

Exhibit "A"  
HOME Agreement

Recorded at the Request of  
and When Recorded Return to:

City of Fresno  
City Clerk's Office  
2600 Fresno Street, Room 2133  
Fresno, CA 93721-3603

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

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

By: \_\_\_\_\_  
Wilma Quan, City Manager

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

CITY OF FRESNO  
HOME INVESTMENT PARTNERSHIPS PROGRAM  
AGREEMENT

by and between

CITY OF FRESNO,  
a municipal corporation

and

FCTC Senior, LP  
a California limited partnership

regarding

Fancher Creek Senior Apartments  
Northeast Corner of Marion Avenue and Fancher Creek Drive,  
Fresno, CA 93727 (Parcel Map 2007-41)

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## HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT

This HOME Investment Partnerships Program Agreement (hereinafter referred to as the Agreement) is entered into this, \_\_\_\_\_, 2019, by and between the City of Fresno, a municipal corporation, acting through its Planning and Development Department - Housing and Community Development Division (hereinafter referred to as the CITY), and the FCTC Senior, LP, a California limited partnership (hereinafter referred to as DEVELOPER).

### RECITALS

A. WHEREAS, the CITY has received a HOME Investment Partnerships (HOME) Program grant from the U.S. Department of Housing and Urban Development (hereinafter referred to as (HUD), under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (hereinafter referred to as the Act).

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

C. WHEREAS, the DEVELOPER desires to act as the owner/developer exercising effective project control, as to the construction of a 180-unit apartment complex of which 11 units (3 at 50% and 8 at 60%) will be floating HOME-assisted units preserved as Very Low- to Low-Income rental housing, as defined by the HOME Program, and related on-site and off-site improvements as more particularly described in EXHIBIT "B" – Project Description and Schedule, incorporated herein.

D. WHEREAS, the Project will be constructed upon HOME Program eligible Property to be owned by the DEVELOPER.

E. WHEREAS, to further its goal to increase the supply of Affordable Housing within the City of Fresno (City), the CITY desires to assist the DEVELOPER by providing a One Million Four Hundred Twenty Thousand Five Hundred dollars and 00/100 (\$1,420,500.00) residual receipts HOME Program Loan to the Project (hereinafter referred to as Loan), at 2% interest for a period of fifty-five years for eligible HOME Project soft and construction costs, upon the terms and conditions in this Agreement, as further identified in EXHIBIT "C" – Budget, to be secured by the underlying Property and the Affordable Housing covenants attached as EXHIBIT "D" – Exemplar Declaration of Restriction, and Note, Exemplar Notes attached as EXHIBIT "F" – Promissory Note loan, upon the terms and conditions in this Agreement.

F. WHEREAS, Environmental Impact Report No. 10133, prepared for the Fancher Creek Project (EIR No. 10133) was certified by the Council of the City of Fresno on May 17, 2005, by Resolution No. 2005-183, which evaluated the construction of over 2300 residential units in the entire 475 acre area for the Fancher Creek development, including 240 residential units in a mixed use portion of the Town Center; and

G. WHEREAS, on March 25, 2010, the Council adopted an Addendum to EIR No. 10133, dated June 29, 2009, which addressed a total of 740 residential units in the Town Center, which is an increase of 500 units; and

H. WHEREAS, after adoption of the Addendum to EIR No. 10133, the Council approved a Development Agreement by and between the City of Fresno and Fancher Creek Properties LLC which set forth the rights and responsibilities for development of the Fancher Creek Town Center, including the residential units within the Town Center Area; and

I. WHEREAS, an environmental review of the Project pursuant to the National Environmental Policy Act (NEPA) guidelines was completed on August 2, 2017, that resulted in a Finding of No Significant Impact; and

J. WHEREAS, the CITY has determined that this Agreement is in the best interest of, and will materially contribute to, the Housing Element of the General Plan. Further, the CITY has found that the Project: (i) will have a positive influence in the neighborhood and surrounding environs, (ii) is in the vital and best interest of the CITY, and the health, safety, and welfare of CITY residents, (iii) complies with applicable federal, State, and local laws and requirements, (iv) will increase, improve, and preserve the community's supply of Low-Income Housing available at an affordable cost to Low-Income Senior households, as defined hereunder, (v) planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of Very Low- to Low-Income Housing, and (vi) will comply with any and all owner participation rules and criteria applicable thereto.

K. WHEREAS, the CITY and the DEVELOPER have determined that the Project's HOME-Assisted Units constitute routine programmatic/grantee lender activities utilizing available and allocated program/grantee funding, outside the reach of the California Constitution Article XXXIV and enabling legislation.

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

M. WHEREAS, on December 11, 2019, the Housing and Community Development Commission of the City of Fresno reviewed this HOME Agreement and recommended approval.

N. WHEREAS, on April 3, 2017, the DEVELOPER's Board reviewed and approved the development of the Project and HOME Agreement.

O. WHEREAS, on November 4, 2019, the DEVELOPER's Board approved a resolution to finance any outstanding funds for the construction, completion and occupancy of the Project up to \$27,338,976.

P. WHEREAS, on [DATE] the Guarantor agreed to unconditionally guarantee the DEVELOPER's resolution financially supporting the outstanding financing of up to \$27,338,976 for the construction, completion and occupancy of the Project.

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

## **ARTICLE 1. DEFINITIONS**

The following terms have the meaning and content set forth in this Article wherever used in this Agreement, attached exhibits or attachments that are incorporated into this Agreement by reference.

1.1 Acquisition means vesting of the Property in fee title to the DEVELOPER.

1.2 ADA means the Americans with Disabilities Act of 1990, as most recently amended.

1.3 Affirmative Fair Housing Marketing Plan means a good faith effort to attract

eligible persons of all racial, ethnic and gender groups, in the housing market area, to rent the proposed Housing Unit proposed for construction on the eligible Property, as hereinafter defined.

1.4 Affordability Period means the minimum HOME Program affordability period of twenty years and thereafter the City's thirty-five year affordability commencing from the date the CITY enters project completion information into HUD's Integrated Disbursement and Information System (IDIS), which date will be provided to the DEVELOPER by the CITY and added as an administrative amendment hereto; CITY agrees to enter project completion information into IDIS within thirty days of CITY's receipt thereof.

1.5 Affordable Housing means eleven of the one hundred eighty Housing units required to meet the affordability requirements of 24 C.F.R. 92.252.

1.6 Budget means the Budget for the development of the Project, as may be amended upon the approval of the CITY's Housing and Community Development Division Manager provided any increase in HOME Funds hereunder requires City Council Approval, attached hereto as EXHIBIT "C".

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

1.8 CFR means the Code of Federal Regulations.

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

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

1.11 Debt Service means payments made in a calendar year pursuant to the financing obtained for the acquisition and construction, operation and/or ownership of the Project, but excluding payments made pursuant to the Note.

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

1.13 Deed of Trust means that standard form Deed of Trust (including the security agreement) given by the DEVELOPER as Trustor, to the CITY as beneficiary, through escrow established by the DEVELOPER at its sole cost and expense with Old Republic Title Company, and recorded against the Property to ensure the Note, together with the Deed of Trust attached in the form substantially similar hereto as EXHIBIT "G", as well as any amendments to, modification of and restatements of said Deed of Trust, which Deed of Trust shall be subordinated to the Project senior lenders per the Budget attached as EXHIBIT "C". The terms of any such Deed of Trust are hereby incorporated into this Agreement by this reference.

1.14 Eligible Costs means the HOME eligible soft or construction costs funded by the Loan, consistent with the Project Budget attached as EXHIBIT "C", allowable under 24 C.F.R. Part 92, as specified in 24 C.F.R. 92.205 and 92.206, and not disallowed by 24 C.F.R. 92.214, provided, however, that costs incurred in connection with any activity that is determined to be ineligible under the Program by HUD or the CITY shall not constitute Eligible Costs.

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

1.16 Federal HOME Investment Partnerships Program Funds (also referred to in this Agreement as "HOME Funds" or "HOME Program Funds") means the federal HOME Program monies consisting of the Loan, in an amount not to exceed the sum of One Million Four Hundred Twenty Thousand Five Hundred dollars and 00/100 (\$1,420,500.00) to be used for eligible Project costs.

1.17 Funding Sources means the CITY's HOME Funds, Guarantor's Personal Guaranty of Funds, Community Development Block Grant funds, Deferred Developer Fee, and any other funds that may become available to the Project.

1.18 Guarantor means Edward Kashian, individually and as Trustee of the Edward M. Kashian and Jeanne C. Kashian Declaration of Trust dated December 5, 2005, who shall personally guarantee the complete, professional and satisfactory performance of the DEVELOPER under this agreement and has concurrently executed a Personal Guaranty for the benefit of the City of Fresno.

1.19 Hazardous Materials means any hazardous or toxic substances, materials, wastes, pollutants or contaminants which are defined, regulated or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants" or "toxic substances" under federal or state environmental and health safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating or occupying a housing project, to the extent and degree that such substances are stored, used and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.20 Household means one or more persons occupying the HOME Units within the Project.

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

1.22 Loan means the Project Loan of HOME Funds, in the total amount not to exceed One Million Four Hundred Twenty Thousand Five Hundred dollars and 00/100 (\$1,420,500.00) and the aggregate HOME per unit cap (24 CFR 92.250) for the eleven HOME-assisted Units as determined by the CITY and made available by the CITY to the Project pursuant to this Agreement, as more specifically described in the Budget and in the Promissory Note attached as EXHIBIT "F". The Loan shall be payable in accordance with the terms of the Note, shall be secured by a deed of trust on each parcel constituting the Property, and shall be subject to the Deed of Trust attached as EXHIBIT "G".

1.23 Loan Documents are collectively this Agreement, the Note (attached hereto as EXHIBIT "F"), Deed of Trust, Declaration of Restrictions, and all related

documents/instruments as they may be amended, modified or restated from time to time along with all exhibits and attachments thereto, relative to the Loan.

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

1.25 Material Change means a change, modification, revision or alteration to the Loan Documents or Agreement 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). The City must respond to any change or request for change within 30 days or change is deemed approved.

1.26 Note means that certain assumable, HOME Loan Note in a principal amount not to exceed the HOME Program per unit cap (24 C.F.R. 92.250) as determined by the CITY, given by the DEVELOPER as promisor, in favor of the CITY as promisee, evidencing the Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement, secured by the Deed of Trust as no worse than 4th position lien upon the Property, naming the CITY as beneficiary and provided to the CITY, no later than the date of the Affordable Project funding hereunder, an exemplar of which is attached hereto as EXHIBIT "F", and incorporated herein, as well as any amendments to, modifications of and restatements of said Note consented to by the CITY.

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

1.28 Program Income has the meaning provided in the HOME Program including 24 C.F.R. 92.503.

1.29 Project Schedule means the schedule for commencement and completion of the Project included in EXHIBIT "B".

1.30 Project Units means the construction of one hundred eighty affordable Senior rental units of which eleven units will be preserved as Affordable HOME-assisted Units.

1.31 Property means the property located at the Northeast Corner of Marion Avenue and Fancher Creek Drive, Fresno, CA 93727 (Parcel Map 2007-41), more specifically described in the Property Description attached to EXHIBIT "A".

1.32 Rent means the total monthly payment a tenant pays for an Affordable Unit



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

1.33 Residual Receipts means Residual Receipts as defined in EXHIBIT "F".

1.34 Seniors means those persons who are 62 years of age or older.

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

1.36 Senior Lender means one or more lenders providing the Senior Financing for the Affordable Project.

1.37 Unit means the one hundred eighty Affordable Housing Units constructed upon the Property and preserved as Affordable Housing Units for the duration of the HOME twenty-year and City thirty-five year Affordability Periods.

1.38 Very Low Income means for the purpose of this Agreement those whose annual income does not exceed 50% of the median income for the Fresno, California area as determined by HUD, except as HUD may establish income ceilings higher or lower than 50% of the median income for the area on the basis of HUD findings that such variations are necessary.

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

2.1 Loan of HOME Funds. The CITY agrees to provide a loan of HOME Funds to the DEVELOPER, in an amount not to exceed One Million Four Hundred Twenty Thousand Five Hundred dollars and 00/100 (\$1,420,500.00), all under the terms and conditions provided in this Agreement. The HOME Funds shall be used for payment of HOME eligible construction costs.

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

2.3 Term of Agreement. This Agreement is effective upon the date of execution and shall remain in force with respect to the Project for the duration of the Affordability Periods unless earlier terminated as provided herein. At the end of Affordability Periods, this Agreement will expire. It is understood and agreed upon, however, that if for any reason this Agreement should be terminated in whole or in part as provided hereunder, without default, the CITY agrees to record a Notice of Cancellation regarding this Agreement upon the written request of the DEVELOPER.

2.4 Loan Repayment and Maturity. The Loan will be due and payable in accordance with the Note and not later than the Maturity date provided in the Note.

2.5 Incorporation of Documents. The DEVELOPER's HOME application dated April 3, 2017, the CITY Council approved Minutes of December 12,, 2019, approving this Agreement, the Loan Documents, Guarantor's Personal Guaranty, the Act and HUD

regulations at 24 C.F.R. Part 85, 92, CPD 98-2 and all exhibits, attachments, documents and instruments referenced herein, as now in effect and as may be amended from time to time, constitute part of this Agreement and are incorporated herein by reference. All such documents have been provided to the parties herewith or have been otherwise provided to/procured by the parties and reviewed by each of them prior to execution hereof.

2.6 Covenants of DEVELOPER. The DEVELOPER for itself and its agents/assigns covenants and agrees to comply with all the terms and conditions of this Agreement and the requirements of 24 CFR Part 92.

2.7 Subordination. This Agreement, the Declaration of Restrictions and the Deed of Trust may be subordinated to certain approved financing (in each case, a "Senior Lender"), to no worse than 4th position, but only on condition that all of the following conditions are satisfied: (a) all of the proceeds of the proposed Senior Loan, less any transaction costs, must be used to provide construction financing for the Project consistent with an approved subsequent financing plan; (b) the subordination agreement must provide the CITY with adequate rights to cure any defaults by the DEVELOPER including providing the CITY or its successor with copies of any notices of default; (c) upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the subordination agreement, inter-creditor agreements, standstill agreements, and/or other documents as may be reasonably requested by the Lender to evidence subordination to the Project financing, without the necessity of any further action or approval provided that such agreements contain written provisions that are no more onerous and which are consistent with the customary standard requirements imposed by the financing source(s), on subordinate cash flow obligations under their then existing senior financing policies, and further provided that the City Attorney approves such document(s) as to form.

2.8 Personal Guaranty of Funds. Guarantor personally guarantees the complete, professional and satisfactory performance of the DEVELOPER under this Agreement and has executed a Personal Guaranty for the benefit of the City of Fresno. In the event DEVELOPER fails to commence construction as set forth in Section 7.2 of this Agreement, all HOME funds, including interest, shall become immediately due and payable by Guarantor to the City, as set forth herein and in the Personal Guaranty Agreement attached hereto as EXHIBIT "H" and concurrently executed by Guarantor. This Section shall survive expiration or termination of this Agreement.

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

3.1 Existence and Qualification. The DEVELOPER, represents and warrants to the CITY as of the date hereof, that the DEVELOPER is a duly organized California limited partnership in good standing with the State of California; the DEVELOPER has the requisite power, right, and legal authority to execute, deliver, and perform its obligations under the HOME Agreement has taken all actions necessary to authorize the execution, delivery, performance, and observance of its obligations under this Agreement. This Agreement, when executed and delivered by the DEVELOPER enforceable against the DEVELOPER in accordance with its respective terms, except as such enforceability may be limited by: (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws of general applicability affecting the enforcement of creditors' rights generally, and (b) the application of general principles of equity without the joinder of any other party.

3.2 No Litigation Material to Financial Condition. The DEVELOPER represents and warrants to the CITY as of the date hereof that, except as disclosed to and approved by

the CITY in writing, no litigation or administrative proceeding before any court or governmental body or agency is now pending, nor, to the best of the DEVELOPER's knowledge, is any such litigation or proceeding now threatened, or anticipated against the DEVELOPER that, if adversely determined, would have a material adverse effect on the financial condition, business, or assets of the DEVELOPER or on the operation of the Project.

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

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

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

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

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

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

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

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

A. At least 5% of the dwelling units, or at least two units, whichever is

greater, must be constructed to be accessible for persons with mobility disabilities. An additional 2% of the dwelling units, or at least three units, whichever is greater, must be accessible for persons with hearing or visual disabilities. These units must be constructed in accordance with the Uniform Federal Accessibility Standards (U.F.A.S.) or a standard that is equivalent or stricter. These mandates can be found at 24 C.F.R. Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

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

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

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

D. The design and construction requirements as required by the CITY's Universal Design Ordinance pursuant to F.M.C. 11-110, including, but not limited to the following requirements:

- i. No step accessible entryway;
- ii. All interior doorways and passageways at least 32 inches wide;
- iii. One downstairs "flex room" and accessible bathroom with reinforcements for grab bars;
- iv. Six square feet of accessible kitchen counter space; and
- v. Hallways at least 42 inches wide.

4.2 Affirmative Fair Housing Marketing Plan. The DEVELOPER warrants, covenants and agrees with the CITY that it shall comply with all affirmative fair housing marketing requirements, including without limitation, those set out at 24 C.F.R. 92.350 and 92.351, in order to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market. The DEVELOPER shall be responsible for preparing an "Affirmative Fair Housing Marketing Plan" for this specific development and have the Plan available for public review prior to lease up. The DEVELOPER shall maintain records of actions taken to affirmatively market the units constructed, and to assess the results of these actions.

4.3 Availability of HOME Funds. The DEVELOPER understands and agrees that the availability of HOME Funds is subject to the control of HUD, or other federal agencies,

and should said Funds be encumbered, withdrawn or otherwise made unavailable to the CITY, whether earned by or promised to the DEVELOPER, and/or should the CITY in any fiscal year hereunder fails to allocate said Funds, the CITY shall not provide said Funds unless and until they are made available for payment to the CITY by HUD and the CITY receives and allocates said Funds. No other funds owned or controlled by the CITY shall be obligated under this Agreement.

4.4 Compliance with Agreement. The DEVELOPER warrants, covenants and agrees that, in accordance with the requirements of 24 C.F.R. 92.252 and 24 C.F.R. Part 85, upon any uncured default by the DEVELOPER within the meaning of Article 10.1 of this Agreement, the CITY may suspend or terminate this Agreement and all other agreements with the DEVELOPER without waiver or limitation of rights/remedies otherwise available to the CITY.

4.5 Conflict of Interest. The DEVELOPER warrants, covenants and agrees that it shall comply with the Conflict of Interest requirements of 24 C.F.R. 92.356 including, without limitation, that no officer, employee, agent or consultant of the DEVELOPER may occupy a Project Unit. The DEVELOPER understands and acknowledges that no employee, agent, consultant, officer or elected official or appointed official of the CITY, who exercises any functions or responsibilities with respect to the Project, or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for anyone with which that person has family or business ties, during his or her tenure or for one year thereafter. To the extent provided at 24 C.F.R. 92.356(f), no owner, developer or sponsor of the Project, or officer, employee, agent or consultant thereof, may occupy a Project Unit.

4.6 Construction Standards. The DEVELOPER shall construct the proposed Project Units assisted under this Agreement in compliance with all applicable local codes, ordinances and zoning requirements in effect at the time of issuance of CITY building permits.

4.7 Covenants and Restrictions to Run with the Land. The CITY and the DEVELOPER expressly warrant, covenant and agree to ensure that the covenants and restrictions set forth in this Agreement are recorded and will run with the land, provided, however, that, on expiration of this Agreement such covenants and restrictions shall expire, provided that such agreements contain written provisions that are no more onerous and which are consistent with the customary standard requirements imposed by the financing source(s), on subordinate cash flow obligations under their then existing senior financing policies, and further provided that City Attorney approves such document(s) as to form.

A. The CITY and the DEVELOPER hereby declare their understanding and intent that the covenants and restrictions set forth herein directly benefit the land (a) by enhancing and increasing the enjoyment and ownership of the proposed Project by a certain Very Low- and Low-Income Household, and (b) by making possible the obtaining of advantageous financing for construction.

B. The DEVELOPER covenants and agrees with the CITY that after issuance of a recorded Certification of Completion for the Project until the expiration of the Affordability Period it shall cause eleven of the Units to be rented as Affordable Housing for Very Low- to Low-Income households.

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

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

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

4.8 Displacement of Persons. The DEVELOPER covenants and agrees with the CITY that pursuant to 24 C.F.R. 92.353, it will take all reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations and farms). The parties acknowledge and agree that the Property site is currently vacant land and is not occupied.

4.9 Initial and Annual Income Certification and Reporting. The DEVELOPER covenants and agrees with the CITY that it shall comply with the procedures for annual income determinations at 24 C.F.R. 92.203. The DEVELOPER, shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from the Project Unit Household members. The DEVELOPER, shall make a good faith effort to verify that the income provided by an applicant or occupying Household in an income certification is accurate by taking one or more of the following steps as part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income verification form from the applicant's current employer; (3) obtain an income verification form from the Social Security Administration and California Department of Social Services if the applicant receives assistance from either of such agencies; (4) obtain income tax return for the most recent tax year; or (5) if the applicant is unemployed, obtain another form of independent verification. Copies of Household income certification and verification must be available for review and approval by the CITY prior at the initial lease up. The DEVELOPER further warrants, covenants and agrees that it cooperate with the CITY in the CITY's income certification/affordability monitoring activities.

4.10 Lead-Based Paint. The DEVELOPER covenants and agrees with the CITY that it shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 C.F.R. Part 35, including the HUD 1012 Rule, and 24 C.F.R. 982.401(j), and any amendment thereto, and Environmental Protection Agency (EPA) Section 402 (c)(3) of the Toxic Substances Control Act (TSCA) to address lead-based hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities. Contractors performing renovations in lead-based paint units must be EPA-certified renovators. These requirements apply to all units and common areas of the Project. The DEVELOPER shall incorporate or cause

incorporation of this provision in all contracts and subcontracts for work performed on the Project, which involve the application of paint. The DEVELOPER shall be responsible for all disclosure, inspection, testing, evaluation, and control and abatement activities.

4.11 Minority Outreach Activities. The DEVELOPER covenants and agrees with the CITY that it shall comply with all federal laws and regulations described in Subpart H of 24 C.F.R. Part 92, including, without limitation, any requirement that the DEVELOPER comply with the CITY's minority outreach program.

4.12 Other Laws and Regulations. The DEVELOPER covenants and agrees with the CITY that, in addition to complying with the federal laws and regulations already cited in this Agreement, the DEVELOPER has reviewed, and shall comply with and require all its contractors and subcontractors on the Project to comply with, all other federal laws and regulations that apply to the HOME Program, including, without limitation, requirements of 24 C.F.R. 58.6 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128 the following:

A. The DEVELOPER does not intend to use any financing that is secured by a mortgage insured by HUD in connection with the Project as part of its land acquisition and construction costs of the Project.

B. The Project is not located in a tract identified by the Federal Emergency Management Agency as having special flood requirements.

C. The Project requirements, Subpart F of 24 C.F.R. Part 92, as applicable and in accordance with the type of Project assisted, including, but not limited to, the HOME per-unit subsidy amount at 24 C.F.R. 92.250.

D. The property standards at 24 CFR 92.251.

E. The Project "Labor" requirements, as applicable, of 24 C.F.R. 92.354 including Davis Bacon prevailing wage requirements (40 U.S.C. 276a - 276a-7), as supplemented by Department of Labor regulations (29 CFR Part 5).

F. The provisions of Section 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor Regulations (29 C.F.R. Part 5), in regards to the construction and management of the proposed Project.

G. The DEVELOPER and its contractors, subcontractors and service providers for the Project, shall comply with all applicable local, State and federal requirements concerning equal employment opportunity, including compliance with Executive Order (E.O.) 11246, "Equal Employment Opportunity", as amended by E.O. 11375, (amending E.O. 11246 Relating to Equal Employment Opportunity), and as supplemented by regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor".

H. The provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

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

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

K. The provision of E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 C.F.R. part 24.

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

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

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

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

P. The Housing and Community Development Act of 1974.

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

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

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

4.14 Reporting Requirements. The DEVELOPER warrants, covenants and agrees with the CITY that it shall submit performance reports to the CITY as detailed in Section 7.19. Furthermore, the DEVELOPER agrees to provide, at the sole cost of the DEVELOPER, an annual audited Financial Statements for the Project expenses and ongoing financial transactions which occur as a result of this Agreement as detailed in Section 5.6. The DEVELOPER agrees to account for the expenditure of HOME Funds using generally accepted accounting principles, which financial documentation shall be made available to the CITY and HUD upon their respective written request(s).

4.15 Housing Affordability. The DEVELOPER covenants and agrees with the CITY that eleven of the Project Units will be affordable to Very Low- and Low-Income households and other requirements of 24 CFR 92.252 during the Affordability Periods. Three Units, at a minimum, be rented to and occupied by, or, if vacant, available for rental and occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than 50%, and Eight Units shall, at a minimum, be rented to and occupied by or, if vacant available for rental and occupancy (a) person(s) whose annual household income at the time of initial occupancy is not greater than 80% of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable rent consistent with HOME Program regulations, for the Affordability Periods except upon foreclosure or other transfer in lieu of foreclosure following default under a Deed of Trust. However, if at any time following a transfer by foreclosure or transfer in lieu of foreclosure, but still during the Affordability Periods, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes such owner of record those whom such owner of record has or had business ties, obtains an ownership interest in the Project or the Property, the Affordability Periods shall be revived according to its original terms. In the event the DEVELOPER fails to comply with this Section or the Affordability Periods is not revived following transfer by foreclosure or transfer in lieu of foreclosure, the DEVELOPER shall return to the CITY all HOME Funds disbursed to the DEVELOPER by the CITY.

4.16 Terminated Projects. The DEVELOPER understands and agrees that, if the Project is terminated before completion, either voluntarily or otherwise, such constitutes an



ineligible activity and the CITY will not be required to provide any further HOME Program assistance funding to the Project Units.

## **ARTICLE 5. PROPERTY MAINTENANCE**

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

5.1 Adequate Repair and Maintenance. The DEVELOPER during its time on title shall cause the maintenance the Project and Property to be in compliance with all applicable City codes, laws, and ordinances.

5.2 Affordable Rental Housing. The DEVELOPER covenants and agrees that the Project shall constitute eleven affordable Housing Units for rent and preserved as floating Very Low- to Low-Income Rental Household (as provided at 24 C.F.R. 92.252) during the entire Affordability Periods. This covenant shall remain in effect and run with and restrict the land during the entirety of the Affordability Periods. In the event the DEVELOPER fails to comply with the time period in which the Affordable Units constitute Affordable Housing, the CITY shall without waiver or limitation, be entitled to injunctive relief, as the DEVELOPER acknowledges that damages are not adequate remedy at law for such breach.

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

Additionally, the DEVELOPER agrees:

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

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

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

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

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

(iii) The DEVELOPER's discovery of any occurrence or condition on any real property adjoining or in the vicinity of such properties that would cause such properties or underlying or surrounding real estate or part thereof to be subject to any restrictions on the ownership, occupancy, transferability, or use of the property under any environmental law, rule, regulation, ordinance or statute; and

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

5.4 Compliance with Laws. The DEVELOPER shall promptly and faithfully comply with, conform to and obey all present and future federal, State and local statutes, regulations, rules, ordinances and other legal requirements applicable by reason of this Agreement or otherwise to the Project including without limitation prevailing wage requirements. The DEVELOPER acknowledges that the use of HOME Funds subjects the Project to extensive federal regulation and covenants and agrees that it shall comply with, conform to and obey (and take steps as are required of the DEVELOPER to enable the CITY to comply with, conform to and obey) all federal statutes, regulations, rules and policies applicable to the Project.

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

5.6 Financial Statements and Audits.

A. The DEVELOPER shall submit an Annual Audited Financial Statement signed and prepared according to generally accepted accounting principles consistently applied (except as otherwise disclosed therein).

B. Audited Financial Statements covering the income and expenses, and the financial transactions for the Project during a prior fiscal year including a residual receipts calculation.

5.7 Inspection and Audit of Books, Records and Documents. The DEVELOPER shall be accountable to the CITY for all HOME Funds disbursed for the Project pursuant to this Agreement. Any duly authorized representative of the CITY or HUD shall, at all reasonable times, have access to and the right to inspect, copy, make excerpts or transcripts, audit, and examine all books of accounts, records, files and other papers or property, and other documents of the DEVELOPER pertaining to the Project or all matters covered in this Agreement and for up to six years after the expiration or termination of this Agreement.

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

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

C. The DEVELOPER will cooperate fully with the CITY and HUD in connection with any interim, final or annual audits relating to the Project that may be performed relative to the performance of this Agreement.

5.8 Inspection of Property. Any duly authorized representative of the CITY or HUD shall, at all reasonable times, have access and the right to inspect the Property until completion of construction and annually thereafter until expiration of the applicable Affordability Periods, within seventy-two hours written notice, subject to the rights of the tenants.

5.9 Property Maintenance. The DEVELOPER shall maintain the completed Project and all improvements on site in good condition and repair (and, as to landscaping, in a healthy condition) in accordance with 24 C.F.R. 92.251(f). The DEVELOPER and those taking direction under the DEVELOPER shall: (i) maintain all on-site improvements according to all other applicable law, rules, governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the improvements free from graffiti; (iii) keep the Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to on-site improvements; and (v) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials. If the Property is not kept in good, clean, safe conditions as determined by the CITY, the CITY shall have the right to select a property management company to manage the property and the property shall pay for such property management.

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

5.11 Nondiscrimination. The DEVELOPER shall comply with and cause any and all contractors and subcontractors to comply with any and all federal, State, and local laws with regard to illegal discrimination, and the DEVELOPER shall not illegally discriminate against any persons on account of race, religion, sex, family status, age, handicap, or place of

national origin in its performance of this Agreement and the completion of the Project.

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

A. The DEVELOPER shall request CITY's written approval of the granting of the security interests in the Property described in Section 5.9 above.

B. The DEVELOPER anticipates syndicating the Low Income Housing Tax Credits that will be generated by the Project, which syndication will require the transfer of limited partnership interests. The CITY hereby approves the initial Transfer of the limited partner interest to affiliates of the investor, provided that in each instance the CITY is given prior written notice.

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

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

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

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

6.1 Loan Commitments and Financing Plan. The Housing and Community Development Division shall review any revised Finance Plan and deliver notice to the DEVELOPER within 30 days max either approving or disapproving the Finance Plan in its reasonable discretion. If the CITY disapproves the Finance Plan, it will specify the reason for the disapproval and ask the DEVELOPER to provide any additional information the CITY may need to approve the Finance Plan. .

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

6.3 Use of HOME Funds. The DEVELOPER warrants, covenants and agrees that it shall request HOME Funds only for reimbursement of eligible costs incurred as identified in the attached Budget, attached hereto as EXHIBIT "C", including costs allowable under 24 C.F.R. 92.206, aggregating not more than One Million Four Hundred Twenty Thousand Five Hundred dollars and 00/100 (\$1,420,500.00). The CITY's obligations shall in no event exceed the HOME Funds amount specified in this Agreement.

A. If any such Funds shall be determined to have been requested and/or used by the DEVELOPER for costs other than for eligible costs, and subject to the notice and cure provisions of Section 10.2 hereunder, an equal amount from nonpublic funds shall become immediately due and payable by the DEVELOPER to the CITY;

provided, however, that the DEVELOPER shall, subject to its full cooperation with the CITY, be entitled to participate in any opportunity to remedy, contest, or appeal such determination.

B. In the event HOME Funds are requested to reimburse Eligible Costs which subsequently lose eligibility as Eligible Costs, the DEVELOPER shall immediately return such HOME Funds to the CITY.

C. The CITY will disburse HOME Funds, only to the DEVELOPER through proper invoicing, for eligible costs of the Affordable Units as provided in this Article 6.

D. In the event DEVELOPER fails to commence construction as set forth in Section 7.2 of this Agreement, all HOME funds, including interest, shall become immediately due and payable by the Guarantor to the City, as set forth herein and in the Personal Guaranty Agreement concurrently executed by the Guarantor. This Section shall survive expiration or termination of this Agreement.

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

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that with the passage of time or the giving of notice or both would constitute an Event of Default.

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

C. The CITY has approved the requested reimbursement of eligible Project costs.

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

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

F. The DEVELOPER has provided the CITY with a written request for HOME Funds (provided by the CITY) and supporting documentation for reimbursement of eligible Project costs, and detailing such Eligible Costs applicable to the request.

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

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

6.5 Requests for Reimbursement of HOME Funds. The DEVELOPER shall request that the CITY reimburse funds for eligible pre-development and construction cost using the CITY's Request for Reimbursement of Funds form. The DEVELOPER shall only request a maximum of One Million Four Hundred Twenty Thousand Five Hundred dollars and 00/100 (\$1,420,500.00) in HOME Program assistance for the eleven Affordable Units. All requests should provide in detail such Eligible Costs applicable to the request. All requests for HOME Funds disbursement shall be accompanied with the Certification required by Section 6.6 of this Agreement and demonstrate they are in compliance with the

requirements set forth in CPD 98-2 for "floating" units.

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

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

B. The DEVELOPER has carried out all of its obligations and is in compliance with all the obligations or covenants specified in this Agreement, to the extent that such obligations or covenants are required to have been carried out or are applicable at the time of the request for the Reimbursement;

C. The DEVELOPER has not committed or suffered an act, event, occurrence, or circumstance that constitutes an Event of Default or that with the passage of time or giving of notice or both would constitute an Event of Default; and

D. The Disbursement requested will be used solely for reimbursement of Eligible Construction Costs identified in this Agreement and must be supported by the itemized obligations that have been properly incurred, expended and are properly chargeable in connection with construction of the Project.

6.7 Disbursement for Reimbursement of Funds. The disbursement of HOME Program Loan Funds shall occur within the normal course of CITY business after the CITY receives the Certification and to the extent of annually allocated and available HOME Funds.

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

Without waiver of limitation, the parties agree as follows:

7.1 Pre-Construction Meeting Regarding HOME Program Processes and Procedures. The DEVELOPER shall schedule, and the CITY shall attend a meeting prior to construction for the purpose of outlining the Project processes and procedures.

7.2 Commencement. The DEVELOPER shall commence construction of the Project within 12 months of the HOME Agreement execution date and in accordance with the Project Schedule as identified in EXHIBIT "B".

7.3 Completion of Project. The DEVELOPER shall, upon completion of the Project, record a Notice of Completion of construction of the Project in accordance with the Project Schedule as identified in EXHIBIT "B".

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

cancellation of any such agreement(s), notice of filing of a mechanic's lien, or breach or default by other party(ies) thereto.

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

7.6 Fees, Taxes and Other Levies. The DEVELOPER shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, the DEVELOPER shall not be required to pay and discharge any such charge so long as: (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the CITY, the DEVELOPER deposits with the CITY any funds or other forms of assurances that the CITY, in good faith, may determine from time to time are appropriate to protect the CITY from the consequences of the contest being unsuccessful. The DEVELOPER shall have the right to apply for and obtain an abatement and/or exemption of the Project from real property taxes in accordance with all applicable rules and regulations, including Section 214(g) of the California Revenue and Taxation Code.

7.7 Financing. The DEVELOPER shall promptly inform the CITY of any new financing or funding not included in the budget for the Project, and the DEVELOPER shall provide the CITY with copies of all agreements with any and all funding sources for the Project. The DEVELOPER shall require each agreement with any and all funding sources not included in the Budget to contain a provision whereby the party(ies) to the agreement other than the DEVELOPER, if permitted by the party(ies) applicable rules and regulations, agree to notify the CITY immediately of any event of default by the DEVELOPER thereunder. Should the DEVELOPER not comply with all the obligations of this section, the loan shall become immediately due and payable as provided for in this Agreement. This Section shall survive expiration or termination of this Agreement.

7.8 Identification Signage. Before the start of construction, the DEVELOPER shall place a poster or sign, with a minimum four feet by four feet in size, identifying the City of Fresno Planning and Development Department, Housing and Community Development Division as a Project participant. The sign shall also include the CITY's Housing logo, as well as the Equal Housing Opportunity logo, as mandated by HUD. The font size shall be a minimum of 4 inches. The poster/sign shall be appropriately place, and shall remain in place throughout the Project construction.

7.9 Inspections. The DEVELOPER shall permit, facilitate, and require its contractors and consultants to permit and facilitate observation and inspection at the job site by the CITY and other public authorities during reasonable business hours, for the purpose of determining compliance with this Agreement, including without limitation those annual on-site inspections required of the CITY by 24 C.F.R. 92.504(d).

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

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

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

A. If the DEVELOPER fails to discharge, bond or otherwise satisfy the CITY with respect to any lien, encumbrance, charge or claim referred to in Section 7.12 above, then, in addition to any other right or remedy, the CITY may, but shall not be obligated to, discharge such lien, encumbrance, charge, or claim at the DEVELOPER's expense. Alternatively, the CITY may require the DEVELOPER to immediately deposit with the CITY, the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The CITY may use such deposit to satisfy any claim or lien that is adversely determined against the DEVELOPER. The DEVELOPER hereby agrees to indemnify and hold the CITY harmless from liability for such liens, encumbrances, charges or claims together with all related costs and expenses.

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

7.14 Plans and Specifications. The DEVELOPER has submitted to the CITY preliminary plans and specifications for the Project under the Master Plan Development (Project Preliminary Plans). The DEVELOPER will construct the Project in full conformance with the plans and specifications and modifications thereto approved by the CITY. The DEVELOPER shall obtain the CITY's prior written approval for any modifications to the plans and specifications.

A. The HOME Agreement shall contain by reference the design and site plan of the Project; such design must be approved by the City Council with the HOME Agreement.

B. The Plans must be in significant detail in order to calculate the square footage of all areas of the project.



C. Before Commencement of Construction, the DEVELOPER shall submit to the CITY, for its review and approval, the final Plans and Specifications for the Project. The DEVELOPER will construct the Affordable Rental Housing in full conformance with the Plans and Specifications and modifications thereto approved by the CITY. The DEVELOPER shall obtain the CITY's prior written approval for any modifications to the Plans and Specifications.

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

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

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

7.18 Reporting Requirements. The DEVELOPER shall submit to the CITY the following Project reports:

A. From the date of execution of this Agreement, until issuance of the final Certificate of Completion, the DEVELOPER shall submit a Quarterly Report, in a form approved by the CITY, which will include, at a minimum, the following information: progress of the Project and affirmative marketing efforts. The Quarterly Reports are due fifteen days after each March 31st, June 30th, September 30th, and December 31st, during said period.

B. Annually, beginning on the first day of the month following the CITY's issuance of the Certificate of Completion, and continuing until the termination of the Agreement, the DEVELOPER shall comply with an annual monitoring of the site and

related operational and tenant documentation. The annual monitoring shall include, at a minimum, the following: monitoring of occupancy of each Project Unit including the annual income and the household size, the date occupancy commenced, certification from an officer of the DEVELOPER that the Project is in compliance with the Affordability requirements, audited Finance Statement, budgeting reports, grounds and building inspection, and such other information the CITY may need to obtain to complete the annual monitoring of the property. The DEVELOPER shall provide any additional information requested by the CITY to complete the annual monitoring.

C. Annually, beginning on the first day of the month following the CITY's issuance of the final Certificate of Completion, evidencing the construction of the Project, and continuing until the expiration of the Agreement, the DEVELOPER shall submit proof of insurance as required in Article 9.

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

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

B. Any and all extensions hereunder shall be by mutual written agreement of the CITY's Housing and Community Development Division Manager and the DEVELOPER, shall not cumulatively exceed one hundred eighty days.

7.20 Certificate of Completion. Upon completion of the construction of the Project, the DEVELOPER shall submit to the CITY: 1) certification in writing that the Project has been substantially constructed in accordance with the plans and specifications, approved by the CITY; 2) a recorded Notice of Completion; 3) a cost-certifying final itemized budget where the DEVELOPER shall identify the actual costs of construction of the Project; 4) a rent roll outlining income, household size, rent, race, ethnicity, and related household information. This final cost-certification shall identify costs in line-item format, consistent with the Project Budget, and 5) a request for a recorded Certification of Completion. Upon a determination by the CITY that the DEVELOPER is in compliance with all of the DEVELOPER's construction obligations, as specified in this Agreement, the CITY shall furnish, within thirty calendar days of a written request by the DEVELOPER, a recordable Certificate of Completion for the Project in the form attached hereto as EXHIBIT "E". The CITY will not

unreasonably withhold or delay furnishing the Certificate of Completion. If the CITY fails to provide the Certificate of Completion within the specified time, it shall provide the DEVELOPER a written statement indicating in what respects the DEVELOPER has failed to complete the Project in conformance with this Agreement or has otherwise failed to comply with the terms of this Agreement, and what measures the DEVELOPER will need to take or what standards it will need to meet in order to obtain the Certificate of Completion. Upon the DEVELOPER taking the specified measures and meeting the specified standards, the DEVELOPER will certify to the CITY in writing of such compliance and the CITY shall deliver the recordable Certificate of Completion to the DEVELOPER in accordance with the provisions of this section.

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

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

8.2 Occupancy Requirements. Three of the Affordable HOME Units shall be rented and occupied by, or if vacant, available for rental occupancy by those households whose annual household income at the time of initial occupancy is not greater than 50% of the most recent annual median income, calculated and published by HUD for the Fresno Metropolitan Statistical Area, applicable to such household's size, and at an affordable rent consistent with HOME Program regulations (as provided at 24 C.F.R. 92.252) for the term of this Agreement. Eight of the HOME Assisted Affordable Units shall be rented and occupied by, or if vacant, available for rental occupancy by those households whose annual household income at the time of initial occupancy is not greater than 80% of the most recent annual median income, calculated and published by HUD for the Fresno Metropolitan Statistical Area, applicable to such household's size, and at an affordable rent consistent with HOME Program regulations (as provided at 24 C.F.R. 92.252) for the term of this Agreement. The DEVELOPER shall comply with the income targeting requirements of 24 C.F.R. 92.216.

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

8.4 Lease of HOME Units Provisions. In addition to the requirements of 24 C.F.R. 92.253, the leases are subject to the following:

A. The DEVELOPER shall include in its Leases for the HOME-assisted Units, provisions which authorize the DEVELOPER to immediately terminate the

tenancy of any Household of which one or more of its members misrepresented any fact material to the Household's qualification as a Very Low- or Low-Income Household. Each such lease agreement shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for Very Low- to Low-Income, such Household's rent may be subject to increase to the lesser of: 1) the amount payable by tenant under state or local law; or 2) 30% of the Household's actual adjusted monthly income, except that, consonant with the Act, tenants of HOME Funds-assisted units that have been allocated Low Income Housing Tax Credits by a housing credit agency pursuant to section 42 of the internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42.

8.5 Final Management Plan. Before leasing and at least sixty calendar days prior to the construction Completion Date, the DEVELOPER shall submit to the CITY, for review and approval, a plan for marketing and managing the proposed Affordable Units (Final Management Plan). The Final Management Plan shall address in detail how the DEVELOPER or its designated management entity plans to market the availability of the Affordable Units to prospective tenants and how the DEVELOPER plans to certify the eligibility of potential tenants. The Final Management Plan shall also address how the DEVELOPER and/or the management entity plan to manage and maintain the Affordable Units in accordance with HOME Program regulations at Section 92.251 Property Standards, and shall include appropriate financial information and documentation. The Final Management Plan shall contain detailed descriptions of policies and procedures with respect to tenant selections and evictions. Topics to be covered in these procedures shall include at a minimum the following:

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

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

At least ninety calendar days prior to the Project Completion Date, the DEVELOPER shall also submit any proposed management contract to the CITY for prior review. The CITY shall have the right to review any proposed amendments, other than renewals to the management contract, and any new management contracts during the term of this Agreement. Such management contract(s) shall contain a provision expressing this right.

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

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

8.7 **Maintenance and Security.** The DEVELOPER shall (i) at its own expense maintain the Project in good condition, in good repair and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of the Unit occupants. The DEVELOPER shall not commit or permit any waste on or to the Project, and shall prevent and/or rectify any physical deterioration of the Project. The DEVELOPER shall maintain the housing Units in conformance with all applicable federal, state and local laws, ordinances, codes and regulations, the Final Management Plan, and this Agreement.

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

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

8.9 **Rent Schedule and Utility Allowances.** The DEVELOPER covenants and agrees not to charge rent to tenants for HOME Units in an amount which exceeds those rents prescribed to the Project as they associate with particular income and rent limitations levels as established annually by HUD, consistent with the HOME Program requirements applicable to the Affordable Units in the Fresno, California area, as established by HUD, and further covenants not to impose a monthly allowance for utility services to tenants of such Affordable Units in excess of an amount approved by HUD in accordance with 24 C.F.R. 92.252. The DEVELOPER agrees to furnish to the CITY with a certificate setting forth the maximum monthly rentals for the HOME Units and the monthly allowances for utilities and services to be charged during any annual period until the expiration of the Affordability Period. The DEVELOPER shall reexamine the income of each tenant Household living in

the Affordable Units at least annually.

## **ARTICLE 9. INSURANCE AND INDEMNITY AND BONDS**

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

### **9.1 Insurance and Indemnity Requirements**

(a) Throughout the life of the HOME Agreement, the DEVELOPER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, 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 HOME Agreement or any extension, the DEVELOPER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to the developer shall be withheld until notice is received by the CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate the HOME Agreement. No action taken by the CITY pursuant to this section shall in any way relieve the developer of its responsibilities under the HOME Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

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

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity

obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

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

#### 9.2 Minimum Limits of Insurance

The DEVELOPER, or General Contractor if DEVELOPER subcontracts with such, shall procure and maintain for the duration of the contract, and for five years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to the CITY, its, officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified 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. (Only required if the project includes new construction of a building, or renovation of, or addition to, an existing building.)
5. Contractors' Pollution Legal Liability (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.

In the event the HOME Agreement involves any lead based, mold or asbestos environmental hazard, either the Commercial Auto policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering:

(a) materials to be transported by the applicant pursuant to the HOME Agreement.

(b) In the event the HOME Agreement involves any lead-based environmental hazard (e.g., lead based paint), and/or asbestos environmental hazard (e.g. asbestos remediation), and/or mold environmental hazard (e.g. mold remediation) the Commercial Pollution Liability insurance policy or other appropriate policy shall be endorsed to include coverage for lead based environmental hazards and/or asbestos environmental hazards and/or mold environmental hazards and "microbial matter including mold".

### 9.3 Umbrella or Excess Insurance

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

### 9.4 Deductibles and Self-Insured Retentions

The DEVELOPER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and the DEVELOPER shall also be responsible for payment of any self-insured retentions. Any deductibles or 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 deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) The DEVELOPER shall provide a financial guarantee, satisfactory to the CITY's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the CITY be responsible for the payment of any deductibles or self-insured retentions.

### 9.5 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 calendar days written notice has been given to the CITY, except ten days for nonpayment of premium. The DEVELOPER 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, the DEVELOPER shall furnish the CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the CITY, the DEVELOPER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen 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. The Contractors Pollution Liability insurance policy shall be written on either an occurrence form, or a claims-made form.
- (iii) The Commercial General, Automobile and Contractors Pollution Liability insurance policies shall be endorsed to name CITY, its officers, officials, agents, employees and volunteers as an additional insured. The DEVELOPER shall establish additional insured status for the CITY and for all ongoing and completed operations under both Commercial General and Commercial Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: CG 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) All such policies of insurance shall be endorsed so the DEVELOPER's insurance shall be primary and no contribution shall be required of the CITY. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents and volunteers. If the DEVELOPER maintains higher limits of liability than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits of liability maintained by the DEVELOPER.
- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated minimum limits.
- (vi) For any claims related to the HOME Agreement, the DEVELOPER'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 DEVELOPER's insurance and shall not contribute with it.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to the CITY, its officers, officials, agents, employees and volunteers.
- (viii) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as Loss Payee.

Providing of documents – The DEVELOPER shall furnish the 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 work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of the CITY, the DEVELOPER shall immediately furnish the CITY with a complete copy of any insurance policy required under the HOME 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 the HOME Agreement. All subcontractors working under the direction of the DEVELOPER shall also be required to provide all documents noted herein.

#### 9.6 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 HOME Agreement or the commencement of work by the DEVELOPER.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work or termination of the HOME 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 HOME Agreement, or work commencement date, the DEVELOPER must purchase "extended reporting" period coverage for a minimum of five years after completion of the work or termination of the HOME 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 HOME Agreement.

#### 9.7 Maintenance of Coverage

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

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

#### 9.8 Subcontractors

If the DEVELOPER subcontracts any or all of the services to be performed under this Agreement, the DEVELOPER shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by the CITY Risk Manager or designee. If no Side Agreement is required, the DEVELOPER shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and the DEVELOPER shall ensure that the CITY, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with the DEVELOPER, and the CITY, prior to commencement of any work by the subcontractor.

#### 9.9 Indemnity

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

To the full extent required by applicable federal and state law, the DEVELOPER and its contractors and agents shall comply with the Davis-Bacon Act, as amended, pursuant to California Labor Code Section 1720 et seq., and the regulations adopted pursuant thereto ("Prevailing Wage Laws"), if so required, and shall be solely responsible for carrying out the requirements of such provisions. The DEVELOPER shall indemnify, defend (with counsel of the DEVELOPER's) and hold the CITY and its elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, the payment of requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors, or third party claimants pursuant to Labor Code Section 1726 and 1781). The failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including, but not limited to, Prevailing Wage Laws, or any act or omission of the DEVELOPER related to this Agreement with respect to the payment or requirement of payment of prevailing wage.

A. This section shall survive termination or expiration of this Agreement.

#### 9.10 Property Insurance

The DEVELOPER shall maintain in full force and effect, throughout the remaining life of this Agreement, a policy(ies) of property insurance acceptable to the CITY, covering the Project premises, with limits reflective of the value of the Project premises upon issuance of the Certificate of Completion or substantial completion of the project referenced in this agreement, including fire and Extended Comprehensive Exposure (ECE) coverage in an amount, form, substance, and quality as acceptable to the CITY's Risk Manager. The CITY shall be added by endorsement as a loss payee thereon.

#### 9.11 Bond Obligations

The DEVELOPER or its General Contractor shall obtain, pay for and deliver good and sufficient payment and performance bonds along with a Primary Obligee, Co-Obligee or Multiple Obligee Rider in a form acceptable to the CITY from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California and Treasury-listed, in a form satisfactory to the CITY and naming the CITY as Obligee.

A. The "Faithful Performance Bond" shall be at least equal to one 100 % of the DEVELOPER's estimated construction costs as reflected in the DEVELOPER's pro forma budget, to the guarantee faithful performance of the Project, within the time prescribed, in a manner satisfactory to the CITY, consistent with this Agreement, and that all material and workmanship will be free from original or developed defects.

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

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

D. In lieu of the bonds required above, the CITY, in its sole discretion, may accept from the DEVELOPER a Board-approved resolution requiring DEVELOPER to finance any outstanding funds for the construction, completion, and occupancy of the Project in an amount up to \$27,338,976 (Construction Completion Guaranty). The Construction Completion Guaranty shall be in a form acceptable to the CITY, and endorsed by Guarantor's Personal Guaranty Agreement naming the CITY as the sole beneficiary for up to \$27,338,976. The Construction Completion Guaranty and Guarantor's Personal Guaranty Agreement shall be maintained by the DEVELOPER and Guarantor, in full force and effect, until the CITY is provided with a recorded Notice of Completion for the construction of the Project and shall be subject to and governed by the laws of the State of California.

## ARTICLE 10. DEFAULT AND REMEDIES

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

A. The DEVELOPER's use of HOME Funds for costs other than Eligible Costs or for uses not permitted by the terms of this Agreement;

B. The DEVELOPER's failure to obtain and maintain the insurance coverage required under this Agreement;

C. Except as otherwise provided in this Agreement, the failure of the DEVELOPER to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) the DEVELOPER's material deviation in the Project work specified in the Project Description as identified in this Agreement, without the CITY's prior written consent; (2) the DEVELOPER's use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) the DEVELOPER's failure to complete the Project, as specified in this Agreement, unless delay is permitted under Section 7.19 of this Agreement; (4) cessation of the Project for a period of more than fifteen consecutive days (other than as provided at Section 7.19 of this Agreement) prior to submitting to the CITY certification that the Project is complete; (5) any material adverse change in the condition of the DEVELOPER or its development team, or the Project that gives the CITY reasonable cause to believe that the Project cannot be completed by the scheduled completion date according to the terms of this Agreement; (6) the DEVELOPER's failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY's request; (7) the DEVELOPER's failure to comply with any federal, state or local laws or applicable CITY restrictions governing the Project, including but not limited to provisions of this Agreement pertaining to equal employment opportunity, nondiscrimination and lead-based paint;

D. Any representation, warranty, or certificate given or furnished by or on behalf of the DEVELOPER shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that the DEVELOPER concealed or failed to disclose a material fact to the CITY, provided, however, that if any representation, warranty, or certification that proves to be materially false is due merely to the DEVELOPER's inadvertence, the DEVELOPER shall have a thirty (30) day opportunity after written notice thereof to cause such representation, warranty, or certification to be true and complete in every respect;

E. The DEVELOPER shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within ninety days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within ninety days;

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

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

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

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

10.2 Notice of Default and Opportunity to Cure. The CITY shall give written notice to the DEVELOPER of any Event of Default by specifying: (1) the nature of the event or deficiency giving rise to the default; (2) the action required to cure the deficiency, if any action to cure is possible, and (3) a date, which shall not be less than the lesser of any time period provided in this Agreement, any time period provided for in the notice, or thirty calendar days from the date of the notice, by which such deficiency must be cured, provided that if the specified deficiency or default cannot reasonably be cured within the specified time, with the CITY's written consent, the DEVELOPER shall have an additional reasonable period to cure so long as it commences cure within the specified time and thereafter diligently pursues the cure in good faith. The CITY acknowledges and agrees that the DEVELOPER shall have the right to cure any defaults hereunder and that notice and cure rights hereunder shall extend to any and all partners of the DEVELOPER that are previously identified in writing delivered to the CITY in the manner provided in this Agreement.

10.3 Remedies Upon an Event of Default. Upon the happening of an Event of Default and a failure to cure said Event of Default within the time specified, the CITY's obligation to disburse HOME Funds shall terminate. The CITY may also at its option and without notice institute any action, suit, or other proceeding in law, in equity or otherwise, which it shall deem necessary or proper for the protection of its interests and may without limitation proceed with any or all of the following remedies in any order or combination that the CITY may choose in its sole discretion:

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

## **ARTICLE 11. GENERAL PROVISIONS.**

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

11.1 Amendments. No modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by the parties hereto. The CITY recognizes that other Project funders and equity investors may require revisions to the Loan Documents to be consistent with their funding and investing requirements. The CITY agrees to reasonably consider and negotiate as to any reasonable amendments to this

Agreement to address such requirements, subject to any necessary City Council approval and approval as to form by the City Attorney.

11.2 Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party will be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

11.3 Binding on All Successors and Assigns. Unless otherwise expressly provided in this Agreement, all the terms and provisions of this Agreement shall be binding on and inure to the benefit of the parties hereto, and their respective heirs, successors, assigns, and legal representatives.

11.4 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. The execution of this Agreement by any party hereto will not become effective until counterparts hereof have been executed by all parties hereto.

11.5 Disclaimer of Relationship. Nothing contained in this Agreement, nor any act of the CITY or of the DEVELOPER, or of any other person, shall in and by itself be deemed or construed by any person to create any relationship of third party beneficiary, or of principal and agent, of limited or general partnership, or of joint venture.

11.6 Discretionary Governmental Actions. Certain planning, land use, zoning and other permits and public actions required in connection with the Project including, without limitation, the approval of this Agreement, the environmental review and analysis under NEPA or any other statute, and other transactions contemplated by this Agreement are discretionary government actions. Nothing in this Agreement obligates the CITY or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. The CITY cannot take action with respect to such matters before completing the environmental assessment of the Project under NEPA and any other applicable statutes. The CITY cannot and does not commit in advance that it will give final approval to any matter. The CITY shall not be liable, in contract, law or equity, to the DEVELOPER or any of its executors, administrators, transferees, successors-in-interest or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

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

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

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

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

11.11 Governing Law and Venue. Except to the extent preempted by applicable federal law, the laws of the State of California shall govern all aspects of this Agreement,

including execution, interpretation, performance, and enforcement. Venue for filing any action to enforce or interpret this Agreement will be Fresno, California.

11.12 Headings. The headings of the articles, sections, and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

11.13 Interpretation. This Agreement in its final form is the result of the combined efforts of the parties. Any ambiguity will not be construed in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

11.14 No Assignment or Succession. The DEVELOPER shall not sell, transfer, assign or otherwise dispose of all or a material part of any interest it might hold in the Property without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, upon prior written notice to the CITY, the DEVELOPER shall be permitted to assign its rights and obligation under this Agreement with respect to the Project and to the Partnership without the CITY's consent.

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

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

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

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

If to the CITY:           City of Fresno  
                                  Planning and Development Department  
                                  Housing and Community Development Division  
                                  2600 Fresno Street, Room 3070



Fresno, CA 93721-3605

If to DEVELOPER: FCTC Senior, L.P  
Attn: Edward Kashian, President  
265 E. River Park Circle, Suite 150  
Fresno, CA 93720

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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

CITY OF FRESNO,  
a California municipal corporation

By: \_\_\_\_\_  
Wilma Quan, City Manager  
(Attach notary certificate of acknowledgment)

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

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: Tracy N. Parvanian Date 11/27/19  
for Senior Deputy City Attorney

ATTEST:  
YVONNE SPENCE, MMC CRM  
City Clerk

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

FCTC SENIOR, LP,  
a California limited partnership

By: COMMUNITY REVITALIZATION AND  
DEVELOPMENT CORPORATION,  
a California Nonprofit Public Benefit  
Corporation

Its: Managing General Partner

By: David Rutledge  
David Rutledge  
Its: President

By: DOMINUS CONSORTIUM, LLC, a  
California limited liability company  
Its: Administrative General Partner

By: ESSAYONS, LP, a California  
limited partnership  
Its: Member

By: PENTORI, a California  
corporation  
Its: General Partner

By: \_\_\_\_\_  
Thomas G. Richards  
Its: President

By: NEGOCIOS DE FAMILIA, LLC, a  
California limited liability company  
Its: Member

By: LANCE-KASHIAN &  
COMPANY, a California  
corporation  
Its: Manager

By: \_\_\_\_\_  
Sal Gonzales  
Its: President

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CITY OF FRESNO,  
a California municipal corporation

By: \_\_\_\_\_  
Wilma Quan, City Manager  
(Attach notary certificate of acknowledgment)

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

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

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

ATTEST:  
YVONNE SPENCE, MMC CRM  
City Clerk

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

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Sal Gonzales  
Its: President

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Wilma Quan, City Manager  
(Attach notary certificate of acknowledgment)

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

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

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

ATTEST:  
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COMPANY, a California  
corporation  
Its: Manager

By: \_\_\_\_\_  
Sal Gonzales  
Its: President

## 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 that document.

State of California

County of Shasta

On 11-26-19 before me, Chelsie Landon, Notary Public  
(insert name and title of the officer)

personally appeared David Rutledge  
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

[Signature]

(Seal)



## ACKNOWLEDGMENT

A notary public or other officer completing this certification 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 that document.

State of California

County of Fresno

On November 26, 2019 before me, Leta M. Ciavaglia, Notary Public  
(Insert name and title of the officer)

personally appeared THOMAS G. RICHARDS  
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 *Leta M. Ciavaglia* (Seal)



# CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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 that document.

State of California

County of Fresno

On November 26, 2019 before me, Steven M. Young, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Sal Gonzales  
Name(s) of Signer(s)

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 Steven M. Young  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

## OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

☐ Corporate Officer – Title(s): \_\_\_\_\_

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer – Title(s): \_\_\_\_\_

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Attachments:

EXHIBIT A: PROPERTY DESCRIPTION

EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE

EXHIBIT C: PROJECT BUDGET AND CASH FLOW STATEMENT

EXHIBIT D: EXEMPLAR DECLARATION OF RESTRICTIONS

EXHIBIT E: EXEMPLAR CERTIFICATE OF COMPLETION

EXHIBIT F: EXEMPLAR PROMISSORY NOTE

EXHIBIT G: EXEMPLAR DEED OF TRUST

EXHIBIT H: EXEMPLAR PERSONAL GUARANTY



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

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

Parcels A, B and C of Parcel Map No. 2007-41, according to the map thereof filed for record April 16, 2019 in Book 75 of Parcel Maps at pages 23 through 26, Fresno County Records

APN: 313-920-03; 313-920-04; 313-920-05; 313-920-06 and 313-920-07

## **EXHIBIT "B"**

### **PROJECT DESCRIPTION AND SCHEDULE**

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

The Fancher Creek Senior Housing Project consists of the construction of 180 affordable housing units, on-site and off-site improvements, amenities, and parking. Of the 180 units in the project, 11 will be reserved as floating Very Low- and Low-income rental units for Senior households earning 50% to 80% of area median income as shown in the table below.

The location of the Fancher Creek Senior Apartments site is located at the Northeast corner of Marion Avenue and Fancher Creek Drive, Fresno, CA 93727 (Parcel Map 2007-41).

#### **HOME-FUNDED FLOATING UNITS**

% of Median	Unit
50% or less	3
80% or less	8
Totals	11

HOME Funds will be made available by the CITY for payment of HOME eligible construction costs not to exceed the lesser of One Million Four Hundred Twenty Thousand Five Hundred dollars and 00/100 (\$1,420,500.00), the aggregate HOME Program per unit cap (24 C.F.R. 92.250) for the 11 floating HOME-assisted Units as determined by the CITY, as needed, for HOME eligible project construction costs.

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

A. Commencement of Construction: July 15, 2020

B. Completion of Construction: January 15, 2022

C. Rent Up Completion: September 15, 2022

**EXHIBIT "C"**  
**PROJECT BUDGET AND FINANCE PLAN**

## Financial Plan

## Fancher Creek Housing Project

10/24/2019

Project Concept		Unit Mix/Rents/Cash Flow	
Land Square Footage	87,120		
Land Acreage	2.00		
Gross Building Square Footage	141,016		
Residential Square Footage (plus comm room)	106,080		
Total Residential Units	180		
Density (du/ac)	90.0		
Net Rentable Square Footage	100,680		
Affordable @ 60% of AMI		105	
Affordable @ 50% of AMI		54	
Affordable @ 82% of AMI		19	
Two (2bed) Manager Units		178	
Unit Mix	# Units	SE	Net Rent PU
1 BR/1 BTH	44	478	\$ 555.00
1 BR/1 BTH	31	478	\$ 676.00
1 BR/1 BTH	3	492	\$ 676.00
1 BR/1 BTH	51	509	\$ 676.00
1 BR/1 BTH	15	509	\$ 941.00
2 BR/1 BTH	10	842	\$ 652.00
2 BR/1 BTH	2	842	\$ 398.00
2 BR/1 BTH	18	819	\$ 798.00
2 BR/1 BTH	4	819	\$ 1,122.00
2 BR/2 BTH (Manager)	2	819	\$ -
	180	100,680	
144 1-Bedroom		\$	95,995.00
34 2-Bedroom		\$	26,968.00
Monthly Gross Rent Residential		\$	122,963.00
Annual Gross Rent Residential		\$	1,475,556.00
Annual Vacancy (5%)			(73,777.80)
Annual Effective Rent		\$	1,401,778.20
Annual Operating Exp.			(764,435.00)
Total Annual Net Operating Income			637,343.20
Debt Service Bank Loan			(527,775.00)
Cash Flow			109,568.20

Development Costs	
Land Cost	2,259,784
Soft Cost and Impact Fees	823,536
Financing Fees	1,912,000
Construction Costs	20,077,826
Developer Fee	3,625,674
Contingency and Reserves	1,731,023
Architectural/Eng./Environmental	625,000
<b>TOTAL DEVELOPMENT COST</b>	<b>31,054,843</b>

Valuation	
FMV based on Capitalization Rate	6.0%
LTV based on Development Costs	0%

Permanent Sources of Funds	
	0%
	0%
CDBG Program Funds	7%
	2,259,784
	0%
Kashian Funds	88%
	27,374,559
	0%
	0%
HOME Program Funds	5%
	1,420,500
	0%
<b>Total Sources of Funds</b>	<b>100%</b>
	<b>31,054,843</b>

HOME Program Investment Analysis	
Funds Leveraged with HOME Investment	\$ 29,634,343
Per HOME dollar Leverage Ratio	20.86
Total Cost per Residential Square Foot	\$ 293
Cost per Unit	\$ 172,527
Subsidy per 1 HOME Units	\$ 129,136

**EXHIBIT "D"**  
**EXEMPLAR DECLARATION OF RESTRICTIONS**

Recorded at the Request of  
and When Recorded Return to:

City of Fresno  
Development and Resource Management Dept.  
Housing and Community Development Division  
2600 Fresno Street, Room 3070  
Fresno, CA 93721-3605

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

*The document is exempt from the payment of a recording fee in accordance with Government Code Sections 6103 and 27383.*

APN: 313-920-03; 313-920-04; 313-920-05; 313-920-06 and 313-920-07

**DECLARATION OF RESTRICTIONS**

THIS DECLARATION OF RESTRICTIONS (Declaration) is executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by FCTC SENIOR, LP, a California limited partnership (DECLARANT), in favor of the CITY OF FRESNO, a California municipal corporation (CITY).

WHEREAS, the DECLARANT is the owner of the real estate in the county of Fresno, California, located at northeast corner of Marion Avenue and Fancher Creek Drive, Fresno, CA 93727 (Parcel Map 2007-41), which is more particularly described in EXHIBIT "A" – Property Description, attached hereto and made a part hereof, including the improvements thereon (the Property); and

WHEREAS, pursuant to a certain City of Fresno HOME Investment Partnerships Agreement dated \_\_\_\_\_, 2019, incorporated herein by reference (HOME Agreement) and instruments referenced therein, DECLARANT agrees to utilize, the CITY agrees to provide, certain HOME funds from the United States Department of Housing and Urban Development (HUD), to DECLARANT and DECLARANT agrees to construct one hundred eighty Senior (age 62 and older) rental housing units of which eleven will be HOME-assisted units and reserved as Affordable Housing units available as Very Low- and Low-Income units, subject to the terms and conditions set forth in the HOME Agreement for Low-Income households earning 50% to 80%, or below, of the area median income for the Fresno Metropolitan Statistical Area (FMSA).

WHEREAS, the HOME regulations promulgated by HUD, including without limitation 24 C.F.R. 92.252; 24 and the HOME Agreement impose certain affordability requirements upon property owned by the DECLARANT, which affordability restrictions shall be enforceable for a fifty-five year period; and

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

NOW THEREFORE, DECLARANT declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the Project. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, will inure to the benefit of the CITY, and will be enforceable by it. Any purchaser under a contract of sale covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration commencing on the date the DECLARANT is notified by the CITY that the Affordable Unit Household information has been entered into HUD's Integrated Disbursement and Information System (IDIS) as provided in the HOME Agreement, constituting the commencement of the HOME twenty year Affordability Period and City thirty-five year affordability period.

1. Declarations. DECLARANT hereby declares that the Property is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Project and the HOME Agreement, and are established and agreed upon for the purpose of enhancing and protecting the value of the Property and in consideration of the CITY entering into the HOME Agreement with the DECLARANT.

2. Restrictions. The following covenants and restrictions on the use and enjoyment of the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of the CITY and shall run with the Property and be binding on any future owner's of the Property and inure to the benefit of and be enforceable by CITY. These covenants and restrictions are as follows:

a. The DECLARANT for itself and its successor(s) on title covenants and agrees that from the date the Project is entered into IDIS as complete, until the expiration of the Affordability Period, it shall cause the Affordable housing units to be used as rental affordable housing to Very Low- to Low-Income Households with an income of 50% to 80%, or less, of area median income. The DECLARANT further agrees to file a recordable document setting forth the Project Completion Date when determined by the CITY. Unless otherwise provided in the Agreement, the term Affordable Housing shall include, without limitation, compliance with the following requirements:

i. Nondiscrimination. There shall be no discrimination against nor segregation of any persons or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or handicap in the sale, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall the DECLARANT establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Project and/or Property.

ii. Principal Residence. The Housing Units constituting the Affordable Units upon the Project Property shall be leased only to eligible natural persons, who shall occupy the Affordable housing units as the tenants' principal place of residence. The forgoing requirement that the tenant of unit occupy the unit as their principal residence does not apply to (i) persons, other than natural persons, who acquire the Project Property

or portion thereof by foreclosure or deed in lieu of foreclosure; or HUD qualified entities that acquire the Property or portion thereof with the consent of the CITY.

iii. Household Income Requirements. The eleven Affordable housing units constituting the Project Property may be conveyed only to a natural person(s) whose annual Household income at the time of rental is not greater than 50% to 80% of the most recent annual median income calculated and published by HUD for the FMSA applicable to such household's size.

Item (a) above is hereinafter referred to as the Covenant and Restriction.

3. Enforcement of Restrictions. Without waiver or limitation, the CITY shall be entitled to injunctive or other equitable relief against any violation or attempted violation of any Covenant and Restriction.

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

Notwithstanding the foregoing, upon foreclosure by a lender or other transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD, the Affordability Period shall be terminated unless the foreclosure or other transfer in lieu of foreclosure or assignment recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid the termination of low-income affordability. However, the requirements with respect to Affordable Unit shall be revived according to their original terms, if during the original Affordability Period, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner of those with whom the former owner has or had formally, family or business ties, obtains an ownership interest in the Project or the Property, the Affordability Period shall be revived according to its original terms.

5. Benefit. This Declaration shall run with and bind the Property for a term commencing on the date Project information is entered into IDIS as complete, until the expiration of the Affordability Period. The failure or delay at any time of CITY and/or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

6. Costs and Attorney's Fees. In any proceeding arising because of failure of DECLARANT or any future owner of the Property to comply with the Covenant and Restriction required by this Declaration, as may be amended from time to time, the CITY shall be entitled to recover its respective costs and reasonable attorney's fees incurred in connection with such default or failure.

7. Waiver. Neither DECLARANT nor any future owner of the Property may exempt itself from liability for failure to comply with the Covenant and Restriction required in this Declaration; provided however, that upon the transfer of the Property, the transferring

owner may be released from liability hereunder, upon the CITY's written consent of such transfer, which consent shall not be unreasonably withheld, conditioned or delayed.

8. Severability. The invalidity of the Covenant and Restriction or any other covenant, restriction, condition, limitation, or other provision of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration and each shall be enforceable to the greatest extent permitted by law.

9. Pronouns. Any reference to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

10. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

11. Amendment. No amendment or modification of this Declaration shall be permitted without the prior written consent of the CITY and DECLARANT.

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

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

14. Headings. The headings of the articles, sections, and paragraphs used in this Declaration are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

15. DECLARANT LIABILITY. The DECLARANT shall not have any personal liability for the obligations under this Declaration. The sole recourse of the CITY shall be exercised by its rights against the Property pursuant to the Deed of Trust and Lender shall have no right to seek or recover any deficiency amount from DECLARANT.

[SIGNATURE PAGE TO FOLLOW]



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

DECLARANT:

FCTC SENIOR, LP, a California limited partnership

By: COMMUNITY REVITALIZATION AND DEVELOPMENT CORPORATION,  
a California Nonprofit Public Benefit Corporation

Its: Managing General Partner

By: \_\_\_\_\_  
David Rutledge

Its: President

By: DOMINUS CONSORTIUM, LLC,  
a California limited liability company

Its: Administrative General Partner

By: ESSAYONS, A LIMITED PARTNERSHIP,  
a California limited partnership

Its: Member

By: PENTORI, a California corporation  
Its: General Partner

By: \_\_\_\_\_  
Thomas G. Richards  
Its: President

By: NEGOCIOS DE FAMILIA, LLC,  
a California limited liability company

Its: Member

By: LANCE-KASHIAN & COMPANY,  
a California corporation

Its: Manager

By: \_\_\_\_\_  
Salvador Gonzales  
Its: President

**EXHIBIT "A"**  
**Legal Description**  
**To Declaration of Restrictions**

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

Parcels A, B and C of Parcel Map No. 2007-41, according to the map thereof filed for record April 16, 2019 in Book 75 of Parcel Maps at pages 23 through 26, Fresno County Records

APN: 313-920-03; 313-920-04; 313-920-05; 313-920-06 and 313-920-07

**EXHIBIT "E"**  
**EXAMPLAR CERTIFICATE OF COMPLETION**

Recorded at the Request of  
and When Recorded Return to:

City of Fresno  
Development and Resource Management Dept.  
Housing and Community Development Division  
2600 Fresno Street, Room 3070  
Fresno, CA 93721-3605

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

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

APN: 313-920-03; 313-920-04; 313-920-05; 313-920-06 and 313-920-07

City of Fresno

By: \_\_\_\_\_  
Jennifer K. Clark, Director  
Planning and Development Department

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

## Certificate of Completion

APN: 313-920-03; 313-920-04; 313-920-05; 313-920-06 and 313-920-07

### Recitals:

A. By a HOME Investment Partnerships Program Agreement dated \_\_\_\_\_, 2019, (HOME Agreement) between the City of Fresno, a municipal corporation (CITY), and FCTC SENIOR, LP, a California limited partnership, (DEVELOPER), the DEVELOPER agreed to construct a one hundred and eighty unit apartment complex for Senior households of which eleven are to be designated as HOME-assisted floating units, and related on-site and off-site improvements upon the Property described in EXHIBIT "A" attached to the HOME Agreement, and made part hereof by this reference (the Property), with assistance of HOME Funds while meeting the affordable housing, income targeting and other requirements of 24 C.F.R. 92 according to the terms and conditions of the HOME Agreement and Loan Documents and other documents/instruments referenced therein.

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

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

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

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

### NOW THEREFORE:

1. The CITY certifies that the DEVELOPER commenced construction of the Project on \_\_\_\_\_, 2019, and completed construction of the Project on \_\_\_\_\_ 2021, and has done so in full compliance with the HOME Agreement.

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

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

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

///  
///

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, CITY has executed this Certificate of Completion as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF FRESNO

By: \_\_\_\_\_, Director  
Planning and Development Department  
(Attach notary certificate of acknowledgment)

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

ATTEST:  
YVONNE SPENCE, MMC CRM  
CITY CLERK

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
CITY ATTORNEY

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

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

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

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

FCTC SENIOR, LP, a California limited partnership

By: COMMUNITY REVITALIZATION AND DEVELOPMENT CORPORATION,  
a California Nonprofit Public Benefit Corporation  
Its: Managing General Partner

By: \_\_\_\_\_  
David Rutledge  
Its: President

By: DOMINUS CONSORTIUM, LLC,  
a California limited liability company  
Its: Administrative General Partner

By: ESSAYONS, A LIMITED PARTNERSHIP,  
a California limited partnership  
Its: Member

By: PENTORI, a California corporation  
Its: General Partner

By: \_\_\_\_\_  
Thomas G. Richards  
Its: President

By: NEGOCIOS DE FAMILIA, LLC,  
a California limited liability company  
Its: Member

By: LANCE-KASHIAN & COMPANY,  
a California corporation  
Its: Manager

By: \_\_\_\_\_  
Salvador Gonzales  
Its: President

## EXHIBIT "F" – EXAMPLAR PROMISSORY NOTE

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

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### PROMISSORY NOTE Secured by Deed of Trust

Loan Amount: \$1,420,500.00  
Fresno, California

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

For value received, the undersigned, FCTC SENIOR, LP, a California limited partnership (Borrower), promises to pay to the order of the City of Fresno, a California municipal corporation, (Lender), the sum of One Million Four Hundred Twenty Thousand Five Hundred dollars and 00/100 (\$1,420,500.00), to the extent that such funds are loaned to Borrower, with interest on the unpaid principal balance running from the date of disbursement with simple interest at the rate of 2% annually in accordance with the HOME Investment Partnerships Agreement dated \_\_\_\_\_, 2019, entered into between the Lender and the BORROWER, (Agreement), with the balance of principal and interest due and payable on or before the earlier of (i) Borrower's uncured default under the Agreement with respect to the Project, and (ii) fifty-five years from the date of this Note, (Maturity Date), on which date the unpaid balance of principal with unpaid interest thereon shall be due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws.

This is a Residual Receipts Note. Principal and interest payments equal to 50% of 100% of annual Residual Receipts, to the extent that Residual Receipts exist and are itemized in audited financial statements supplied to Lender with each payment hereunder, shall be due one hundred eighty days following the end of the year in which the Project converts to its permanent phase under the Financing, and said payment continues each successive year thereafter until the Maturity Date, upon which all principal and interest shall be due and payable (prorated amounts to be paid for the first and last year of the Note). Any failure to make a payment required hereunder within ten days after such payments are due shall constitute a default under the Agreement with respect to the Project and this Note. Residual Receipts payments, if any, are to be applied first to this HOME Loan Note, secured by a deed of trust in a third and subordinate lien position, until said Note is paid in full. Thereafter, any Residual Receipts payments, if any, shall be applied to the CDBG Loan provided to the Project by the City of Fresno and as specified in the Project Budget attached to the HOME Agreement as Exhibit "C". It shall not be a default hereunder if no payment was made because Project Residual Receipts did not exist for any particular year. Additionally, any failure to timely submit to Lender audited financial statements within thirty days after such financial statements are due shall constitute a default under the Agreement with respect to the Project and Note.

Residual Receipts means in each operating year after the conversion of the Project financing to its permanent phase, 100% of the sum of: (i) all cash received by the Project from (A) rents, lease payments, and all sources generally considered in the apartment industry to be "other income" (which does not include payments for optional services provided by the Borrower), (B) payments from HUD under a Housing Assistance Program Section 8 Contract to the Project, if any, and excluding (a) tenant security or other deposits required by law to be restricted, and (b) interest on reserves not available for distribution, and (ii) the net proceeds of any insurance (including rental interruption insurance), other than fire and extended coverage and title insurance, to the extent not reinvested, less the sum of: (i) all payments on account of any loans, (ii) contributions to any prudent and reasonable cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as may be reasonably required by the lenders to the Project for the operation of the Project

not to exceed the amount required by the Project's permanent lender, annually adjusted in proportion to the average increase of the following indices (a) the United States Bureau of Labor Statistics for Hourly Wage Rates of all workers in manufacturing, and (b) of all Commodity Wholesale Prices, said indices shall be re-defined to the mutual satisfaction of the parties in the event of change in form and basis of indices, all increases shall use the indices for calendar year 2010 as their base; and (iii) the payment of principal and interest, and any associated fees, expenses, and costs, with respect to the Financing.

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

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

Business Day means any day other than Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day.

Note Maturity Date means fifty-five years from the Note date.

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust and Assignment of Rents, on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note, and executed in favor of and delivered to the Lender (Deed of Trust), insured as a 4th position lien on the Property.

Time is of the essence. It will be a default under this Note if the Borrower defaults under the Agreement, any other Loan Document with the Lender, or this Note and such default continues beyond the notice and cure period as provided in such documents. In the event of a default by the Borrower with respect to any sum payable under this Note and the failure to cure such default within ten days, the Borrower shall pay a late charge equal to the lesser of 2% of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest and then to principal balance. On the occurrence of an uncured default or on the occurrence of any other event that under the terms of the Loan Documents give rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind. Lender acknowledges and agrees that it shall send notice of any default hereunder to the limited partners of the Borrower and shall accept any cure offered by such limited partners on the same basis as it would accept a cure from the Borrower.



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

All Loan payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate.

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

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

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

The Deed of Trust provides as follows:

Except as provided herein or in the Agreement, if the Trustor/Grantor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, the Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

The Lender may transfer this Note and deliver to the transferee all or any part of the Property then held by it as security under this Note, and the transferee will then become vested with all the powers and rights given to the Lender; and the Lender will then be forever relieved from any liability or responsibility in the matter, but the Lender will retain all rights and powers given by this Note with respect to Property not transferred.

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

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

This Note shall be nonrecourse to the Borrower and all its constituent members and may be prepaid at any time without penalty. Neither the Borrower nor any of its general and limited partners shall have any personal liability for repayment of the Loan. The sole recourse of the Lender under the Loan Documents for repayment of the Loan shall be the exercise of its rights against the Property pursuant to the Deed of Trust and the Lender shall have no right to seek or recover any deficiency amount from the Borrower or any partner of the Borrower.

//

IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be executed as of the date and year first above written.

FCTC SENIOR, LP, a California limited partnership

By: COMMUNITY REVITALIZATION AND DEVELOPMENT CORPORATION,  
a California Nonprofit Public Benefit Corporation  
Its: Managing General Partner

By: \_\_\_\_\_  
David Rutledge  
Its: President

By: DOMINUS CONSORTIUM, LLC,  
a California limited liability company  
Its: Administrative General Partner

By: ESSAYONS, A LIMITED PARTNERSHIP,  
a California limited partnership  
Its: Member

By: PENTORI, a California corporation  
Its: General Partner

By: \_\_\_\_\_  
Thomas G. Richards  
Its: President

By: NEGOCIOS DE FAMILIA, LLC,  
a California limited liability company  
Its: Member

By: LANCE-KASHIAN & COMPANY,  
a California corporation  
Its: Manager

By: \_\_\_\_\_  
Salvador Gonzales  
Its: President

**EXHIBIT "G"**  
**EXAMPLAR DEED OF TRUST**

Recorded at the Request of  
and When Recorded Return to:

City of Fresno  
Planning and Development Dept.  
Housing and Community Development Division  
2600 Fresno Street, Room 3070  
Fresno, CA 93721-3605

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

TITLE ORDER NO. \_\_\_\_\_

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

APN: 313-920-03; 313-920-04; 313-920-05; 313-920-06 and 313-920-07

**DEED OF TRUST**

THIS DEED OF TRUST (Deed of Trust) made this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between FCTC Senior, LP, a California limited partnership (herein Borrower), Old Republic Title Company, a California Corporation (herein Trustee), and the City of Fresno, a Municipal Corporation organized and existing under the laws of the State of California whose address is 2600 Fresno Street, Fresno, California 93721 (herein Beneficiary and Lender).

The Borrower, in consideration of the indebtedness herein recited and the trust herein created, does irrevocably grant and convey to Trustee, in trust, with power of sale, all the Borrower's right, title, and interest now owned or hereafter acquired in the real property (Land) known as Fancher Creek Senior Apartments northeast corner of Marion Avenue and Fancher Creek Drive, Fresno, CA 93727 (Parcel Map 2007-41), located in Fresno County, California and more particularly described in the Attached Exhibit "A", incorporated by reference (Borrower agrees that any greater to the Land later acquired during the term of this Deed of Trust will be subject to this Deed of Trust), together with the rents, issues, and profits, subject however, to the right, power, and authority granted and conferred on the Borrower in this Deed of Trust to collect and apply the rents, issues, and profits; and

The Borrower also irrevocably grants, transfers, and assigns to the Trustee, in trust, with power of sale, all of the Borrower's right, title and interest now owned or later acquired to the following property (including the rights or interests pertaining to the property) located at the Property:

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

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

TO SECURE, in order of priority that Beneficiary determines:

- (1) Payment of the indebtedness evidenced by a note of Borrower of even date with this Deed of Trust in the principal amount of One Million Four Hundred Twenty Thousand Five Hundred dollars and 00/100 (\$1,420,500.00) (Note), payable to Beneficiary or order, and all extensions, modifications, or renewals of that note;
- (2) Payment of the interest on that indebtedness according to the terms of the Note;
- (3) Payment of all other sums (with interest as provided herein) becoming due and payable to Beneficiary or Trustee pursuant to the terms of this Deed of Trust;
- (4) Performance of every obligation contained in this Deed of Trust, the Note, the HOME Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 2019, and its related documents, the Declaration of Restrictions dated the \_\_\_\_ day of \_\_\_\_\_, 2019, any instrument now or later evidencing or securing any indebtedness secured by this Deed of Trust, and any agreements, supplemental agreements, or other instruments of security executed by Borrower as of the same date of this Deed of Trust or at any time subsequent to the date of this Deed of Trust for the purpose of further securing any indebtedness amending this Deed of Trust or any instrument secured by this Deed of Trust (collectively the Loan Documents); and
- (5) Payment of all other obligations owed by Borrower to Beneficiary that by their terms recite that they are secured by this Deed of Trust, including those incurred as primary obligor or as guarantor.

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

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

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

instrument, or result in the creation or imposition of any lien, charge, or encumbrance of any nature on any of the property or assets of the Borrower, except as contemplated by the provisions of the Loan Documents; and each of the Loan Documents, when executed and delivered to the Beneficiary, will constitute a valid obligation, enforceable in accordance with its terms.

The Borrower represents and warrants to the Beneficiary that as of the date of this Deed of Trust that the Property is not used principally for agricultural or grazing purposes; that the Borrower is engaged in the development and operation of improvements to the Property; and that the principal purpose of the Loan is the construction, development and/or the operation of the improvements to the Property.

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

1. Payment of Principal. The Borrower shall promptly pay when due the principal indebtedness evidenced by the Note.
2. Hazard Insurance. The Borrower, at its sole cost and expense, for the mutual benefit of the Borrower and the Beneficiary, shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as the Lender may require and in such amounts and for such periods as the Lender may require as set forth in the HOME Agreement referenced above.

The insurance carrier providing the insurance shall be chosen by the Borrower subject to approval by the Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to the Lender and shall include a standard mortgage clause in favor of and in a form acceptable to the Lender. The Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, the Borrower shall give prompt notice to the insurance carrier and the Lender. The Lender may make proof of loss if not made promptly by the Borrower.

If the Property is abandoned by the Borrower, or if the Borrower fails to respond to the Lender within 30 days from the date notice is mailed by the Lender to the Borrower that the insurance carrier offers to settle a claim for insurance benefits, the Lender is authorized to collect and apply the insurance proceeds at the Lender's option either to restore or repair of the Property or to the sums secured by this Deed of Trust.

3. Preservation and Maintenance of Property. Leaseholds; Condominiums; Planned Unit Developments. The Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, the Borrower shall perform all of the Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. The Borrower shall not permit overcrowded conditions to exist as defined by the U.S. Department of Housing and Urban Development.
4. Protection of Lender's Security. If the Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects the Lender's interest in the Property, then the Lender, at the Lender's option, upon notice to the Borrower, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect the Lender's interest. If the Lender requires mortgage insurance as a condition of making the loan secured by this Deed of Trust, the Borrower shall pay the premiums required to maintain such insurance in effect until such time as the

requirement for such insurance terminates in accordance with the Borrower's and the Lender's written agreement or applicable laws.

Any amounts disbursed by the Lender pursuant to this Paragraph 4 shall become additional indebtedness of the Borrower secured by this Deed of Trust. Unless the Borrower and the Lender agree to other terms of payment, such amounts shall be payable upon notice from the Lender to the Borrower requesting payment thereof. Nothing contained in this paragraph 4 shall require the Lender to incur any expense or take any action hereunder.

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

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

10. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.
11. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust or if the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses", and "attorney's fees" include all sums to the extent not prohibited by applicable law or limited herein.
12. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation thereof.

**NON-CONFORMING COVENANTS.** Borrower and Lender further covenant and agree as follows

13. Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, the Note or the Program restrictions, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 10 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 13, including, but not limited to, reasonable attorney's fees. If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election

to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine.

Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

14. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower in paragraph 13 hereof, including but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.
15. Nonrecourse. Borrower shall not have any personal liability for repayment of the loan. The sole recourse of the Lender under the Loan Documents for repayment of the Loan shall be the exercise of its rights against the Property.
16. Withdrawal, Removal and/or Replacement. General partner of the Borrower pursuant to the terms of a partnership agreement due to violation by a general partner of the terms of a partnership agreement, or a voluntary withdrawal from a partnership by a general partner, and any transfer of limited partnership interest or interests in the same, shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the loan.
17. Lien of Deed of Trust. Beneficiary agrees that the lien of this Deed of Trust shall be subordinated to any extended low-income housing commitment (as such term is defined in Section (42(h)(6)(B) of the internal Revenue Code) (the Extended Use Agreement) recorded against the Property, provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Property by instrument of lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code, subject to the limitations upon evictions, terminations of tenancies and increases in gross rents of tenants of low-income units as provided in that Section.



18. Assignment of Rent; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 13 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 13 hereunder or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

19. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust, and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.
20. Substitute Trustee. Lender at lender's option, may from time to time, appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the Fresno County Recorder's Office. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Instrument is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.
21. Statement of Obligation. Lender may collect a fee not to exceed fifty dollars (\$50.00) for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.
22. Event of Default. Prior to declaring or taking any remedy permitted under Loan Documents, (where applicable) Borrower's limited partners shall have an additional period of not less than thirty days to cure such alleged default. Notwithstanding the foregoing, in the case of a default that cannot with reasonable diligence be remedied or cured within thirty days, Borrower's limited partners shall have such additional time as reasonably necessary to remedy or cure such default, but in no event more than ninety days from the expiration of the initial thirty day period above, and if the Borrower's limited partners reasonably believe that in order to cure such default, Borrower's limited partners must remove one or both of Borrower's general partners in order to cure such default, Borrower's limited partners shall have an additional thirty days following the effective date of such removal to cure such default. To the extent that there is a conflict between this paragraph 22 and any remedy permitted by the HOME Agreement, Loan Documents, or Loan, the terms of this paragraph 22 shall control.

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

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

- (d) The assignment by Borrower, as lessor or sublessor, as the case may be, of the rents or the income of the Property or any part of it (other than to Beneficiary) without first obtaining the written consent of Beneficiary.
- (e) The following events:
  - (i) the filing of any claim or lien against the Property or any party of it, whether or not the lien is prior to this Deed of Trust, and the continued maintenance of the claim or lien for a period of thirty days without discharge, satisfaction, or adequate bonding in accordance with the terms of this Deed of Trust;
  - (ii) the existence of any interest in the Property other than those of Borrower, Beneficiary, any tenants of Borrower, and anyone listed in a title exception approved by Beneficiary in writing; or
  - (iii) the sale, hypothecation, conveyance, or other disposition of the Property except with the express written approval of Beneficiary, any of which will be an Event of Default because Borrower's obligation to own and operate the Property is one of the inducements to Beneficiary to make the Loan;
- (f) Default under any agreement to which Borrower is a party, which agreement relates to the borrowing of money by Borrower from Beneficiary.
- (g) Any presentation or warranty made by any Loan Party or any other Person under this Deed of Trust or in, under, or pursuant to the Loan Documents, is false or misleading in any material respect as of the date on which the representation or warranty was made.
- (h) Any of the Loan Documents, at any time after their respective execution and delivery and for any reason, cease to be in full force or are declared null and void, or the validity or enforceability is contested by Borrower or any stockholder or partner of Borrower, or Borrower denies that it has any or further liability or obligation under any of the Loan Documents to which it is a party.

If one or more Event of Default occurs and is continuing, then Beneficiary may declare all the Indebtedness to be due and the Indebtedness will become due without any further presentment, demand, protest, or notice of any kind, and Beneficiary may:

- (i) in person, by agent, or by a receiver, and without regard to the adequacy of security, the solvency of Borrower, or the existence of waste, enter on and take possession of the Property or any party of it in its own name or in the name of Trustee, sue for or otherwise collect the rents, issues, and profits, and apply them, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon the Indebtedness, all in any order that Beneficiary may determine. The entering on and taking possession of the Property, the collection of rents, issues, and profits, and the application of them will not cure or waive any default or notice of default or invalidate any act done pursuant to the notice;
- (ii) commence an action to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages of real property;
- (iii) deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause the Property to be sold, which notice Trustee or Beneficiary will cause to be filed for record;
- (iv) with respect to any Personalty, proceed as to both the real and personal property in accordance with Beneficiary's rights and remedies in respect of the Land, or proceed to sell the Personalty separately and without regard to the Land in accordance with Beneficiary's rights and remedies; or

(v) exercise any of these remedies in combination or any other remedy at law or in equity.

24. Protection of Security.

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

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

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

25. Effect of Assignment.

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

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

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

///

[SIGNATURE PAGE TO FOLLOW]

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

**BORROWER**

**FCTC SENIOR, LP, a California limited partnership**

By: **COMMUNITY REVITALIZATION AND DEVELOPMENT CORPORATION,**  
a California Nonprofit Public Benefit Corporation  
Its: **Managing General Partner**

By: \_\_\_\_\_  
David Rutledge  
Its: President

By: **DOMINUS CONSORTIUM, LLC,**  
a California limited liability company  
Its: **Administrative General Partner**

By: **ESSAYONS, A LIMITED PARTNERSHIP,**  
a California limited partnership  
Its: **Member**

By: **PENTORI, a California corporation**  
Its: **General Partner**

By: \_\_\_\_\_  
Thomas G. Richards  
Its: President

By: **NEGOCIOS DE FAMILIA, LLC,**  
a California limited liability company  
Its: **Member**

By: **LANCE-KASHIAN & COMPANY,**  
a California corporation  
Its: **Manager**

By: \_\_\_\_\_  
Salvador Gonzales  
Its: President

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

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

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

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

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

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

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

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

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

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

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

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

(10) That as additional security, Borrower hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Borrower the right, prior to any default by Borrower in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect the rents, issues and profits of said property, reserving unto Borrower the right, prior to any default by Borrower in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees. Upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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

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

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

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

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

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

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid:

To Old Republic Title Company, Trustee:

Dated \_\_\_\_\_

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and

you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

MAIL RECONVEYANCE TO: By \_\_\_\_\_

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



**EXHIBIT "H"**  
**EXAMPLAR PERSONAL GUARANTY OF EDWARD M. KASHIAN**  
**FOR**  
**BALANCE OF FUNDS FOR CONSTRUCTION, COMPLETION, AND**  
**OCCUPANCY OF THE FANCHER CREEK SENIOR HOUSING PROJECT**

For valuable consideration, the undersigned, Edward M. Kashian individually and as Trustee of the Edward M. Kashian and Jeanne C. Kashian Declaration of Trust dated December 5, 2005, (Guarantor), unconditionally guarantees \$27,338,976, the balance committed by Kashian Enterprises by approved Resolution dated November 4, 2019, for the construction, completion, and occupancy of the Fancher Creek Senior Housing Project (Project) as set forth in the HOME Investment Partnerships (HOME) Program Agreement dated November 4, 2019, (HOME Agreement). Guarantor promises to pay the City of Fresno, a municipal corporation (City) or order, on demand, in lawful money of the United States, any funds required to complete financing of the Project under Exhibit "C" Project Budget of the HOME Agreement, including the principal amount thereof, all interest thereon and all costs and expenses incurred in enforcing or collecting this Guaranty, the Indebtedness or any security for the Indebtedness or this Guaranty.

The amount of the Guarantors liability hereunder and under the HOME Agreement, Exhibit "C" now or at any time hereafter in force between the Guarantor and the City, including any other guaranty executed by the Guarantor relating to any obligations to the City for the Project, shall be cumulative and not alternative. Any Guarantor disbursement(s) on the Project by the Guarantor shall not reduce Guarantor's maximum obligation hereunder for the construction, completion, and occupancy of the Project unless written notice to that effect has been actually received by Guarantor from an authorized representative of the City of following the City's inspection of the Project as to the construction, completion and 100% occupancy of the Project. Guarantor's Personal Guaranty shall continue for the duration of the Project's construction, completion, and occupancy as evidenced by the City's recording of a Certificate of Completion.

A separate action or actions may be brought and prosecuted by the City against the Guarantor and the Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability hereunder as to the construction, completion and occupancy of the Project or the enforcement thereof.

The Guarantor authorize the City, without notice or demand and without affecting the Guarantor's liability hereunder as to the construction, completion and occupancy of the Project from time to time, to renew, compromise, extend, accelerate or otherwise change any of the terms of the commitment of funds necessary for the construction, completion, and occupancy of the Project. Indebtedness or any part thereof, including changing the rate of interest thereon or the time for payment thereof; (a) take and hold security for the payment of this Guaranty or the Indebtedness, and exchange, enforce, waive and release any such security; (b) apply such security and direct the order or manner of sale or other disposition thereof as the City in its discretion may determine; (c) apply payments received from the Guarantor to the Indebtedness in such order as the City may determine in its sole discretion; and (d) release or substitute any Person liable on the Indebtedness, any other guarantor of the Indebtedness, or any other Person providing support for the Indebtedness to the City, this Guaranty, or any other guaranty. The Guarantor waives any defenses arising by any action taken by the City under this paragraph. As used in this Guaranty, "Person" means any individual or entity.

The Guarantor waives any right to require the City to (a) proceed against the Guarantor or any other guarantors; (b) proceed against or exhaust any security including real property or

other support for the Indebtedness granted by the Guarantor, or any other guarantor or Person; or (c) pursue any other remedy in the City's power whatsoever. This means, among other things:

1. The City may collect from the Guarantor without first foreclosing on any real or personal property collateral pledged by the Guarantor.
2. If the City forecloses on any real property collateral pledged by the Guarantor:
  - a. The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
  - b. The City may collect from the Guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Borrower. This is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the commitment is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d, or 726 of the Code of Civil Procedure.

The Guarantor waives any defense arising by reason of (i) any disability or other defense of any other guarantor or any other Person; (ii) the cessation from any cause whatsoever of the liability of Guarantor for the Indebtedness for any reason other than payment in full and final satisfaction; (iii) the enforceability of commitment documents executed in connection with the Indebtedness; (iv) the non-perfection of any security or support for the Indebtedness, this Guaranty, or any other guaranty of the Indebtedness; or (v) the loss or impairment of any right of subrogation or reimbursement. The Guarantor shall have no right of subrogation to and waives any right to enforce any remedy which the City now has or may hereafter have against the Guarantors, and waive any benefit of, any right to participate in, and any right to direct the application of any security for the Indebtedness, this Guaranty or any other guaranty of the Indebtedness, now or hereafter held by the City, whether any of the foregoing rights arise in equity, at law, by contract, or by reason of Sections 2787 to 2855, inclusive, of the California Civil Code. Without limiting the generality of the foregoing, the Guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise. The Guarantor agrees that this Guaranty shall survive the realization upon any of the real or personal property collateral pledged by the Guaranty, including, without limitation, a non-judicial foreclosure action. The Guarantors waives all presentments, demands for performance, notices of nonperformance, or other defaults, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty or with respect to any commitment for the as to the construction, completion and occupancy of the Project. The Guarantor assumes the responsibility for being and keeping itself informed of the financial condition of all other circumstances bearing upon the risk of nonpayment for the construction, completion and occupancy of the Project.

Without limiting any waiver of rights of subrogation contained herein, any indebtedness of the Guarantor now or hereafter held by the Guarantor is hereby subordinated to the Indebtedness for the construction, completion and occupancy of the Project, and such indebtedness of the Guarantor, if the City so requests, shall be collected, enforced and received by the Guarantor as trustee for the City and paid over to the City on account of the

Indebtedness, but without reducing or affecting in any manner the liability of the Guarantor under the other provisions of this Guaranty. The City shall have rights of setoff against and bankers' liens upon all monies, securities and other properties of the Guarantor to the extent provided by law.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any Indebtedness by the Guarantor or any other guarantor is avoided as a preference, fraudulent conveyance or on any other grounds provided by law, or must otherwise be returned by the City as a result of an order for relief being entered with respect to the Guarantor or any other guarantor under the United States Bankruptcy Code, or as a result of the Guarantor's or any other guarantor's assignment for the benefit of creditors.

The Guarantor has entered into this Guaranty with the understanding that the City may rely upon it to the exclusion of any other guaranties. The City has not, nor has the Guarantor's represented, that there are or may be other guarantors. Nothing in this Guaranty, however, shall bind the City to seek other guarantors, separate and apart from the undersigned's personal guarantee. The Guarantor understands that the City may already have, or concurrently herewith, may have obtained or hereafter may obtain other guarantors (one or more, several or joint) of the Indebtedness for the construction, completion and occupancy of the Project. Such guarantors, heretofore, hereto with, or hereafter obtained, shall in no way affect the Guarantor's complete liability hereunder for the full amount of the Indebtedness for the construction, completion and occupancy of the Project. Nothing herein shall require the City to sue all of the guarantors severally or together or to sue more than one or to prorate the above liability among the guarantors or any of them. The Guarantor agrees that the City may, in its sole and uncontrolled discretion, sue any one or more of the guarantors for all of the Indebtedness for the construction, completion and occupancy of the Project and within its sole and uncontrolled discretion, the City may take judgment against any one of the guarantors for all of the Indebtedness for the construction, completion and occupancy of the Project, plus interest, costs and attorneys' fees, or, within its sole discretion, the City may prorate such judgment between or among one or more of the guarantors.

Guarantor has provided financial documentation, in a form approved by the City that is an accurate and fair representation that Guarantor's financial condition is sufficient to cover the Personal Guaranty. The Guarantor represents and warrants that the Guarantor shall notify City within thirty days of any material adverse changes in Guarantor's financial condition for the duration of the Guaranty. "Material Adverse Change" may be defined as a 25% decrease in net worth or liquidity ratio.

The Guarantor agrees that if the Guarantor is a settlor under a trust or trusts and has transferred any or all of the Guarantors' assets to such trust or trusts: (i) no assets of the Guarantor are held in an irrevocable trust; (ii) the Guarantor as settlor has retained all revocation rights for all trusts for which the Guarantor is the settlor; and (iii) subject to Probate Code 18200, creditors will have access to all assets in such trust or trusts established by the Guarantor.

The Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by the City (or allocable to City's in-house counsel) in the enforcement of this Guaranty, or the collection of any Indebtedness for the construction, completion and occupancy of the Project to City, irrespective of whether suit is filed, or in the renewal, extension or restructure of any Indebtedness for the construction, completion and occupancy of the Project irrespective of whether such renewal, extension or restructure is consummated.

When this Guaranty is executed by more than one Guarantor, the word "Guarantor," respectively, shall mean all and any one or more of them and each promise and obligation set forth herein shall be joint and several. If the Guarantor is an individual and resides in a community property state, then, unless the Guarantor's obligations for the construction, completion and occupancy of the Project hereunder are otherwise limited by a specific annotation either on the first page of this Guaranty or following the Guarantor's signature below, any married person who signs this Guaranty warrants that it is an obligation incurred on behalf of his or her marital community and agree that this Guaranty shall bind the marital community.

This Guaranty shall benefit the City, its successors and assigns, and shall bind the Guarantor's successors and assigns. This Guaranty is assignable by the City with respect to all or any portion of the Indebtedness for the construction, completion and occupancy of the Project and obligations guaranteed hereunder, and when so assigned by the Guarantor shall be liable to the assignees under this Guaranty without in any manner affecting the Guarantor's liability hereunder with respect to any Indebtedness for the construction, completion and occupancy of the Project or obligations retained by the City.

If any term, provision, covenant or condition of this Guaranty is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

This Guaranty shall be governed by and construed in accordance with the laws of the State of California and venue and jurisdiction with respect hereto shall be in Fresno County.

Any notice to the City required hereunder shall not be effective against the City unless it is given in writing, and actually received by the City, to the attention of the "City Manager" at each address where the Indebtedness for the construction, completion and occupancy of the Project is payable.

This Guaranty is intended by the Guarantor and the City as the final expression of the Guarantor's obligation for commitment of funds for the construction, completion and occupancy of the Project and liabilities to the City described herein and is intended as a complete statement of their agreement concerning the subject matter hereof. This Guaranty may be amended only by a writing signed by the Guarantors and agreed to by the City.

This Guaranty is executed by Guarantor this \_\_\_ day of November, 2019.

"GUARANTOR"

The Edward M. Kashian and Jeanne C.  
Kashian Declaration of Trust, dated  
December 5, 2005

---

Edward M. Kashian  
(Attach notary certificate of acknowledgment)  
265 E. River Park Circle  
Fresno, CA 93720

---

Edward M. Kashian, Trustee

Attachment: Approved Resolution

## DECLARATION OF RESTRICTIONS

Recorded at the Request of  
and When Recorded Return to:

City of Fresno  
Development and Resource Management Dept.  
Housing and Community Development Division  
2600 Fresno Street, Room 3070  
Fresno, CA 93721-3605

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

*The document is exempt from the payment of a recording fee in accordance with Government Code Sections 6103 and 27383.*

APN: 313-920-03; 313-920-04; 313-920-05; 313-920-06 and 313-920-07

### DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (Declaration) is executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by FCTC SENIOR, LP, a California limited partnership (DECLARANT), in favor of the CITY OF FRESNO, a California municipal corporation (CITY).

WHEREAS, the DECLARANT is the owner of the real estate in the county of Fresno, California, located at northeast corner of Marion Avenue and Fancher Creek Drive, Fresno, CA 93727 (Parcel Map 2007-41), which is more particularly described in EXHIBIT "A" – Property Description, attached hereto and made a part hereof, including the improvements thereon (the Property); and

WHEREAS, pursuant to a certain City of Fresno HOME Investment Partnerships Agreement dated \_\_\_\_\_, 2019, incorporated herein by reference (HOME Agreement) and instruments referenced therein, DECLARANT agrees to utilize, the CITY agrees to provide, certain HOME funds from the United States Department of Housing and Urban Development (HUD), to DECLARANT and DECLARANT agrees to construct one hundred eighty Senior (age 62 and older) rental housing units of which eleven will be HOME-assisted units and reserved as Affordable Housing units available as Very Low- and Low-Income units, subject to the terms and conditions set forth in the HOME Agreement for Low-Income households earning 50% to 80%, or below, of the area median income for the Fresno Metropolitan Statistical Area (FMSA).

WHEREAS, the HOME regulations promulgated by HUD, including without limitation 24 C.F.R. 92.252; 24 and the HOME Agreement impose certain affordability requirements upon property owned by the DECLARANT, which affordability restrictions shall be enforceable for a fifty-five year period; and

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

NOW THEREFORE, DECLARANT declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the Project. All of the restrictions, covenants and limitations will run

with the land and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, will inure to the benefit of the CITY, and will be enforceable by it. Any purchaser under a contract of sale covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration commencing on the date the DECLARANT is notified by the CITY that the Affordable Unit Household information has been entered into HUD's Integrated Disbursement and Information System (IDIS) as provided in the HOME Agreement, constituting the commencement of the HOME twenty year Affordability Period and City thirty-five year affordability period.

1. Declarations. DECLARANT hereby declares that the Property is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Project and the HOME Agreement, and are established and agreed upon for the purpose of enhancing and protecting the value of the Property and in consideration of the CITY entering into the HOME Agreement with the DECLARANT.

2. Restrictions. The following covenants and restrictions on the use and enjoyment of the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of the CITY and shall run with the Property and be binding on any future owner's of the Property and inure to the benefit of and be enforceable by CITY. These covenants and restrictions are as follows:

a. The DECLARANT for itself and its successor(s) on title covenants and agrees that from the date the Project is entered into IDIS as complete, until the expiration of the Affordability Period, it shall cause the Affordable housing units to be used as rental affordable housing to Very Low- to Low-Income Households with an income of 50% to 80%, or less, of area median income. The DECLARANT further agrees to file a recordable document setting forth the Project Completion Date when determined by the CITY. Unless otherwise provided in the Agreement, the term Affordable Housing shall include, without limitation, compliance with the following requirements:

i. Nondiscrimination. There shall be no discrimination against nor segregation of any persons or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or handicap in the sale, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall the DECLARANT establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Project and/or Property.

ii. Principal Residence. The Housing Units constituting the Affordable Units upon the Project Property shall be leased only to eligible natural persons, who shall occupy the Affordable housing units as the tenants' principal place of residence. The forgoing requirement that the tenant of unit occupy the unit as their principal residence does not apply to (i) persons, other than natural persons, who acquire the Project Property or portion thereof by foreclosure or deed in lieu of foreclosure; or HUD qualified entities that acquire the Property or portion thereof with the consent of the CITY.

iii. Household Income Requirements. The eleven Affordable housing units constituting the Project Property may be conveyed only to a natural person(s) whose annual Household income at the time of rental is not greater than 50% to 80% of the most recent annual median income calculated and published by HUD for the FMSA applicable to such household's size.

Item (a) above is hereinafter referred to as the Covenant and Restriction.

3. Enforcement of Restrictions. Without waiver or limitation, the CITY shall be entitled to injunctive or other equitable relief against any violation or attempted violation of any Covenant and Restriction.

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

Notwithstanding the foregoing, upon foreclosure by a lender or other transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD, the Affordability Period shall be terminated unless the foreclosure or other transfer in lieu of foreclosure or assignment recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid the termination of low-income affordability. However, the requirements with respect to Affordable Unit shall be revived according to their original terms, if during the original Affordability Period, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner of those with whom the former owner has or had formally, family or business ties, obtains an ownership interest in the Project or the Property, the Affordability Period shall be revived according to its original terms.

5. Benefit. This Declaration shall run with and bind the Property for a term commencing on the date Project information is entered into IDIS as complete, until the expiration of the Affordability Period. The failure or delay at any time of CITY and/or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

6. Costs and Attorney's Fees. In any proceeding arising because of failure of DECLARANT or any future owner of the Property to comply with the Covenant and Restriction required by this Declaration, as may be amended from time to time, the CITY shall be entitled to recover its respective costs and reasonable attorney's fees incurred in connection with such default or failure.

7. Waiver. Neither DECLARANT nor any future owner of the Property may exempt itself from liability for failure to comply with the Covenant and Restriction required in this Declaration; provided however, that upon the transfer of the Property, the transferring owner may be released from liability hereunder, upon the CITY's written consent of such transfer, which consent shall not be unreasonably withheld, conditioned or delayed.

8. Severability. The invalidity of the Covenant and Restriction or any other covenant, restriction, condition, limitation, or other provision of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration and each shall be enforceable to the greatest extent permitted by law.

9. Pronouns. Any reference to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all

genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

10. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

11. Amendment. No amendment or modification of this Declaration shall be permitted without the prior written consent of the CITY and DECLARANT.

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

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

14. Headings. The headings of the articles, sections, and paragraphs used in this Declaration are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

15. DECLARANT LIABILITY. The DECLARANT shall not have any personal liability for the obligations under this Declaration. The sole recourse of the CITY shall be exercised by its rights against the Property pursuant to the Deed of Trust and Lender shall have no right to seek or recover any deficiency amount from DECLARANT.

[SIGNATURE PAGE TO FOLLOW]



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

DECLARANT:

FCTC SENIOR, LP, a California limited partnership

By: COMMUNITY REVITALIZATION AND DEVELOPMENT CORPORATION,  
a California Nonprofit Public Benefit Corporation  
Its: Managing General Partner

By: David Rutledge  
David Rutledge  
Its: President

By: DOMINUS CONSORTIUM, LLC,  
a California limited liability company  
Its: Administrative General Partner

By: ESSAYONS, A LIMITED PARTNERSHIP,  
a California limited partnership  
Its: Member

By: PENTORI, a California corporation  
Its: General Partner

By: \_\_\_\_\_  
Thomas G. Richards  
Its: President

By: NEGOCIOS DE FAMILIA, LLC,  
a California limited liability company  
Its: Member

By: LANCE-KASHIAN & COMPANY,  
a California corporation  
Its: Manager

By: \_\_\_\_\_  
Salvador Gonzales  
Its: President

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Its: Managing General Partner

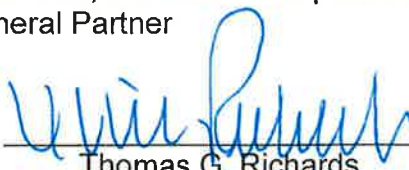
By: \_\_\_\_\_  
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Its: President

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

Salvador Gonzales

Its: President

## 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 that document.

State of California

County of Shasta

On 11-26-19 before me, Chelsie Landon, Notary Public  
(insert name and title of the officer)

personally appeared David Rutledge,  
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.

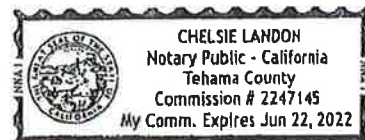
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Chelsie Landon

(Seal)



## ACKNOWLEDGMENT

A notary public or other officer completing this certification 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 that document.

State of California

County of Fresno

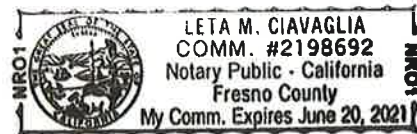
On November 26, 2019 before me, Leta M. Ciavaglia, Notary Public  
(Insert name and title of the officer)

personally appeared THOMAS G. RICHARDS  
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 Leta M. Ciavaglia (Seal)



**CALIFORNIA ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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 that document.

State of California

County of Fresno }

On November 26, 2019 before me, Steven M. Young, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Salvador Gonzales  
Name(s) of Signer(s)

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 Steven M. Young  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☐ Corporate Officer – Title(s): \_\_\_\_\_

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer – Title(s): \_\_\_\_\_

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

**EXHIBIT "A"**  
**Legal Description**  
**To Declaration of Restrictions**

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

Parcels A, B and C of Parcel Map No. 2007-41, according to the map thereof filed for record April 16, 2019 in Book 75 of Parcel Maps at pages 23 through 26, Fresno County Records

APN: 313-920-03; 313-920-04; 313-920-05; 313-920-06 and 313-920-07

## PROMISSORY NOTE

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

---

### PROMISSORY NOTE Secured by Deed of Trust

Loan Amount: \$1,420,500.00  
Fresno, California

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

For value received, the undersigned, FCTC SENIOR, LP, a California limited partnership (Borrower), promises to pay to the order of the City of Fresno, a California municipal corporation, (Lender), the sum of One Million Four Hundred Twenty Thousand Five Hundred dollars and 00/100 (\$1,420,500.00), to the extent that such funds are loaned to Borrower, with interest on the unpaid principal balance running from the date of disbursement with simple interest at the rate of 2% annually in accordance with the HOME Investment Partnerships Agreement dated \_\_\_\_\_, 2019, entered into between the Lender and the BORROWER, (Agreement), with the balance of principal and interest due and payable on or before the earlier of (i) Borrower's uncured default under the Agreement with respect to the Project, and (ii) fifty-five years from the date of this Note, (Maturity Date), on which date the unpaid balance of principal with unpaid interest thereon shall be due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws.

This is a Residual Receipts Note. Principal and interest payments equal to 50% of 100% of annual Residual Receipts, to the extent that Residual Receipts exist and are itemized in audited financial statements supplied to Lender with each payment hereunder, shall be due one hundred eighty days following the end of the year in which the Project converts to its permanent phase under the Financing, and said payment continues each successive year thereafter until the Maturity Date, upon which all principal and interest shall be due and payable (prorated amounts to be paid for the first and last year of the Note). Any failure to make a payment required hereunder within ten days after such payments are due shall constitute a default under the Agreement with respect to the Project and this Note. Residual Receipts payments, if any, are to be applied first to this HOME Loan Note, secured by a deed of trust in a third and subordinate lien position, until said Note is paid in full. Thereafter, any Residual Receipts payments, if any, shall be applied to the CDBG Loan provided to the Project by the City of Fresno and as specified in the Project Budget attached to the HOME Agreement as Exhibit "C". It shall not be a default hereunder if no payment was made because Project Residual Receipts did not exist for any particular year. Additionally, any failure to timely submit to Lender audited financial statements within thirty days after such financial statements are due shall constitute a default under the Agreement with respect to the Project and Note.

Residual Receipts means in each operating year after the conversion of the Project financing to its permanent phase, 100% of the sum of: (i) all cash received by the Project from (A) rents, lease payments, and all sources generally considered in the apartment industry to be "other income" (which does not include payments for optional services



provided by the Borrower), (B) payments from HUD under a Housing Assistance Program Section 8 Contract to the Project, if any, and excluding (a) tenant security or other deposits required by law to be restricted, and (b) interest on reserves not available for distribution, and (ii) the net proceeds of any insurance (including rental interruption insurance), other than fire and extended coverage and title insurance, to the extent not reinvested, less the sum of: (i) all payments on account of any loans, (ii) contributions to any prudent and reasonable cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as may be reasonably required by the lenders to the Project for the operation of the Project not to exceed the amount required by the Project's permanent lender, annually adjusted in proportion to the average increase of the following indices (a) the United States Bureau of Labor Statistics for Hourly Wage Rates of all workers in manufacturing, and (b) of all Commodity Wholesale Prices, said indices shall be re-defined to the mutual satisfaction of the parties in the event of change in form and basis of indices, all increases shall use the indices for calendar year 2010 as their base; and (iii) the payment of principal and interest, and any associated fees, expenses, and costs, with respect to the Financing.

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

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

Business Day means any day other than Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day.

Note Maturity Date means fifty-five years from the Note date.

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust and Assignment of Rents, on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note, and executed

in favor of and delivered to the Lender (Deed of Trust), insured as a 4th position lien on the Property.

Time is of the essence. It will be a default under this Note if the Borrower defaults under the Agreement, any other Loan Document with the Lender, or this Note and such default continues beyond the notice and cure period as provided in such documents. In the event of a default by the Borrower with respect to any sum payable under this Note and the failure to cure such default within ten days, the Borrower shall pay a late charge equal to the lesser of 2% of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest and then to principal balance. On the occurrence of an uncured default or on the occurrence of any other event that under the terms of the Loan Documents give rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind. Lender acknowledges and agrees that it shall send notice of any default hereunder to the limited partners of the Borrower and shall accept any cure offered by such limited partners on the same basis as it would accept a cure from the Borrower.

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

All Loan payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate.

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

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

No delay or omission of the Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as acquiescence, nor will any single or partial exercise preclude any further exercise. The Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of the Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note

and not in modification. No waiver of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

The Deed of Trust provides as follows:

Except as provided herein or in the Agreement, if the Trustor/Grantor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, the Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

The Lender may transfer this Note and deliver to the transferee all or any part of the Property then held by it as security under this Note, and the transferee will then become vested with all the powers and rights given to the Lender; and the Lender will then be forever relieved from any liability or responsibility in the matter, but the Lender will retain all rights and powers given by this Note with respect to Property not transferred.

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

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

This Note shall be nonrecourse to the Borrower and all its constituent members and may be prepaid at any time without penalty. Neither the Borrower nor any of its general and limited partners shall have any personal liability for repayment of the Loan. The sole recourse of the Lender under the Loan Documents for repayment of the Loan shall be the exercise of its rights against the Property pursuant to the Deed of Trust and the Lender shall have no right to seek or recover any deficiency amount from the Borrower or any partner of the Borrower.

//

[SIGNATURE PAGE TO FOLLOW]

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

BORROWER

FCTC SENIOR, LP, a California limited partnership

By: COMMUNITY REVITALIZATION AND DEVELOPMENT CORPORATION,  
a California Nonprofit Public Benefit Corporation  
Its: Managing General Partner

By: David Rutledge  
David Rutledge  
Its: President

By: DOMINUS CONSORTIUM, LLC,  
a California limited liability company  
Its: Administrative General Partner

By: ESSAYONS, A LIMITED PARTNERSHIP,  
a California limited partnership  
Its: Member

By: PENTORI, a California corporation  
Its: General Partner

By: \_\_\_\_\_  
Thomas G. Richards  
Its: President

By: NEGOCIOS DE FAMILIA, LLC,  
a California limited liability company  
Its: Member

By: LANCE-KASHIAN & COMPANY,  
a California corporation  
Its: Manager

By: \_\_\_\_\_  
Salvador Gonzales  
Its: President

IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be executed as of the date and year first above written.

FCTC SENIOR, LP, a California limited partnership

By: COMMUNITY REVITALIZATION AND DEVELOPMENT CORPORATION,  
a California Nonprofit Public Benefit Corporation

Its: Managing General Partner

By: \_\_\_\_\_  
David Rutledge

Its: President

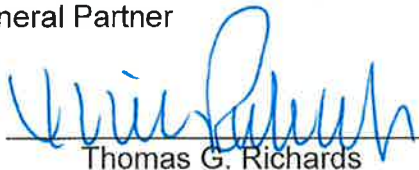
By: DOMINUS CONSORTIUM, LLC,  
a California limited liability company

Its: Administrative General Partner

By: ESSAYONS, A LIMITED PARTNERSHIP,  
a California limited partnership

Its: Member

By: PENTORI, a California corporation  
Its: General Partner

By:  \_\_\_\_\_  
Thomas G. Richards  
Its: President

By: NEGOCIOS DE FAMILIA, LLC,  
a California limited liability company

Its: Member

By: LANCE-KASHIAN & COMPANY,  
a California corporation

Its: Manager

By: \_\_\_\_\_  
Salvador Gonzales  
Its: President

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FCTC SENIOR, LP, a California limited partnership

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a California Nonprofit Public Benefit Corporation  
Its: Managing General Partner

By: \_\_\_\_\_  
David Rutledge  
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Its: General Partner

By: \_\_\_\_\_  
Thomas G. Richards  
Its: President

By: NEGOCIOS DE FAMILIA, LLC,  
a California limited liability company  
Its: Member

By: LANCE-KASHIAN & COMPANY,  
a California corporation  
Its: Manager

By:  \_\_\_\_\_  
Salvador Gonzales  
Its: President

## 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 that document.

State of California

County of Shasta

On 11.20.19 before me, Chelsie Landon Notary Public  
(insert name and title of the officer)

personally appeared David Rutledge  
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 [Signature] (Seal)



## ACKNOWLEDGMENT

A notary public or other officer completing this certification 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 that document.

State of California

County of Fresno

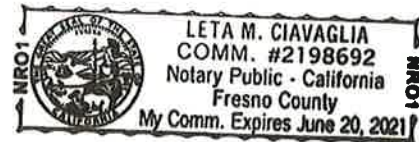
On November 26, 2019 before me, Leta M. Ciavaglia, Notary Public  
(Insert name and title of the officer)

personally appeared THOMAS G. RICHARDS  
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 *Leta M. Ciavaglia* (Seal)





**CALIFORNIA ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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 that document.

State of California

County of Fresno

On November 26, 2019 before me, Steven M. Young, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Salvador Gonzales  
Name(s) of Signer(s)

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 Steven M. Young  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☐ Corporate Officer – Title(s): \_\_\_\_\_

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer – Title(s): \_\_\_\_\_

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

## DEED OF TRUST

Recorded at the Request of  
and When Recorded Return to:

City of Fresno  
Planning and Development Dept.  
Housing and Community Development Division  
2600 Fresno Street, Room 3070  
Fresno, CA 93721-3605

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

TITLE ORDER NO. \_\_\_\_\_

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

APN: 313-920-03; 313-920-04; 313-920-05; 313-920-06 and 313-920-07

## DEED OF TRUST

THIS DEED OF TRUST (Deed of Trust) made this \_\_\_ day of \_\_\_\_\_, 2019, by and between FCTC Senior, LP, a California limited partnership (herein Borrower), Old Republic Title Company, a California Corporation (herein Trustee), and the City of Fresno, a Municipal Corporation organized and existing under the laws of the State of California whose address is 2600 Fresno Street, Fresno, California 93721 (herein Beneficiary and Lender).

The Borrower, in consideration of the indebtedness herein recited and the trust herein created, does irrevocably grant and convey to Trustee, in trust, with power of sale, all the Borrower's right, title, and interest now owned or hereafter acquired in the real property (Land) known as Fancher Creek Senior Apartments northeast corner of Marion Avenue and Fancher Creek Drive, Fresno, CA 93727 (Parcel Map 2007-41), located in Fresno County, California and more particularly described in the Attached Exhibit "A", incorporated by reference (Borrower agrees that any greater to the Land later acquired during the term of this Deed of Trust will be subject to this Deed of Trust), together with the rents, issues, and profits, subject however, to the right, power, and authority granted and conferred on the Borrower in this Deed of Trust to collect and apply the rents, issues, and profits; and

The Borrower also irrevocably grants, transfers, and assigns to the Trustee, in trust, with power of sale, all of the Borrower's right, title and interest now owned or later acquired to the following property (including the rights or interests pertaining to the property) located at the Property:

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

(3) The Property to the extent not included on clauses (1) and (2) above.

TO SECURE, in order of priority that Beneficiary determines:

- (1) Payment of the indebtedness evidenced by a note of Borrower of even date with this Deed of Trust in the principal amount of One Million Four Hundred Twenty Thousand Five Hundred dollars and 00/100 (\$1,420,500.00) (Note), payable to Beneficiary or order, and all extensions, modifications, or renewals of that note;
- (2) Payment of the interest on that indebtedness according to the terms of the Note;
- (3) Payment of all other sums (with interest as provided herein) becoming due and payable to Beneficiary or Trustee pursuant to the terms of this Deed of Trust;
- (4) Performance of every obligation contained in this Deed of Trust, the Note, the HOME Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 2019, and its related documents, the Declaration of Restrictions dated the \_\_\_\_ day of \_\_\_\_\_, 2019, any instrument now or later evidencing or securing any indebtedness secured by this Deed of Trust, and any agreements, supplemental agreements, or other instruments of security executed by Borrower as of the same date of this Deed of Trust or at any time subsequent to the date of this Deed of Trust for the purpose of further securing any indebtedness amending this Deed of Trust or any instrument secured by this Deed of Trust (collectively the Loan Documents); and
- (5) Payment of all other obligations owed by Borrower to Beneficiary that by their terms recite that they are secured by this Deed of Trust, including those incurred as primary obligor or as guarantor.

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

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

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

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

The Borrower represents and warrants to the Beneficiary that as of the date of this Deed of Trust that the Property is not used principally for agricultural or grazing purposes; that the Borrower is engaged in the development and operation of improvements to the Property; and that the principal purpose of the Loan is the construction, development and/or the operation of the improvements to the Property.

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

1. **Payment of Principal.** The Borrower shall promptly pay when due the principal indebtedness evidenced by the Note.
2. **Hazard Insurance.** The Borrower, at its sole cost and expense, for the mutual benefit of the Borrower and the Beneficiary, shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as the Lender may require and in such amounts and for such periods as the Lender may require as set forth in the HOME Agreement referenced above.

The insurance carrier providing the insurance shall be chosen by the Borrower subject to approval by the Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to the Lender and shall include a standard mortgage clause in favor of and in a form acceptable to the Lender. The Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, the Borrower shall give prompt notice to the insurance carrier and the Lender. The Lender may make proof of loss if not made promptly by the Borrower.

If the Property is abandoned by the Borrower, or if the Borrower fails to respond to the Lender within 30 days from the date notice is mailed by the Lender to the Borrower that the insurance carrier offers to settle a claim for insurance benefits, the Lender is authorized to collect and apply the insurance proceeds at the Lender's option either to restore or repair of the Property or to the sums secured by this Deed of Trust.

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

Any amounts disbursed by the Lender pursuant to this Paragraph 4 shall become additional indebtedness of the Borrower secured by this Deed of Trust. Unless the Borrower and the Lender agree to other terms of payment, such amounts shall be payable upon notice from the Lender to the Borrower requesting payment thereof. Nothing contained in this paragraph 4 shall require the Lender to incur any expense or take any action hereunder.

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

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

10. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.
11. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust or if the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses", and "attorney's fees" include all sums to the extent not prohibited by applicable law or limited herein.
12. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation thereof.

**NON-CONFORMING COVENANTS.** Borrower and Lender further covenant and agree as follows

13. Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, the Note or the Program restrictions, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 10 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 13, including, but not limited to, reasonable attorney's fees. If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall give public notice of sale to the persons