owner Participation Agreement (OPA) with 1501 N Blackstone L.P. is for a mixed use of affordable housing and retail development located on the west side of Blackstone between McKinley and Home Avenues. The OPA will address affordable housing goals set forth in SB 341 and will redevelop an underutilized, unattractive infill site along the Blackstone Avenue Bus Rapid Transit Corridor with proximity to transportation and schools including Fresno City College. The Interfund Loan Agreement and Appropriation Resolutions combine with other sources to complete project funding.

BACKGROUND

Introduction

In the past few years, the City of Fresno has taken significant steps in responding to the changing needs of its growing population and the challenges that come with it. The various planning documents prepared within the last decade lay the framework for a responsible growth strategy that is focused around smart growth principles, a multi-modal transportation approach, complete neighborhood concept and development that promotes fiscal stability. The 2015 General Plan adopted in 2014 recommends strategies for addressing the city's challenges and capitalizing on its opportunities and assets.

The City has committed capital investment in public improvements and recognizes the need to: invest for long term sustainable equitable economic growth; incentivize infill development; create strategic partnerships; and, up-zone land along Bus Rapid Transit (BRT) corridors to attract investment.

The Blackstone McKinley project is an important step in realizing the vision and direction set forth in the General Plan through transit supportive infill development. The Project, situated at two major intersections along future high quality BRT stops, will be a catalyst project within an infill area. The project will help achieve important public policy objectives of both the City and the San Joaquin Valley Air Pollution Control District (SJVAPCD).

Project Description

In January 2016 the City as Housing Successor approved an Owner Participation Agreement with 1501 N Blackstone Ave L.P. Since that time the developers and City have worked to improve the project scope, funding and feasibility resulting in the proposed First Amended and Restated Owner Participation Agreement. The Agreement would lead to the development of eighty eight (88) multifamily residential units and 7,500 square feet of ground floor retail situated in two, four story buildings served by 112 on-grade, on-site parking spaces. The site of approximately three acres is located on the Bus Rapid Transit Corridor on the west side of Blackstone between McKinley Avenue on the north and Home Avenue on the South. The project site is zoned Neighborhood Mixed Use and is proposed for 30.8 units per acre.

The residential portion of the development is proposed to consist of 88 units in a mix of twenty seven (27) one bedroom units; twenty nine (29) two bedroom units, thirty one (31) three bedroom units and a managers unit. In terms of affordability 18 units shall be available to households earning 30% of AMI or less, 35 units shall be available to households earning 50% of AMI or less and 34 units shall be available to households earning 60% of AMI or less. As shown in Exhibit C the various unit sizes (i.e. 1, 2 and 3 bedrooms) are available at every affordability level (i.e. 30%, 50% and 60%). The affordable units will be covenanted for a period of fifty five (55) years. The Project will be designed as both a LEED Gold Certified and net-zero-energy mixed use project in which the development generates as much on site energy as it consumes.

The majority of commercial space is being sought by Clinica Sierra for medical and health related services. The balance of space is being considered for lease to the City of Fresno to serve as a 2,000 square foot senior center for a term of 15 years at \$1.00 per year. Fresno City College intends to provide intern programs through both Clinica Sierra and the senior center.

The Blackstone McKinley mixed use project would be developed and owned by 1501 N Blackstone L.P. a California limited partnership comprised of : Integrated Community Development LLC a California limited liability company, the “ Administrative General Partner “; the Corporation for Better Housing a California a non-profit corporation “Managing General Partner”; and, Kavigam Inc, a California corporation , the Limited Partner who will be replaced at the time of tax credit syndication by the tax credit investor.

Integrated Community Development LLC, a real estate development company, and the Corporation for Better Housing, a 501 (c) (3) are experienced affordable housing developers headquartered in Woodland Hills California. Integrated Community Development LLC is headed by Charles Brumbaugh, Principal, Ben Lingo, Principal and Jake Lingo, Senior Vice President. Together, Integrated Community Development LLC and Corporation for Better Housing have constructed over 3,900 units in 59 projects throughout California since 1997. Locally they have 330 units in operation in Fresno County.

Financing

The total project costs are estimated at \$38,302,248. The financing plan consists of: \$12,627,600 from Affordable Housing Sustainable Communities (AHSC) program administered by the California Housing and Community Development Commission (HCD); a request of \$3,158,000 from permanent conventional loan financing through Cal HFA; \$1,760,000 from CalHFA Earned Surplus (soft loan); \$329,000 from the City of Fresno in the form of an impact fee exemption pursuant to the Economic Expansion Act (FMC 12-4.1400); \$500,000 contribution from the City of Fresno General Fund; \$478,000 from the City of Fresno in off-site improvements; \$2,200,000 residual receipts loan from the Housing Successor's Low and Moderate Income Housing Asset Fund (LMIHAF); a \$1,843,572 grant from the San Joaquin Valley Air Pollution Control District; \$3,064,446 from Deferred Developer Fees; and, \$12,341,790 from tax credit equity from the low income housing 4% tax credit program. Subject to review and concurrent of the City Manager and Public Works Director, Owner shall additionally apply for certain public improvements through AHSC funding.

- ***AHSC Application***

The AHSC is funded by the greenhouse gas reduction fund and seeks to reduce emissions through the projects that it funds. The developer will be applying for \$12,627,600 from AHSC for Transit Oriented Affordable Housing Development. The application requires that in addition to the affordable housing component at least one other type of eligible Capital Project/ Program Cost be included in the funding request. The eligible projects are: Sustainable Transportation Infrastructure; Transportation Related Amenities; and, Programs (such as bike sharing). It is a singular application that provides loans for the affordable housing development component and grants for the transportation-related infrastructure, amenities and programs. The potential grant award amount is influenced by the project's greenhouse gas emission reduction. The transportation award from the SJVAPCD (discussed below) gives evidence of the potential emission reduction from this project and significantly improves the competitive position of the AHSC application. The developer is working with the SJVAPCD and City of Fresno Public Works staff to prepare the transportation infrastructure component of the AHSC application. The Public Works Department has preliminarily identified several improvements for submission including sidewalks and bike lanes in the neighborhood and along Blackstone, Maroa and Clinton Avenues. The developer estimates that the grant request holds the potential for an award of between \$2.5 and \$4 million to the City of Fresno for improvements.

- ***Housing Successor LMIHAF***

The terms of the Housing Successor's Low and Moderate Income Housing Asset Fund Loan of \$2,200,000 are as follows: the principal amount of the loan will be \$2,200,000; the loan will mature fifty -five years after the "payment commencement date" (May 15 of the year immediately following the Certificate of Occupancy); and, the loan will bear a 3% per annum interest rate with interest accruing as of the payment commencement date. Repayment of the loan starts on May 15th of the year that is one year after the certificate of occupancy and is based upon residual receipts. At loan maturity the entire remaining unpaid balance of principal with interest is due and payable.

- *Other City Contributions*

The \$2,200,000 loan includes a \$600,000 Interfund Loan from the City of Fresno's Transportation Department (FAX) to the Housing Successor's Low and Moderate Income Housing Asset Fund. The \$600,000 loan to be made at 2.75%, fixed monthly, and will be effective upon the date which the developer has satisfied conditions precedent to the City's obligation to perform as set forth in the Amended and Restated OPA. The loan will be repaid to the Transportation Department (FAX) by the Housing Successor LMIHAF over a 4 year period. In addition, the City of Fresno proposes to contribute \$500,000 at no interest from the remaining EDA grant match from the General Fund that was placed into an affordable housing fund as part of the Fiscal Year 2018 budget adoption. Lastly the City is providing \$329,000 in the form of an impact fee exemption and \$478,000 in off-site improvements.

- *San Joaquin Valley Pollution Control District*

The San Joaquin Valley Air Pollution Control District (SJVAPCD) has preliminarily awarded a grant of \$1,843,572.36 to the City of Fresno for the construction of the Blackstone and McKinley Transit Oriented Development Project (C-53862-A). The grant is being awarded under the District's Public Benefit Grants Program—Community Improvement Projects that Reduce Vehicle Use and Emissions Component. The City has agreed for the grant to be passed through to the developer for construction of the project.

Performance Schedule

The performance schedule (Exhibit B) estimates the AHSC funding application date of January 2018 with a an estimated award date of June 2018 followed by application for 4% tax credits in July 2018 with an award date of September 2018. The building plans are proposed to be submitted in September 2018 with the commencement of construction and loan disbursement in March 2019. The project completion date is scheduled for September 2020.

OPA Highlights

The OPA sets forth conditions precedent to the Housing Successor and City obligations. Chief among these conditions are the following:

1. The owner provides acceptable evidence of property ownership;
2. The Owner has entered into (and provides evidence of) agreements with any and all funding sources and the general contractor for the project; and,
3. The owner has provided evidence that the combined monies from the various funding sources are not less than the greater of the total development cost or the amount which the City determines is necessary to complete the project.

Implementation of Plans and Policies

The development supports and helps implement numerous public policy objectives related to transportation and land use practices that reduce air pollution, increase transit ridership, support infill and increase accessibility to jobs, housing and urban services.

The Blackstone McKinley Project's 88 units help to meet the City Housing Element's Regional Housing Needs Allocation (RHNA) quantified 2015-2023 Objectives for 7,971 extremely low, very low and low income affordable housing units. In addition to quantified goals, the project helps to meet numerous objectives and policies outlined in the City's Housing Element including those to: encourage development of residential uses in strategic proximity to employment, schools and transportation routes; promote the development of affordable housing near transit and/or smart growth areas; facilitate housing development that is affordable to extremely low and very low income households; promote and encourage sustainable development and green building practices; and, provide incentives for residential projects constructed specifically for lower income households.

The proposed project helps to fulfill SB 341 affordable housing goals and its most challenging expenditure requirements wherein at least 30% of the Housing Successor's LMIHAF must be spent for the development of rental housing affordable to and occupied by extremely low income households earning 30% or less of AMI; and, wherein 50% of LMIHAF must be spent for very low income households earning 50% or less of AMI. Eighteen of the 88 units are earmarked for households earning 30% or less of AMI and all of the LMIHF are designated for these units. In addition, in consideration of the OPA the Housing Successor will also receive 55 year affordability covenants on the remaining 69 units of which 35 and 34 serve very low and lower income households respectively. The Project provides affordable housing to the lowest income groups as envisioned and required by SB 341 for expenditure of LMIHA funds.

ENVIRONMENTAL FINDINGS

This project was determined to be statutorily exempt from the requirements of CEQA pursuant to CEQA Guidelines section 15061(b)(3) because it was determined with certainty that there is no possibility the project will have a significant effect on the environment. Council adopted an exemption pursuant to this section on January 14, 2016. The project description has not substantially changed since that action and no additional environmental review is required.

LOCAL PREFERENCE

The local preference is not applicable because this is not a contract for goods, services or public works of improvement.

FISCAL IMPACT

The \$2.2 million provided by the Housing Successor is available through the adopted FY 17-18 budget (\$1.6 million) and the Interfund Loan Agreement (\$600,000); a \$500,000 contribution in the from the City of Fresno General Fund; \$478,000 from the City of Fresno in off-site improvements; and \$329,000 from the City of Fresno in the form of an impact fee exemption.

Attachments:

- Resolution Approving the Interfund Loan Agreement
- Resolution Amendment number 37th of AAR
- Resolution Amendment number 38 of AAR
- First Amended and Restated OPA
- Vicinity Map

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, APPROVING AN INTERFUND
LOAN AGREEMENT BETWEEN THE TRANSPORTATION
(FAX) DEPARTMENT AND THE LOW AND MODERATE
INCOME HOUSING ASSET FUND

WHEREAS, on December 3, 2009, the Council adopted the Taxpayer Protection Act, amended February 10, 2010, which provides in Article IV that borrowing between City funds requires a loan agreement with interest paid at the current investment pool rate and with a maximum repayment term of five years; and

WHEREAS, the City of Fresno on March 31, 2011, adopted the Reserve Management Act, which provides in Article VI that loans between the General Fund and another City fund require a loan agreement that shall be approved by majority vote of the Council; and

WHEREAS, Council now wishes to authorize an interfund loan from the Transportation (FAX) Department to the Low and Moderate Income Housing Asset Fund for the purpose of providing funding to an affordable housing project at 1501 N. Blackstone Avenue.

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

1. The Council approves the Interfund Loan Agreement attached in the form attached hereto as Exhibit A.
2. The Controller is authorized and directed to take all necessary actions to implement the Interfund Loan Agreement.

* * * * *

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

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2017.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2017
Mayor Approval/No Return: _____, 2017
Mayor Veto: _____, 2017
Council Override Vote: _____, 2017

YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Katie Doerr [Date]
Chief Assistant City Attorney

Attachment: Exhibit A

KBD:ns [77472ns/kbd]

Exhibit A
INTERFUND LOAN AGREEMENT

This Loan Agreement (Agreement) is executed as of _____, 2017, between the City of Fresno Low and Moderate Income Housing Asset Fund (Fund No. _____) (Borrower) and the City of Fresno Transportation (FAX) Department (Fund No. _____) (Lender). Lender agrees to lend to Borrower, and Borrower agrees to repay Lender the Principal Loan Amount, in accordance with the following:

1. **Purpose of the Loan:** To provide funds for use by the Borrower or its designee to provide funding to an affordable housing project at 1501 N. Blackstone Avenue., which is the subject of a First Amended and Restated Owner Participation Agreement (OPA) dated _____, 2017, between 1501 N. Blackstone, L.P., (Developer) and the Borrower.

2. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the Borrower affirms the Developer has satisfied conditions precedent to Borrower's obligation to perform as set forth in the OPA. Monies will be transferred between funds on the Effective Date.

3. **Principal Loan Amount:** Six Hundred Thousand and no/100 Dollars (\$600,000). The loan will be recorded as receivable to the Lender and payable to the Borrower.

4. **Term of the Loan:** The term of this loan shall be four years, beginning on the Effective Date, and shall be repaid in full as of _____, 202__.

5. **Scheduled Payments.** Borrower shall make payments annually against principal and interest. The first payment shall commence on the date that is one year from the Effective Date of this Agreement. At a minimum, each annual scheduled payment shall equal the amount of any accrued interest through the date of payment, plus a principal payment equal to one-fourth (1/4) of the original principal amount. Payments will be credited first to interest then due, and then to principal. Borrower may make partial or complete payment of principal and accrued interest at any time before its due date and without any prepayment penalty.

6. **Source of Repayment.** Repayment shall be from project loan repayment proceeds, and/or loan repayment revenue pursuant to California Health & Safety Code section 34191.4(b), and shall be contingent upon receipt of funds sufficient to repay scheduled obligations under this Agreement when due.

7. **Rate of Interest.** Interest shall accrue at a rate of 2.75%, fixed monthly, calculated and accrued in the same manner that the City would otherwise earn interest on the funds if deposited and earning interest as a pooled investment. Loan interest will be recorded as revenue to the Lender and expenditure to Borrower.

8. **General Provisions.** This Agreement constitutes the full Agreement by and between the parties and no other representations have been made regarding the contents of this Agreement. This Agreement shall not be amended, modified, or altered

in any respect unless such amendment, modification, or alteration has been reduced to writing and executed by both parties.

LENDER

BORROWER

Jim Schaad, Director
Transportation (FAX) Department

Marlene Murphey, Executive Director
City of Fresno in its capacity as Housing
Successor to the Redevelopment Agency
of the City of Fresno

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO
ADOPTING THE 37th AMENDMENT TO THE ANNUAL
APPROPRIATION RESOLUTION NO. 2017-165 APPROPRIATING
\$600,000 TO FUND THE PROJECT AT 1501 N. BLACKSTONE
AVENUE, L.P.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRESNO:

THAT PART III of the Annual Appropriation Resolution No. 2017-165 be and is hereby
amended as follows:

	<u>Increase/(Decrease)</u>
TO: TRANSPORTATION DEPARTMENT	
Fresno Transit Operating	\$ 600,000

THAT account titles and numbers requiring adjustment by this Resolution are as follows:

Fresno Transit Operating

Revenues:

Account: 39008 Refunds--Current Year	\$ <u>600,000</u>
Fund: 43502	
Org Unit: 453001	

Total Revenues	\$ <u>600,000</u>
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Appropriations:

Account: 58012 Loans From City To O/S Agency	\$ <u>600,000</u>
Fund: 43502	
Org Unit: 453001	

Total Appropriations	\$ <u>600,000</u>
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THAT the purpose is to appropriate \$600,000 fund the project at 1501 N. Blackstone
Avenue, L.P.

CLERK'S CERTIFICATION

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

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the _____ Day of _____, 2017

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Approval: _____, 2017

Mayor Approval/No Return: _____, 2017

Mayor Veto: _____, 2017

Council Override Veto: _____, 2017

YVONNE SPENCE, MMC
City Clerk

BY: _____
Deputy

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

Field Code Changed

City of Fresno as Housing Successor to the
Redevelopment Agency of the City of Fresno
848 M Street, 3rd Floor
Fresno, Ca. 93721
Attention: Executive Director

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

By: _____
Its: Executive Director

Dated: _____

FIRST AMENDED AND RESTATED
OWNER PARTICIPATION AGREEMENT

by and among

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

and

1501 N. BLACKSTONE AVE., L.P., a California limited partnership

Blackstone and McKinley Mixed Use Development

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 Regulatory Agreement and Declaration of Covenants and Restrictions
7. Exhibit G: Form of Promissory Note
8. Exhibit H: Form of Deed of Trust
9. Exhibit I: Waived COF Impact Fees

FIRST AMENDED AND RESTATED OWNER PARTICIPATION AGREEMENT

THIS FIRST AMENDED AND RESTATED 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, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno (City), and 1501 N. BLACKSTONE AVE. L.P., a California limited partnership (Owner).

RECITALS

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

A. This Agreement supersedes the Owner Participation Agreement dated January 15, 2016.

B. City is the housing successor in interest to the Redevelopment Agency of the City of Fresno (Former RDA) pursuant to Resolution No. 2012-12, and as such assumes all housing rights and obligations of the Former RDA; and

C. City is responsible for administration of the Low and Moderate Income Housing Asset Fund pursuant to Sections 34176 and 34176.1 of the Health & Safety Code, as amended most recently by Senate Bill 341, effective on January 1, 2014.

D. 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 1501-1531 North Blackstone Avenue and 1631 East Home Avenue, Fresno, California (the Project). The Property and Project are located within the territorial jurisdiction of the City.

E. Owner proposes to develop a new mixed use project on the Property consisting of eighty-eight (88) residential rental units (comprised of 1 manager's unit at market rate and 87 Affordable Units, as defined below) and 7,500 square feet of ground floor retail. The Project shall be designed as both a LEED Gold Certified and net-zero energy mixed use project in which the development generates as much on-site energy as it consumes. Sixty-nine (69) units shall be available to households earning 60% or less of the Area Median Income (AMI), and eighteen (18) units shall be available to households earning 30% or less AMI (collectively, the Affordable Units). The Affordable Units are to be rented and preserved as Affordable Rental Housing for a period of fifty five (55) years. As a condition of this Agreement, the Owner will provide transit passes at no charge to Owner's tenants for a minimum of three years.

F. 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).

G. To the extent Housing Set Aside Funds will exceed 50 percent of the cost of producing the Affordable Units, the City has determined based on substantial evidence, that the use of the Funds is necessary because the City or Owner of the Affordable Units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity. The Project is not feasible and cannot be completed and restricted to the affordable rental housing purposes and uses provided under Law and this Agreement absent the financial support of the City.

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, cannot otherwise be reasonably paid for or financed solely through private financing, and are necessary to eliminate blight.

I. City is willing to assist Owner's construction of the Affordable Units by making available to Owner as a loan certain Low to Moderate Income Housing Asset Funds in the amount of up to \$2,200,000 (the "Loan") upon the terms and conditions specified in this Agreement. The Loan is comprised of an original \$1,500,000 loan from the City, an additional \$100,000 from the City, and \$600,000 from an Interfund Loan Agreement between the COF's Transportation (FAX) Department and the Low and Moderate Income Housing Asset Fund. The Loan shall be allocated such that \$2,200,000 shall secure affordability covenants on the Affordable Units comprised of eighteen (18) units available to extremely low income families (30% AMI), and in addition, in consideration of this Agreement, affordability covenants on the sixty-nine (69) units available to lower income families (60% AMI).

J. 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 a specimen of which is attached hereto as Exhibit "G". 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 Restrictions and Deed of Trust, attached hereto as Exhibit "H," which shall be recorded against and run with and encumber the Property. Said Agreement, Restrictions and Deed of Trust shall be recorded concurrent with construction loan closing.

K. In addition to the Loan, the City of Fresno, a municipal corporation not acting in its capacity as the Housing Successor to the Redevelopment Agency (COF) is willing to provide further financial assistance to the Owner in the form of \$500,000 from the remaining EDA grant match from the COF's general fund that was placed into an affordable housing fund as part of the Fiscal Year 2018 budget adoption, a pass-

through grant from the San Joaquin Valley Air Pollution Control District in the amount of \$1,843,572.36, impact fee waivers, and offsite improvements as detailed in this Agreement which shall be conditioned upon Owner's performance as set forth in this Agreement.

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 eighty-seven (87) Units available at affordable rent, as defined by Cal. H.&S.C. Section 50052.5 (4), to persons and families of low and extremely low income, as defined in Cal. H.&S.C. Section 50106 of Code, consistent with Recital D above which requirements shall be enforceable by covenants running with the land. As used in this Agreement, the term "Affordable Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, for extremely low, very low, lower, and moderate income households which is currently described in the Regulatory Agreement and Declaration of Covenants and Restrictions attached hereto as Exhibit F. There will be no less than eighty-eight (88) total units, of which eighty-seven (87) will be Affordable Units, and no less than eighteen (18) of the Affordable Units shall be for extremely low income households.
 - 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, acting in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno.
- 1.8 "Conditions Precedent of City" means the conditions precedent to the effectiveness of this Agreement against the City.
- 1.9 "Day" whether or not capitalized, means a calendar day, unless stated otherwise.
- 1.10 "Deed of Trust" shall mean the Deed of Trust recorded against the Property securing the Loan, as shown in Exhibit "H" of this Agreement.
- 1.11 "Default" means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.
- 1.12 "Director" means the Executive Director of City in its capacity as Housing Successor.
- 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 byphenyls, (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 "Housing Set-Aside Funds" means those California Health and Safety Code Section 34176 and 34176.1 monies in the Low and Moderate Income Housing Asset Fund held and administered by City a portion of which shall be made available as the Loan to Owner for eligible costs and expenses incurred by Owner in constructing the Improvements in such amounts, and upon such terms and conditions specified in this Agreement.
- 1.21 "Improvements" mean the construction of the Affordable Units and other units that Owner will complete on the Property as part of the Project, including associated fencing, and landscaping improvements.
- 1.22 "Law" means the Community Redevelopment Law of the State (California Health and Safety Code Sections 33000 *et seq.*) and the Dissolution Law

(Assembly Bill x1 26, the California Supreme Court's decision in California Redevelopment Association, et al. v. Matosantos, Assembly Bill 1484, Senate Bill 341, and other subsequent dissolution legislation).

- 1.23 "Loan" means the principal sum of \$2,200,000, comprised of an original \$1,500,000 loan from the City plus an additional \$100,000 from the City and \$600,000 from an Interfund Loan Agreement between the COF's Transportation (FAX) Department and the Low and Moderate Income Housing Asset Fund, provided by City to Owner as a loan, upon the terms and conditions set forth in this Agreement and the Promissory Note attached hereto as Exhibit "G" to be secured by a no worse than 4th position deed of trust lien against the Property. \$600,000 of the Loan is conditioned upon City Council's approval of an Interfund Loan Agreement, or similar document, between the COF's Transportation (FAX) Department and the Low and Moderate Income Housing Asset Fund in the amount of \$600,000. 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 fourth position. The Loan shall be allocated such that \$2,200,000 shall secure affordability covenants on the eighteen (18) units available to extremely low income families, and in addition, in consideration of this Agreement, affordability covenants on the sixty-nine (69) units available to lower income families. Notwithstanding, the City will enter into a commercially reasonable intercreditor agreement.
- 1.24 "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.
- 1.25 "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).
- 1.26 "Owner" means 1501 N. Blackstone Ave., L.P., or an affiliate company in which it is a Member, Managing Member, Principal, or General Partner.
- 1.27 "Project" means the mixed-use development including eighty- eight (88) residential Units on the Property, of which eighty-seven (87) Units shall be Affordable Rental Housing.

- 1.28 "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.
- 1.29 "Property" means the real property described in Exhibit "A," attached hereto.
- 1.30 "Release of Restrictions" means a release of those covenants, conditions and restrictions contained in this Agreement.
- 1.31 "Restrictions" means the affordability restrictions contained in this Agreement and Exhibit "F" thereto, containing all conditions, covenants, and restrictions required by the Law, any other applicable laws and regulations, and this Agreement, running with the Property and the Affordable Units thereon and burdening such for the Affordability Period.
- 1.32 "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.
- 1.33 "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.
- 1.34 "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 development cost of \$38,302,428 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. Owner intends to apply or has already applied for one or more of the following sources of funds: (A) Affordable Housing and Sustainable Communities Funding ("AHSC") administered by the California Department of Housing and Community Development with an application date of January 2018. Subject to review and concurrence by the City Manager and Public Works Director, Owner shall apply for certain public improvements through AHSC funding. COF and Owner shall enter into an agreement for the completion of certain public improvements once identified; (B) the Low Income Housing Tax Credit program administered by the California Tax Credit Allocation Committee in the FY 17/18 Round 2 cycle with an application date of July 2018; and (C) a pass-through grant from the San Joaquin Valley Air Pollution Control District in the amount of \$1,843,572.36. If Owner fails to obtain both a funding commitment from AHSC (or equivalent) funding and a 4% tax credit reservation letter (or equivalent sum of money from another source) within the timeframe set forth above and in no event later than December 15, 2018, then this Agreement will automatically terminate. If Owner fails to obtain a funding commitment from AHSC in 2018, the parties shall reevaluate and renegotiate the Proforma and Project costs associated with LEED Gold and net-zero energy aspects of the Project. City may allow a one-time, 180-day extension through an administrative amendment to this Agreement, pursuant to the City Manager's approval, which shall not be unreasonably withheld. 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 and the COF shall not provide any further financial assistance or begin construction of any off-site improvements 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 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, the executed Deed of Trust, and the executed Restrictions 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 this Agreement until the Restrictions expire, 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. COF ASSISTANCE

In addition to the Loan as set forth in this Agreement, the COF (as defined in recital K) agrees to provide further financial assistance to the Owner. The COF's further financial assistance shall have the same conditions precedent as set forth in Sections 2.2, 2.3, 2.4 and 5.1 of this Agreement. Until each and all of the conditions are satisfied, COF is not obligated to take any action or provide any further financial assistance under this Agreement.

- 4.1 Impact Fees. Pursuant to the COF's Economic Expansion Act, COF agrees to provide further financial assistance to the Owner in the form of an exemption from payment of COF Development Impact Fees in the amount of \$329,064.58 as set forth in Exhibit I.
- 4.2 Offsite Improvements. COF agrees to fund the construction of certain public offsite improvements required for the Project in an amount not to exceed \$478,000. These off-site improvements shall consist of the following:
 - 4.2.1 Blackstone Avenue streetscape improvements, including wider sidewalks, street trees and pedestrian scale street lighting within the Project frontage; and
 - 4.2.2 Home Avenue improvements including street pavement reconstruction; curb, gutter and sidewalk along the Project frontage; street lighting, street trees and undergrounding within the Project frontage.
- 4.3 COF Grant. COF agrees to provide further financial assistance to the Owner in the form of \$500,000 from the remaining EDA grant match from the COF's general fund that was placed into an affordable housing fund as part of the Fiscal Year 2018 budget adoption.
- 4.4 San Joaquin Valley Air Pollution Control District Pass-Through Grant. Pending confirmation of a final award, COF agrees to provide further financial assistance to the Owner in the form of a pass-through grant from the San Joaquin Valley Air Pollution Control District (SJVAPCD) in the amount of \$1,843,572.36. Owner shall enter into any agreements required under the SJVAPCD grant.

5. DEVELOPMENT OF THE PROPERTY.

5.1 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 and COF shall not provide any further financial assistance or begin construction of any off-site improvements 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:

5.1.1 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.

5.1.2 ADA/Barriers to the Disabled. The Project shall comply with all applicable federal, state and local accessibility requirements.

5.2 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.

5.3 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. Owner shall also reasonably cooperate with and assist the City in City's compliance with any applicable audit requirements of the California Redevelopment Law including California Health and Safety Code Sections

33080 and 33080.1. This section shall survive for a period of four years after the expiration or termination of this Agreement.

- 5.4 Audit. Owner shall be accountable to City for all Loan funds disbursed to Owner pursuant to this Agreement. Owner will cooperate fully with City and the State of California 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.
- 5.5 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.

5.5.1 Project Completion. City, acting through and in the discretion of its Director, 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 Director or the Director's designee, which approval shall not be unreasonably withheld, delayed or conditioned.

- 5.6 Subject to the terms of this Agreement, the Loan and any further financial assistance set forth in Section 4 of this Agreement shall be disbursed to Owner according to the terms of this Agreement and only after Sections 2.2, 2.3, 2.4, and 5.1 have been completed. All Loan funds and any further financial assistance shall be used solely for costs of the Project and Improvements.
- 5.7 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.

5.7.1 If City determines not to furnish the Certificate of Completion, in accordance with Section 5.7 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.

5.7.2 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.

- 5.8 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.
- 5.9 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.
- 5.10 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.
- 5.11 Reporting Requirements. Owner shall submit to City the following reports:
- 5.11.1 Annual Reports. Annually, beginning in the year following City's issuance of the Certificate of Completion, and continuing until the expiration of this Agreement, on such dates and in the form agreeable between the parties and consistent with all federal and state reporting requirements applicable to the Project, Owner shall submit an annual report to City, specifically the Executive Director of the Housing Successor to the Redevelopment Agency and the City Manager, in a form approved by City. Such annual report shall include for each of the Affordable Units: the rent, the annual income and the family size of the Household occupying the Affordable Unit. Such annual report shall also state the date the tenancy commenced for each Affordable Unit, certification

Field Code Changed