

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

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

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

CITY OF FRESNO, a municipal corporation

By: _____

Wilma Quan

Its: City Manager

Dated: _____

By: _____

Marlene Murphey

Its: Executive Director, Housing Successor

Dated: _____

AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

THE CITY OF FRESNO
a municipal corporation,

and

NOYAN FRAZIER CAPITAL, L.P.
a California Limited Partnership

AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

by and among

CITY OF FRESNO
a municipal corporation,

and

NOYAN FRAZIER CAPITAL, L.P.
a California Limited Partnership

South Fulton Street
Mixed Use Residential Rental Project
Fresno, California 93721

ATTACHMENTS

Exhibit A	Site Map
Exhibit A-1	Legal Description
Exhibit B	Scope of Development and Basic Design
Exhibit C	Budget/Financial Plan
Exhibit D	Performance Schedule
Exhibit E	Certificate of Completion
Exhibit F	Grant Deed
Exhibit G	Affordability Restrictions

AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

This Amended and Restated Disposition and Development Agreement ("DDA" or "Agreement") is entered into as of the Effective Date (defined below), between CITY OF FRESNO, a municipal corporation ("City"), and **NOYAN FRAZIER CAPITAL, L.P.**, a California Limited Partnership (the "Developer").

RECITALS

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

- A. The parties entered into the Disposition and Development Agreement (DDA) on March 15, 2016, recorded as Document No. 2016-0068936 in the Office of the Fresno County Recorder.
- B. The parties entered into a First Amendment to Disposition and Development Agreement (First Amendment) dated June 22, 2018, recorded as Document No. 2018-0089318 in the Office of the Fresno County Recorder.
- C. The parties entered into an Assignment and Assumption of Disposition and Development Agreement dated effective as of September 1, 2017, recorded as Document No. 2019-0077276 in the Office of the Fresno County Recorder, assigning the DDA from Noyan Frazier Capital, LLC, to Noyan Frazier Capital, LP.
- D. The parties entered into a Second Amendment to Disposition and Development Agreement (Second Amendment) dated September 6, 2019, recorded as Document No. 2019-0101315 in the Office of the Fresno County Recorder.
- E. The City currently owns, or will own, certain real property generally located on the northwest corner of Fulton and Inyo Streets, Fresno, California, more particularly described in Exhibits "A" (Site Map) and "A-1," (legal description) attached (the "Property").
- F. Developer proposes to purchase the Property from City and develop it privately with both new construction and adaptive reuse, with mixed uses consisting of commercial, office, and multi-family residential units, as more particularly described in the Scope of Development, attached as Exhibit "B" (the "**Project**").
- G. Developer agrees to undertake improvements in accordance with the combined Performance Schedule described in Exhibit "D" attached hereto and incorporated herein (the "Performance Schedule").
- H. This project has been environmentally assessed under the California Environmental Quality Act ("**CEQA**") and pursuant to EA No. C-15-035 filed September 18, 2015, the project is found to be within the scope of the Master Environmental Impact Report (MEIR) SCH No. 2012111015 prepared for the Fresno General Plan adopted by the Fresno City Council on December 18, 2014.

AGREEMENT

In consideration of the mutual promises and covenants and upon the terms and conditions set forth in this Agreement, the parties agree as follows:

1. DEFINITIONS

Besides definitions contained elsewhere in this Agreement, the following definitions will govern the construction, meaning, application and interpretation of the defined terms, as used in this Agreement.

1.1 ADA. "ADA" means the Americans with Disabilities Act of 1990.

1.2 Agency. "Agency" or "Successor Agency" means the Successor Agency to the Redevelopment Agency of the City of Fresno.

1.3 Agreement. "Agreement" means this Disposition and Development Agreement between City and Developer.

1.4 Budget. "Budget" means the Budget/Financial Plan for the Project attached hereto and incorporated herein as Exhibit C (the "Budget").

1.5 Certificate of Completion. "Certificate of Completion" means that Certificate issued in the form attached as Exhibit E to Developer by City evidencing completion of the Project for purposes of this Agreement.

1.6 City. "City" means the City of Fresno, a municipal corporation, and acting in its capacity as housing successor to the former Redevelopment Agency of the City of Fresno, having its offices at 2600 Fresno Street, Fresno, California 93721-3605, and operating through its Council and its various departments.

1.7 City Assistance. "City Assistance" shall mean up to \$1,000,000 in financial assistance in the form of Measure C/TOF funds, and \$659,298 in housing funds and land donation valued at \$100,000 from the City in its capacity as Housing Successor.

1.8 Closing, Close or Close of Escrow. "Closing," "Close" or "Close of Escrow" means the closing of the escrow in which the City conveys a fee interest in the Property to Developer.

1.9 Day. "Day," whether or not capitalized, means a calendar day, unless otherwise stated.

1.10 Default. "Default" means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.

1.11 Developer. "Developer" means Noyan Frazier Capital, L.P, a California Limited Partnership.

1.12 Effective Date. "Effective Date" means the date that City signs this Agreement, after Developer signs it.

1.13 Environmental Laws. "Environmental Laws" means any federal, state, or local law, statute, ordinance or regulation concerning environmental regulation, contamination or cleanup of any Hazardous Materials or Waste including, without limitation, any state or federal lien or "superlien" law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.

1.14 Escrow. "Escrow" means the escrow opened with Escrow Holder for City to convey a fee interest in the Property to Developer.

1.15 Escrow Holder. "Escrow Holder" means Placer Title Company 7643 N. Ingram Ave. #101, Fresno, CA 93711, or another title company mutually satisfactory to both parties.

1.16 Hazardous Materials. "Hazardous Materials" means any substance, material, or waste, which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance, which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated biphenyl, (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (i) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*, or (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.*); provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential rental housing, mixed-use, or commercial developments or associated buildings or grounds, or typically used in household activities in a manner typical of other residential, mixed-use or commercial developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Section 25249, *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet, and saccharine.

1.17 Improvements. "Improvements" means the construction of the Project on the Property.

1.18 Outside Date. "Outside Date" means August 31, 2021.

1.19 Performance Schedule. "Performance Schedule" means the schedule attached as Exhibit D, setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement.

1.20 Phase. "Phase" means a stage or portion of the Project designated by Developer for construction. A Phase may not consist of less than an entire residential, mixed-use, or commercial structure.

1.21 Project. "Project" means the development that Developer is to complete on the Property and any off-site improvements, as generally described in the Scope of Development, attached as Exhibit B. The Project includes, without limitation, mixed uses consisting of residential units, ground-floor commercial space, and the associated

landscaping, parking improvements, on-site improvements, and any off-site improvements that the City may require as a condition to approving the Project. The Project may be developed and constructed in one or more Phases.

1.22 Project Completion Date. "Project Completion Date" means the date that City shall have determined the Project has reached completion in accordance with the plans and specifications in the Development Schedule, as evidenced by City's issuance of a Certificate of Completion.

1.23 Property. "Property" means the real property described in Exhibits A and A-1.

1.24 Security Financing Interest. "Security Financing Interest" means a security interest, which Developer grants in its interest in the Property, before City issues and records a Release of Construction Covenants, to secure a debt, the proceeds of which Developer uses to construct the Project.

2. CONVEYANCE OF THE PROPERTY. City will convey the Property to Developer for the purchase price and on the conditions set forth herein.

2.1 Properties to be Conveyed and Purchase Price.

2.1.1 829 Fulton Street, APN 468-282-05T. This parcel will be sold to the Developer for \$1.00. The estimated fair market value of this parcel is \$50,000.

2.1.2 835 Fulton Street, APN 468-282-22T. This parcel will be sold to the Developer for \$1.00. The estimated fair market value of this parcel is \$50,000.

2.1.3 Parking Lot at Inyo and Fulton Streets, APN 468-282-23T. City will sell this property to Developer for \$1.00. The estimated fair market value of this parcel is \$328,000.

2.2 Escrow. No later than April 30, 2021, City, Successor Agency, and the Developer will open an Escrow with the Escrow Holder, and deposit a signed copy of this Agreement as their initial joint escrow instructions. City, Successor Agency and the Developer will sign any supplemental escrow instructions, consistent with this Agreement, that that are necessary or appropriate. This Agreement will control any inconsistency that may exist between this Agreement and the supplemental escrow instructions. The parties authorize the Escrow Holder to act under the escrow instructions and, after the Escrow Holder accepts the instructions in writing, it will carry out its duties as Escrow Holder under this Agreement.

2.3 Conditions Precedent to Closing Escrow. The following are conditions precedent to City's obligation to close the Escrow and convey the Property to the Developer and the Developer's obligation to purchase and accept conveyance of the Property from City. These conditions must be satisfied by the time stated or, if no time is stated, then by the Outside Date set for the Closing.

2.3.1 City and Agency Conditions. The Closing is subject to the fulfillment of each of the conditions precedent described below, which are solely for the benefit of City and which shall be fulfilled consistent with the Exhibit D Performance Schedule, or waived prior to close of escrow:

A. City acquires title to APN 468-282-23T from Successor Agency, including approval of Property Management Plan by DOF, and approval of the Purchase and Sale Agreement between City and

Successor Agency by the Successor Agency, Oversight Board, and DOF.

B. Developer has delivered to City, and City has approved the form and content of, certificates of insurance for all insurance that this Agreement requires Developer to obtain and maintain. However, Developer shall have no obligation to effectuate the policies of insurance required herein until the date of Closing.

C. Notice of Accepting Property Condition. Developer has given written notice to City that it has inspected the Property and accepts the Property in AS IS condition. If the Developer, after its inspection of the Property and review of any environmental reports, disapproves the Property's environmental or other condition, and City is either unwilling or unable to cure the condition to which the Developer objects, then the Developer or City may terminate this Agreement by written notice to the other party and without liability for breach or otherwise.

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

E. Developer has submitted evidence that all necessary development entitlements have been issued and combined monies from the funding sources are not less than the greater of the total development cost of \$20,638,409 or the amount which the City determines is necessary to complete the Project, and such funds are deposited into escrow and escrow is in a position to close. The Project has secured the following sources of funds: (A) Affordable Housing and Sustainable Communities funding (AHSC funding award), administered by the California Department of Housing and Community Development in the amount of \$1,945,352 for Housing Related Infrastructure, \$2,345,836 for Sustainable Transportation Infrastructure, \$122,999 for Transportation Related Amenities and \$1,324,543 for the Affordable Housing Development in the form of a loan; (B) Measure C TOD funds of \$711,085 and \$25,000 in Measure C Bikeways; and (C) San Joaquin Valley Air Pollution Control District Public Benefits Grants Program in the amount of \$1,889,511. Additionally, Developer intends to apply for 4% tax credits projected at \$694,763, or equivalent developer equity. The remaining funds will come from developer equity and permanent financing. If City determines that funds in escrow are not sufficient to complete the

Project, Developer may satisfy this condition as agreed to by Developer and City in writing. Developer's inability to secure tax credits or provide a letter of commitment for alternative funding to fully finance the project in lieu of tax credits will automatically terminate this Agreement.

F. Developer has obtained a performance and payment bond, acceptable to City, in the amount of 110% of the estimated Project costs as further described in Section 5.2.8, herein.

G. Developer is not in default of this Agreement and all representations and warranties of Developer contained herein are true and correct in all material respects.

2.3.2 Developer Conditions. The Closing is subject to the fulfillment or waiver by the Developer of each of the conditions precedent described below, which are solely for the benefit of the Developer and which shall be fulfilled consistent with the Exhibit D Performance Schedule, or waived prior to close of escrow.

A. Condition of Title. Developer has approved the condition of title to the Property pursuant to this paragraph A. City shall obtain a preliminary title report and transmit a copy to Developer not later than fifteen (15) days following opening of escrow. Developer shall notify City in writing within fifteen (15) days after receipt of a copy of the preliminary title report whether it approves the condition of title. Developer's failure to give such notice within fifteen (15) days will be deemed approval of the condition of title. If Developer notifies City that it disapproves any title exception, City may, but is not obligated to, remove that title exception within fifteen (15) days after receipt of Developer's written notice. If City cannot or does not elect to remove any disapproved title exception or give assurance of removal satisfactory to Developer within that period, Developer will have ten (10) business days after the expiration of such fifteen (15) day period to either give City written notice that Developer elects to purchase the Property subject to the disapproved title exceptions or to terminate this Agreement. Developer hereby objects to all title defects, liens, encumbrances, and mortgages evidencing a monetary obligation, other than non-defaulted real property taxes and assessments. The exceptions to title approved by Developer as provided herein shall be referred to as the "Condition of Title." The Developer shall have the right to approve or disapprove any further exceptions reported by the title company after the Developer has approved the Condition of Title for the Property (which are not created by the Developer). The City shall not voluntarily create any new exceptions to title following the date of this Agreement and prior to the Closing.

B. Inspection. Because City will convey fee title of the Property to Developer "AS IS," with all faults, for a period of 60 days after the Effective Date of this Agreement (the "Review Period"), Developer or its designated representatives may conduct tests, investigations and inspections of the Property in all matters relating to the Property,

including, but not limited to, the physical condition or state of the Property and improvements thereon, environmental conditions, , and all other matters relating to the Property or any improvements thereon or affecting Developer or the feasibility of the Property for the Project ("Due Diligence Investigation"). As part of the Due Diligence Investigation, City shall hire an engineer mutually acceptable to both parties to conduct a Phase I environmental assessment at City's cost, and if necessary based on the Phase I, City shall cause a mutually acceptable engineer to conduct a Phase II environmental assessment at City's cost. The results of these assessments will be provided to Developer. If, for any reason, Developer is dissatisfied, in Developer's sole and absolute discretion, with the results of the Due Diligence Investigation, Developer shall provide written notice of disapproval of the Due Diligence Investigation to the City and Escrow Holder. Such written notice of disapproval shall be provided prior to the expiration of the Review Period, and will constitute Developer's notice to terminate pursuant to Section 2.3.3, below. In consideration of Developer's right to conduct the Due Diligence Investigation, including the opportunity to review, inspect and examine the Property in its sole and absolute discretion, Developer shall in all circumstances pay to the City \$100.00, which sum shall be applicable to the Purchase Price.

Developer has the right to enter the Property to conduct the Due Diligence Investigation on the following conditions: (a) the tests, investigations and inspections are conducted without cost or expense to City, (b) the tests, investigations and inspections do not unreasonably interfere with City's possession or use of the Property, and (c) Developer will assume responsibility for any loss or liability and for any damage to the Property to the extent resulting from conducting the tests, investigations or inspections.

Within ten days from the Effective Date, City shall deliver to Developer any and all then-existing plans, engineering reports, surveys, maps, soil or seismic reports, grading plans, environmental reports and assessments, and other studies, reports, correspondence or materials concerning the Property or any improvements thereon (the "Materials"). The Materials may include, without limitation, the following: (i) copies of any environmental reports or environmental site assessments or any other report relating to toxic or hazardous materials or the environmental condition of the Property or improvements; (ii) engineering studies, maps and cost reports (sewer, water, hydrology, storm drain, flood control, FEMA, utilities, traffic and noise); (iii) soils, geology and seismic reports; (iv) covenants, conditions and restrictions, if any, regarding the Property; (v) archaeological studies and reports; (vi) to the extent not described above, grading, erosion control, water, sewer, storm drain, street improvement, landscape and utility improvement plans; (vii) any other documents or materials which City possesses or which are reasonably available to City and which Developer requests in writing or City

determines, in its reasonable judgment, are significant to the evaluation or use of the Property.

City makes no representation or warranty concerning, and will have no liability or responsibility for, the Materials or the information contained therein.

C. **No Default.** City shall not be in default of any provision of this Agreement and all representations and warranties of City contained herein are true and correct in all material aspects.

D. **No Litigation.** There shall be no litigation pending with respect to this Agreement, any land use, zoning, development or building permits or entitlements for the development contemplated by this Agreement or encumbering title to the Property, the outcome of which could materially interfere with the development of the Property as set forth herein.

E. **Title Policy.** Issuance of the Title Policy (defined below) to Developer insuring Developer (or its Permitted Assignee) that fee simple title to the Property is vested in Developer subject only to the approved Conditions of Title.

2.3.3 **Termination for Failure of Condition.** In the event there is a failure of one or more conditions described in Section 2.3.1 or 2.3.2 that are not waived, the party for whose benefit the condition is established may terminate this Agreement by written notice to the other party prior to the Closing, in which event this Agreement shall terminate and no party shall have any further rights or liability to the other under this Agreement.

2.4 **Escrow and Title Costs.** The Developer and City shall each pay 50% of escrow fees, recording fees, and documentary stamp taxes, if any, to convey the Property to Developer. City shall pay the portion of the premium for an CLTA standard owner's policy of title insurance with coverage not exceeding the Purchase Price, insuring the title to the Property as described herein (the "Title Policy"). The Developer shall pay the portion of the premium for an ALTA extended owner's policy of title insurance or any special endorsements required by Developer. Any other costs associated with the Escrow shall be paid by City or the Developer according to the custom and practice in Fresno County, as declared by the Escrow Holder.

2.5 **Prorations.** The Escrow Holder will prorate all ad valorem taxes and assessments, if any, as of the Closing, between City and the Developer. If the then-current taxes and assessments are not ascertainable, the Escrow Agent will apportion the taxes and assessments based on the most recent statement of taxes and assessments. Escrow Holder will adjust the proration, if necessary, within 30 days after the actual taxes and assessments are available. Developer will be solely responsible for ad valorem taxes or assessments on the Property, or any taxes on this Agreement or any rights hereunder, which may be levied, assessed or imposed for any period after the Closing.

2.6 **Form of Deed.** City will convey the Property to the Developer by a Grant Deed, substantially in the form attached hereto as Exhibit F. The conveyance and Developer's title will be subject to all conditions, covenants, restrictions and requirements set forth in this Agreement, and the Grant Deed.

2.7 Nonmerger. Prior to the issuance of a Certificate of Completion, the provisions of this Agreement will not merge with the Grant Deed. The Grant Deed will not affect, impair or limit the provisions, covenants, conditions or agreements of this Agreement.

2.8 Possession. City will deliver exclusive possession of the Property to Developer at or immediately following the Closing.

2.9 Sale "AS IS" – No Warranties. Subject to the terms and conditions contained herein, City will convey the Property "AS IS" with all faults, including, without limitation, the conditions disclosed in any toxics reports delivered to Developer, any conditions disclosed in the files of the regulators such as, but not limited to, the Fresno County Health Department, and the Regional Water Quality Control Board, and any environmental or other physical conditions on or under the Property, buried debris or structures, and soil compaction, presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, and the suitability of the Property for the development purposes intended hereunder. Notwithstanding the foregoing, City, or its contractors, will remediate the presence of Hazardous Materials caused by contractors' use of the parking lot at Inyo and Fulton pursuant to Section 2.1.3.2.

2.10 Close of Escrow. The Escrow will close within 30 days after the parties satisfy all the conditions precedent to Closing as set forth in this Agreement, but not later than the "Outside Date," unless the parties mutually agree to extend the time for Closing.

2.11 Authority of Escrow Holder. The parties authorize the Escrow Holder to, and the Escrow Holder will do the following:

A. Title Policy Premium. Pay and charge City and Developer, respectively, for the title insurance premiums described in Section 2.4 of this Agreement.

B. Pay Fees. Pay and charge the Developer and City equal 50% share of the escrow fees and closing costs, excluding any costs to correct title exceptions or cure property conditions. City and Developer must agree in separate writing or instructions to the Escrow Holder to the allocation of costs to cure title exceptions or property conditions.

C. Record Grant Deed and Disburse Funds. Disburse funds from the Purchase Price, and record and deliver the Grant Deed to the appropriate party when the conditions precedent to Closing are satisfied or waived.

D. Actions to Fulfill Obligations. Take any other action necessary to fulfill its obligations under this Agreement.

E. FIRPTA, and More. Direct the parties to deliver any instrument, or to perform any act, necessary to comply with FIRPTA or any similar state act and regulation promulgated thereunder. City will sign a Certificate of Non-foreign Status, or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as the Escrow Holder may require.

F. Closing and Other Statements. Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including, without limitation, an IRS 1099-S form, and be responsible for withholding taxes, if the law so requires.

G. Closing Statements. Escrow Holder will forward to both Developer and City a separate accounting of all funds received and disbursed for each party, and copies of all signed and recorded documents deposited into Escrow, with the recording and filing date and information endorsed thereon.

H. Termination Without Close. If the Escrow is not in condition to close by the Outside Date, then any party that is not in default of this Agreement may demand the return of money or property and terminate this Agreement and the Escrow. If either party makes a written demand for return of documents or properties, this Agreement will not terminate until five days after Escrow Holder has delivered copies of the demand to the other party at the respective addresses shown in this Agreement. If the other party objects within the five-day period, the parties authorize the Escrow Holder to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of this Agreement will be without prejudice to whatever legal rights either party may have against the other arising from this Agreement. If no party demands that the Escrow terminate, the Escrow Holder will proceed to Closing as soon as possible.

2.12 City's Authority to Sign Instructions and Documents. The City Manager or his designee is authorized to sign on behalf of the City as a municipal corporation and the Executive Director is authorized to sign on behalf of the City in its capacity as Housing Successor. The City Manager and Executive Director, or their respective designees, are authorized to execute any supplemental escrow instructions for City that are not a material change hereto. The City Manager and Executive Director, or their respective designees may make minor modifications, not constituting a material change, to this Agreement, Exhibits and the documents referenced herein, to effect the opening and Close of the Escrow.

2.13 Access Prior to Conveyance. Prior to the conveyance of title from City, representatives of Developer shall have the right of access to the Property at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The Developer shall hold City harmless for any injury or damages arising out of any activity pursuant to this Section. The Developer shall have access to all data and information on the Property available to City, but without warranty or representation by City as to the completeness, correctness or validity of such data and information. Any preliminary work, other than work in connection with Developer's Due Diligence Investigation, undertaken on the Property by the Developer prior to conveyance of title thereto shall be done only after written consent of City, satisfaction of City imposed conditions including without limitation evidence of reasonably required insurance coverage(s), all at the sole expense of the Developer. The Developer shall save and

protect City against any claims or liens resulting from such preliminary work, access or use of the Property. Copies of the data, surveys and tests obtained or made by the Developer on the Property shall be filed with City. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

3. CITY ASSISTANCE.

3.1 City agrees to provide certain financial assistance to the Developer to assist the Developer in construction costs of the Project. The City has secured on behalf of the Developer for a total of Seven Hundred Eleven Thousand Eighty Five Dollars (\$711,085) of Measure C TOD funds programmed in Fiscal Years 15/16 and 16/17. As a condition to payment of the City Assistance, Developer will provide adequate security and/or a personal guaranty securing the full amount of the City Assistance. The performance bond required by Section 5.2.8 shall be deemed adequate security for purposes of this Section. The security and/or personal guarantee shall be released upon recording of the Certificate of Completion.

3.2 Developer may apply for an exemption from payment of City development impact fees pursuant to Fresno Municipal Code section 12-4.1401 et seq.

3.3 Housing Successor Assistance. In addition to the donation of land valued at \$100,000 set forth in Section 2.1.1 and 2.1.2, the City, in its capacity as Housing Successor agrees to provide a grant in the amount of \$659,298 in Low Moderate Income Housing Asset Funds ("Housing Grant") to develop ten affordable residential units that will be restricted to household income levels no greater than 50% of AMI for a period of 55 years. The Housing Grant shall be payable to Developer upon recording of the Certificate of Completion.

4. PROJECT DEVELOPMENT

4.1 Private Development Project; Revision of Project. Developer will complete the Project as described in the Scope of Development using contractors licensed to do business in California. Except as may be expressly provided herein, Developer shall not begin construction or perform any other work on the Property until after Closing. However, prior to the Closing, Developer shall be permitted access to the Property to perform Developer's testing, investigation and other due diligence which Developer deems necessary to prepare for the development of the Project.

4.1.1 Design Approval. Developer shall obtain the City's approval of the design development drawings. Within 15 business days after receiving the design development drawings, the City, through its City Manager, will review the drawings, and acting in a commercially reasonable manner, will approve or disapprove. If the City disapproves the drawings, it will specify the reason for disapproval and ask Developer to provide any additional information the City may need to approve the drawings. If the City fails to either approve or disapprove the design and development drawings within the 15-day period, the City shall be deemed to have approved the design and development drawings. The parties intend this process shall be in addition to, but shall occur concurrently with, the approval process by the Development and Resource Management Department of the City.

4.2 Time for Completion of the Project. City will convey the Property to Developer for construction of the Project, and not for speculation in real estate. Therefore, the

Developer will begin construction by the date provided in the Performance Schedule, and will diligently complete the Project according to the Performance Schedule, or by any other date as the parties may agree in a written extension signed by the parties and subject to any extension of time provided for in Sections 4.3.

4.3 Extension of Time for Completion. In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Any extension of time other than for enforced delay shall require City Council approval. No additional extensions shall be granted as a result of the COVID-19 pandemic.

4.4 Certificate of Completion. After Developer has satisfactorily completed a Phase of the Project according to this Agreement and after the completion of the final Phase of the Project, Developer may ask City to record a Certificate of Completion indicating that a Phase or that all Phases are complete, substantially in the form attached as Exhibit E. For purposes of this section, Developer's submission of a "Safe to Occupy" Certificate or Certificate of Occupancy for the Improvements within the subject Phase of the Project shall be conclusive evidence that Developer has satisfactorily completed those Improvements. Subject to the satisfaction of the conditions to its issuance (see next subsection) and within ten days of such request, City shall provide an instrument certifying Developer's completion of the Project, or any Phase thereof, by preparing and recording the Certificate of Completion. This release, when recorded, will evidence City's conclusive determination that Developer has satisfied the construction covenants in this Agreement as to the subject Phase of the Project. The release will not be evidence that Developer has complied with or satisfied any obligation to any person holding a deed of trust or Security Financing Interest. The release shall not terminate Developer's indemnification or other obligations, which by their nature are intended to survive Project completion. After the release is recorded in the Official Records of Fresno County, any party then owning or after that purchasing, leasing or otherwise acquiring any interest in the applicable portion of the Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement regarding the construction requirements or Project development of the completed Project.

4.5 Conditions to Issuing the Certificate of Completion. The following are all conditions precedent to City issuing the Certificate of Completion for the Project, or any Phase thereof, and each submission will be in a form and substance satisfactory to City:

- A. Evidence that all mechanics' liens or material men's liens and claims recorded against the Property, or any Phase thereof, and the

Project Improvements that are the subject of the Certificate of Completion have been unconditionally and finally released or, if not released, sufficiently bonded against as required by law.

4.6 Liens and Stop Notices. If a claim of lien or bonded stop notice is recorded against the Property or any Project improvements, the Developer, within 91 days after that, or within five days after City's demand, whichever last occurs, will do the following:

- A. Pay or discharge the same; or
- B. Effect the release of it by recording and delivering to City a surety's release bond in sufficient form and amount, or otherwise; or
- C. Give City other assurance that City, in its sole discretion, deems satisfactory to protect City from the effect of the lien, claim or bonded stop notice.

4.7 Annual Proof of Insurance. Annually, beginning with commencement of construction of the Project, and continuing until the issuance of a Certificate of Completion for the Project, Developer shall submit proof of insurance as required by this Agreement.

4.8 Taxes and Assessments. The Developer will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Developer's right to contest any taxes or assessments in good faith. The Developer will remove any levy or attachment on the Property or any part of it, or assure the satisfaction of the levy or attachment within a reasonable time. Except as to property in public use and subject to the following sentence, Developer and those tenants/others holding or using the Property under Developer by lease or otherwise, shall not apply for or take advantage of or otherwise enable any exemption from property/possessory taxes. The Developer shall not allow a use, transfer or sale of the Property/portion thereof, whether prior to or following completion of the improvements hereunder, to an entity that is exempt from property/possessory tax and/or which would allow a removal from the tax roll, absent prior notice to and written consent of City.

4.9 Compliance with Laws. In performing its obligations hereunder, Developer shall comply with all applicable laws, regulations, and rules of the governmental agencies having jurisdiction, including, without limitation, applicable federal and state labor standards and environmental laws and regulations. Developer, not City, is responsible for determining applicability of and compliance with all local, state and federal laws including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, Government Code, the City Charter, and Fresno Municipal Code. City makes no representations regarding the applicability of any such laws to this Agreement, the Project, or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. City shall not be liable or responsible, in law or equity, to any person for Developer's failure to comply with any such laws, whether City knew or should have known of the need for Developer to comply, or whether City failed to notify Developer of the need to comply.

4.10 Entitlements. Certain planning, land use, zoning, conditional use permits, demolition permits, and public actions required in connection with the Project are discretionary government actions. Nothing in this Agreement obligates 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. City shall not be liable, in law or equity, to 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. City agrees to use best efforts to cooperate with Developer to timely review and consider all complete applications for necessary entitlements; provided, however, City shall retain its full governmental discretion to consider any such applications on their merits and in accordance with applicable law.

5. INDEMNITY; INSURANCE.

5.1 Indemnity. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend, with qualified counsel of Developer's choice, the City, and each of its officers, officials, employees and agents from any loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability including, without limitation, personal injury, death at any time and property damage) incurred by the City, Developer or any other person, and from any claims, demands and actions in law or equity (including reasonable attorneys' fees, litigation and legal expenses incurred by the City or held to be the liability of the City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making of this Agreement; (ii) the performance of this Agreement; (iii) the performance or installation of the work or Improvements by the Developer and Developer's employees, officers, agents, contractors or subcontractors; (iv) Developer's failure to complete the Project; (v) the design, installation, operation and removal or maintenance of the work and Improvements; or (vi) City's granting, issuing or approving use of this Agreement and (vii) any financing of the Project including, but not limited to, AHSC, Measure C TOD bonds, and any form of public or private financing under which City has any direct or indirect liability.

Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees or agents are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

The work hereunder constitutes a "public work" as defined in Chapter 1, Park 7, Division 2 of the California Labor Code, and Developer shall cause the work to be performed as a "public work" in accordance with such Chapter of the California Labor Code. 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 worker needed in the execution of agreements for the City. Information specific to the work to be done under this Agreement can be obtained by contacting the Contract Compliance Officer at the City of Fresno office of Construction Management, (559) 621-5600.

This indemnity shall also cover, without limitation the following: (i) any act, error or omission of Developer as to the City or any of their officers, employees, contractors, subcontractors, invitees, agents or representatives in connection with this Agreement, the Project, or the Property; (ii) any use of the Property, the Project by Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives, successors or assigns; (iii) the design, construction,

operation or maintenance of the Project; or (iv) failure of Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives to comply with any Federal, State or local law, code, ordinance or regulation applicable to this Agreement or the Project, including, but not limited to, claims based upon failure to comply fully with prevailing wage laws as may be determined by any court or agency of the State of California or United States Government; with respect to any and all claims related to prevailing wage, Developer, as provided herein and otherwise in this Agreement, assumes all responsibility for payment of prevailing wage and complying with prevailing wage laws, if required, and specifically waives any and all rights against the City, as well as City agents, employees, agencies, and consultants, pursuant to California Labor Code section 1726(c) and analogous federal law, if any, and agrees to defend and fully indemnify the City, as well as City agents, employees, agencies, and consultants, for any claims based upon failure to pay prevailing wage, including, without limitation, claims for damages, fines, penalties, litigation expenses, costs, attorneys' fees, and interest. Developer and/or City have the right to contest or challenge any finding that prevailing wage applies.

This section shall survive termination or expiration of this Agreement and the potential recordation of the Grant Deeds.

5.1.1 Action Arising Out of Approval of This Agreement. The Developer shall indemnify, defend and hold the City and each of their respective officers, officials, employees, agents, boards and volunteers harmless from any judicial action filed against the City by any third party arising out of the City's approval of this Agreement or any permit, entitlement or other action required to implement this Agreement, including without limitation approvals under the Law, CEQA or the City's Municipal Code. The City will promptly notify the Developer of the action. Within fifteen (15) days after receipt of the notice, the Developer shall take all steps necessary and appropriate to assume defense of the action. The City will cooperate with the Developer in the defense of the action (at no cost to the City). Neither the Developer nor the City will compromise the defense of such action or permit a default judgment to be taken against the City without the prior written approval of the other party(ies).

5.1.2 Survival of Indemnification Provisions. Except as otherwise specifically stated herein, the indemnification provisions in this subsection and every other indemnification in this Agreement will survive any termination of this Agreement, will survive any Closing, will survive the expiration of any covenant herein and will not merge with any other document evidencing an interest in real property.

5.2 Insurance. Until City issues the Certificate of Completion and records it in the Official Records of Fresno County, Developer or any of its Contractors or Subcontractors shall pay for and maintain, or cause to be paid and maintained, in effect all insurance policies required hereunder with insurance companies either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or (ii) authorized by the City's Risk Manager. In lieu of Developer paying for or maintaining, Developer may have any of its contractors or subcontractors pay for and maintain any of the policies of insurance identified herein below.

The following policies of insurance are required, and Developer will deliver proof of these policies before starting construction:

5.2.1 Commercial General Liability Insurance. Commercial general liability Insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage, and personal and advertising injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than \$3,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$3,000,000 aggregate for products and completed operations, and \$6,000,000 general aggregate.

5.2.2 Commercial Automobile Liability Insurance. Commercial automobile liability insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 (Section 1, subsection A.1 entitled "Any Auto"), with combined single limits of liability of not less than \$3,000,000 per accident for bodily injury and property damage.

5.2.3 Workers' Compensation Insurance. Workers' compensation insurance, as required under the California Labor Code.

5.2.4 Employer's Liability. Employer's liability coverage with minimum limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

5.2.5 Fire and Extended Coverage Insurance. Fire and extended coverage insurance for at least the full replacement cost of the Developer Improvements on the Property, excluding foundations, footings and excavations and tenant improvements, fixtures and personal property.

5.2.6 Builders Risk Insurance. Builders risk insurance sufficient to cover one hundred (100) percent of the replacement value of all improvements made on the Property including, without limitation, terms of labor and materials in place or to be used as part of the permanent construction (including, without limitation, surplus miscellaneous materials and supplies incidental to the work, and scaffolding, staging, towers, forms and equipment not owned or rented by Developer, the cost of which is not included in the cost of work).

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above-described policies of insurance shall be endorsed to provide an unrestricted thirty-(30) calendar day written notice in favor of the City, of policy cancellation, change or reduction of coverage, except the Workers' Compensation policy that shall provide a ten (10)-calendar day written notice of such cancellation, change or reduction of coverage. If any policy is due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing policy renewal not less than fifteen (15) calendar days before the expiration date of the policy. When an insurer, broker, or agent issues a notice of cancellation, change or

reduction in coverage, Developer shall immediately obtain and file a certified copy of a new or renewal policy and certificates for such policy with the City.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City and the officers, officials, agents and employees as an additional insured. Each policy shall be endorsed so that Developer's insurance is primary and no contribution is required of the City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Developer shall furnish the City with copies of the actual policies upon the request of its designee, or the City's Risk Manager.

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

If Developer fails to maintain the required insurance in full force and effect, Developer shall immediately discontinue all work under this Agreement, and take all necessary actions to secure the work site to insure that public health and safety is protected, until the City receive notice that the required insurance has been restored to full effect and that the premiums for the insurance have been paid for a period satisfactory to City. Developer's failure to maintain any required insurance shall be sufficient cause for the City to terminate this Agreement after notice and the right to cure as provided in Section 9.4.

If Developer subcontracts all or any portion of the work under this Agreement, Developer shall require each subcontractor to provide insurance protection in favor of Developer and the City, and their officers, officials, employees, agents and volunteers according to the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Developer, and City before the subcontractor begins any work.

5.2.7 Insurance for Project Design Work. Developer shall maintain for its Project design work, or if Developer subcontracts any of the Project design work Developer shall require each design subcontractor to maintain professional liability insurance (errors and omissions) with a limit of not less than one million dollars (\$1,000,000) per occurrence.

If claims made forms are used for any Professional Liability Coverage, either (i) the policy shall be endorsed to provide not less than a five (5) year discovery period, or (ii) the coverage shall be maintained for a minimum of five (5) years after the Release of Construction Covenants/Certificate of Completion is recorded. The

requirements of this section relating to such coverage shall survive termination or expiration of this Agreement.

5.2.8 Performance and Payment Bonds. As a condition of approval of this Agreement, Developer will obtain and deliver labor and material bonds, payment, and performance bonds, issued by an insurance company meeting the criteria for Developer's other insurance under this Agreement in a form satisfactory to City. The bonds will each contain a penal sum at least equal to one hundred ten percent (110%) of Developer's estimated construction costs of any particular Phase of the Project then under construction and shall remain in full force until all construction costs are paid, plus Developer has obtained the issuance of a "Safe to Occupy" Certificate or Certificate of Occupancy, or the recording of a Certificate of Completion for that Phase, whichever is earlier. The bonds will name City as a co-obligee. The bonds shall expressly provide for purposes of the bonds, Developer is solely responsible for completion of the Project and payment of all costs, and is solely responsible to the surety in the event the Project is not completed and the obligations of the surety are not limited in any way as a result of the liability of City as a co-applicant or co-borrower under any financing including AHSC, Measure C TOD bonds, and any other public or private financing. Instead of requiring performance and payment bonds, City may consider and accept other evidence of Developer's ability to complete the Project.

6. SECURITY FINANCING INTERESTS AND RIGHTS OF HOLDERS.

6.1 Prohibition Against Transfer of Property, the Buildings or Structures Thereon and Assignment of Agreement. After conveyance of title and prior to the issuance by City of a Certificate of Completion for the Project, the Developer shall not, except as expressly permitted by this Agreement, sell, transfer, convey, or assign the whole or any part of the Property or the buildings or improvements thereon without the prior written approval of City. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property or to prohibit or restrict the leasing of any part or parts of a building or structure.

6.1.1 Permitted Transfers. Notwithstanding the foregoing, the following events ("**Permitted Transfers**") shall not be deemed a transfer for the purposes of requiring City's consent:

- A. Creation of Security Financing Interests;
- B. A sale, conveyance, or transfer of the Property at foreclosure (or a deed in lieu of foreclosure) resulting from a Security Financing Interest;
- C. The conveyance or dedication of parts of the Property to the City or the grant of easements or permits solely to facilitate the development of the Property before the Certificate of Completion is recorded;
- D. Sale or rental of Project units/space in accordance with this Agreement;
- E. Sale or assignment to an entity controlled by or in common control with Developer;

F. Assignments resulting from the death or mental or physical incapacity of an individual;

G. Sale of any membership interest, units, shares, or other interests in Developer for purposes of acquiring additional capital for purposes of developing the Project; and

H. Assignments in trust for the benefit of a partner's spouse, children, grandchildren or other family members.

6.2 Approval or Consent of City. When a request for transfer or assignment is submitted to City for consideration, approval will be conditioned on the following:

A. Financial Strength and Business Experience. The proposed transferee will demonstrate to City's reasonable satisfaction that the proposed transferee has sufficient financial strength and the business experience in planning, financing, development, ownership, and operation of similar projects to complete the Project, or portion thereof, competently.

B. Assumption Agreement. Any transferee, by recordable instrument acceptable to City, shall expressly assume all the unfulfilled or ongoing obligations of the Developer under this Agreement, and agree to be subject to all the conditions and restrictions to which the Developer is subject with respect to the Property or applicable portion thereof.

C. Transfer Documents. The Developer or its successors shall submit all documents, proposed to effect any transfer or assignment, to City for review and approval.

D. Other Information. Developer or its successors shall deliver all information to City that City may reasonably request to enable it to evaluate the proposed transfer or assignment. City shall approve, conditionally approve, or disapprove a request for assignment within 15 days after receiving the request and all supporting documentation.

E. Developer's Release. City's approval of any transfer, assignment, or sale will not relieve the Developer or any successor from any unfulfilled or ongoing obligations of Developer under this Agreement with respect to any portion of the Property not transferred. The provisions of this subsection are intended to discourage land speculation, and these provisions shall be liberally interpreted to accomplish that end.

6.3 Security Financing; Rights of Holders

6.3.1 No Encumbrances Except Mortgages, Deeds of Trust, Sales and Lease-Back or Other Financing for Development. Notwithstanding Section 6.1 of this Agreement, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing are permitted before issuance of a Certificate of Completion but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the construction of improvements on the Property and any other expenditures necessary and

appropriate to develop the Property under this Agreement. The Developer shall promptly notify City of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to completion of the construction of the improvements on the Property whether by voluntary act of the Developer or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

6.3.2 Holder Not Obligated to Construct Improvements. The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion, nor shall any covenant or any other provision in the grant deed for the Property be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

6.3.3 Notice of Default to Mortgage, Deed of Trust, or Other Security Interest Holders; Right to Cure. Whenever City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the improvements, City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust, or other security interest authorized by this Agreement who has previously made a written request to City therefor default of the Developer under this Section 6.3.3. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to City by written agreement reasonably satisfactory to City. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates and submit evidence reasonably satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to City, to a Certificate of Completion from City.

6.3.4 Failure of Holder to Complete Improvements. In any case where, six (6) months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust, or other security interest creating a lien or encumbrance upon the Property has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, City may purchase the mortgage, deed of trust, or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest, any prepayment fees or charges and related lender costs. If the ownership of the Property has vested in the holder, City, if it so desires, shall be entitled to a conveyance of the Property from the holder to City upon payment to the holder of an amount equal to the sum of the following:

- A. The unpaid mortgage, deed of trust, or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- B. All expenses with respect to foreclosure;
- C. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Property;
- D. The costs of any authorized improvements made by such holder; and
- E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by City.

6.3.5 Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of a default or breach by the Developer on a mortgage, deed of trust or other security interest with respect to the Property prior to the completion of the Project, and the holder has not exercised its option to complete the Project, City may cure the default prior to completion of any foreclosure. In any such event, City shall be entitled to reimbursement from Developer of all costs and expenses incurred by City in curing the default. City shall also be entitled to a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Property as authorized herein.

7. USE AND MAINTENANCE OF THE SITE.

7.1 Developer covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Developer, that during development of the Site pursuant to this Agreement and thereafter, neither the Site nor the improvements, nor any portion thereof, shall be improved, used or occupied in violation of any applicable governmental restrictions or the restrictions of this Agreement. Furthermore, Developer and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Site or in the improvements, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Site or the improvements, or any portion thereof.

7.2 Notwithstanding anything to the contrary or that appears to be to the contrary in this Agreement, Developer hereby covenants, on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Developer, that, Developer and such successors and assigns shall use the Site solely for the purpose of constructing, maintaining and operating a mixed use project with residential rental component meeting the requirements and restrictions of this Agreement and the Regulatory Agreement, including, without limitations, restriction of the rental and occupancy of the Restricted Units only to Qualified Tenants for rent not in excess of an Affordable Rent for the period specified herein.

7.3 Affordable Housing.

7.3.1 Construction of Affordable Housing. The Developer covenants and agrees to construct a total of fifty four (54) units, in conformity with the Scope of Development. Ten (10) of the Restricted Units shall be restricted to rental at an Affordable Rent to Very Low or Lower Income Households, shown as 50% of AMI in Exhibit G. All Restricted Units shall be subject to and shall be leased in compliance with the Tenant Selection Criteria attached hereto.

7.3.2 Restricted Unit Requirements. All Restricted Units constructed pursuant to this Agreement shall be occupied at all times by the household of the Qualified Tenant who has rented that Restricted Unit. Developer covenants to cooperate with City in taking all steps necessary to implement this requirement with respect to all Qualified Tenants. In addition, all Qualified Tenants shall meet and shall be prioritized in accordance with the Tenant Selection Criteria. The restrictions upon rental and use of each Restricted Unit shall continue for a period of fifty-five (55) years from the recordation of the Certificate of Completion.

7.3.3 Annual Tenancy Report. Developer shall provide City annually, by January 31, with a report on Project occupancy for each Restricted Unit, including information concerning the number of months during which each Restricted Unit was occupied, and the income category of each tenant household occupying a Restricted Unit. The annual report and Developer's records related to each tenancy shall be subject to inspection and audit upon City's written request.

7.3.4 Obligation to Refrain from Discrimination. There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy or enjoyment of the Site, or any portion thereof, nor shall Developer, or any person claiming under or through Developer, establish or permit any such practice, or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof (except as permitted by this Agreement). The nondiscrimination and nonsegregation covenants herein shall remain in effect in perpetuity.

7.3.5 Form of Nondiscrimination and Nonsegregation Clauses. Subject to the tenancy/occupancy restrictions on the Restricted Units not prohibited by federal law as embodied in this Agreement, which may modify the following nondiscrimination clauses, the following shall apply: Developer shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

7.3.5.1 Deeds. In deeds the following language shall appear: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease,

transfer, use, occupancy, tenure or employment of the land herein conveyed, nor shall the grantee, or any persons claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

7.3.5.2 Leases. In leases the following language shall appear: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased."

7.3.5.3 Contracts. Any contracts with Developer or Developer's heirs, executors, administrators or assigns propose to enter into for the sale, transfer or leasing of the Site shall contain a nondiscrimination and nonsegregation clause substantially as set forth in this Section. Such clause shall bind the contracting party and subcontracting party or transferee under the instrument.

7.3.6 Maintenance of Improvements. Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Site or any part thereof, that, after City's issuance of its Certificate of Completion the Developer shall be responsible for the maintenance of all improvements that may exist on the Site from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in good condition and repair, and shall keep the Site free from any accumulation of debris or waste materials. The Developer shall also maintain all landscaping required pursuant to Developer's approved landscaping plan in a healthy condition, including replacement of any dead or deceased plants. The foregoing maintenance obligations shall run with the land in accordance with and for the term of the Regulatory Agreement. Developer's further obligations to maintain the Site, and City's remedies in the event of Developer's default in performing such obligations, are set forth in the Regulatory Agreement. Developer hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City that would otherwise apply, except as specified in the Regulatory Agreement. Upon the sale of any portion of the Site, Developer (but not Developer's successor) shall be released from the requirements imposed by this Section, and the financial liability therefor, as to the portion of the Site conveyed.

7.3.7 Effect of Covenants. City is deemed the beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land appearing in the Regulatory Agreement, for and in its own right for the

purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of City shall run without regard to whether City has been remains or is an owner of any land or interest in the Site, and shall be effective as both covenants and equitable servitudes against the Site. City shall have the right, if any of the covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies available and to maintain any actions or suits at law or in equity or other and proper proceedings to enforce the curing of such breaches to which it may be entitled. No other person or entity shall have any right to enforce the terms of this Agreement under a theory of third-party beneficiary or otherwise. The covenants running with the land and their duration are set forth in the Regulatory Agreement.

8. REPRESENTATIONS AND WARRANTIES.

8.1 Developer Representations and Warranties.

A. Representations and Warranties of Developer. Developer represents and warrants that:

1. Developer is a California limited partnership duly formed and existing under the laws of the State of California, and authorized to do business in the State of California, County of Fresno, and City of Fresno.
2. Developer has all requisite power and authority to carry out its business as now and hereafter conducted and to enter and perform its obligations under this Agreement.
3. The person or persons signing this Agreement for Developer have been duly authorized to execute and deliver this Agreement and to legally bind Developer to its terms and conditions.
4. Developer's execution and performance of this Agreement does not violate any provision of any other agreement to which Developer is a party.
5. Except as may be specifically set forth in this Agreement, no approvals or consents not heretofore obtained by Developer are necessary to Developer's execution of this Agreement.
6. Developer has or will have sufficient funds available to fund the Project and to pay all costs assumed by Developer hereunder.
7. This Agreement is valid, binding, and enforceable against Developer in accordance with its terms, except as such enforceability may be limited by principals of public policy and subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors, and rules of law governing specific performance, injunctive relief or other equitable remedies.

8. Developer has made no contract or arrangement of any kind the performance of which by the other party thereto would give rise to a lien on the Property.

B. Representations and Warranties of City. City represents and warrants that:

1. City owns the properties at 829 Fulton Street and 835 Fulton Street and intends to purchase the parking lot at Inyo and Fulton Streets, APN 468-282-23T. City is not under contractual obligation to sell the properties other than this Agreement.

8.2 Survival of Representations and Warranties. The parties are relying upon the above representations and warranties in entering this Agreement. The foregoing representations are and shall be continuing in nature and shall remain in full force and effect until all obligations under this Agreement are met or this Agreement is terminated in a manner provided herein.

9. DEFAULT, REMEDIES AND TERMINATION.

9.1 Default. Failure or delay by either party to perform any term of this Agreement shall be a default under this Agreement if not cured within the time set forth herein. Any failure or delay by a party in asserting any right or remedy will not constitute a waiver, and will not deprive the party of its right to institute and maintain any action or proceeding necessary to protect or enforce any right or remedy.

9.2 Legal Actions. A party may institute a legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement. Such legal action shall be brought in the Fresno County Courts, or the Fresno Division of the Federal District Court for the Eastern District of California.

9.3 Rights and Remedies are Cumulative. Except as may be expressly stated otherwise in this Agreement, the rights and remedies of the parties are cumulative. The exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other rights or remedies for the same default or any other default. In addition to the specific rights and remedies herein, the parties may resort to any other rights or remedies available at law or in equity, including, without limitation, specific performance.

9.4 Notice and Cure Periods. If either party fails to perform under any provision of this Agreement including documents incorporated herein, the non-defaulting party shall serve written notice of the default on the defaulting party, describing the default, and the actions necessary to cure the default. A defaulting party will have 30 days from the date of the notice to cure the breach or failure unless a different time period is provided in this Agreement in which case the latter shall apply. If the default is not susceptible to cure within the 30 days, the defaulting party shall begin to cure the default within the 30 days and after that diligently prosecute the cure to completion. Failure of the defaulting party to cure within these times shall entitle the non-defaulting party to enforce any right or remedy provided in this Agreement, at law, or in equity. This provision is not intended to modify or extend any other notice or cure period specifically provided for in this Agreement. Failure

or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

9.5 Right of Re-entry (Power of Termination) and Reverter. City may reenter and take possession of the Property, or part of it, and all improvements on it, terminate the estate conveyed to Developer by the Grant Deed and revest the estate in City if, after the Closing, but before recording a Certificate of Completion, any of the following occurs:

- A. Developer does not begin and complete construction of the Project within the time specified in the Performance Schedule or this Agreement unless otherwise extended by the terms herein; or
- B. Developer abandons or substantially suspends construction of the Project for 30 days after City gives written notice of the abandonment or suspension; or
- C. Developer assigns or transfers, or suffers an involuntary transfer of, any rights or obligations under this Agreement, or in the Property, in violation of the assignment provision of this Agreement.

9.6 Effect on Security Holders. City's right to reenter, repossess, terminate and revest shall be secured by the provisions of the Grant Deed and Deed of Trust attached hereto as Exhibit F. Such right to reenter, repossess, terminate and revest shall be subject to, limited by, and shall not defeat, render invalid, or limit: (i) any Security Financing Interest permitted by this Agreement; or (ii) any provision of this Agreement protecting the holder's Security Financing Interest.

9.7 Resale of the Property. When title to the Property reverts in City in the event of a default by Developer, City may, but is not required to, use its best efforts to resell the Property to a qualified and responsible party (as determined by City), who will assume the obligation of completing the Project or constructing the improvements other than the Project, satisfactory to City. Upon any resale of the Property, or part of it, the proceeds shall be applied as follows:

- A. First, to reimburse City for (a) all costs and expenses incurred (including, without limitation, salaries of personnel and reimbursements to California Department of Housing and Community Development, if any) in connection with the recapture, management, and resale of the Property, or part of it, less any income City derived from the property in connection with the management; (b) all taxes, assessments, and water and sewer charges respecting the Property (or, if any of the Property is exempt from taxation or assessment or such charges during City's ownership, then such taxes, assessments or charges as would have been payable if the Property were not so exempt); (c) any payments necessary to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees from attaching or being made; (d) any expenditures made or obligations incurred to complete the Project or other improvements on the Property; and any amounts otherwise owing to City from Developer or by its successor or transferee; and

B. Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (a) the purchase price paid to City for the Property; and (b) the out-of-pocket costs incurred to develop and improve the Property, less (c) any gains or income to Developer from the Property, the Project or other improvements on it.

Notwithstanding the foregoing, the amount calculated pursuant to this Section shall not exceed the price that Developer paid City for the Property, and the fair market value of the improvements on it when the default or failure occurred, which led to City's exercise of the right of reverter.

C. Any balance remaining after such reimbursements shall be retained by City.

9.8 No Speculation in Land. Unless otherwise provided herein, the rights established in this Section 9 shall be interpreted considering City's intent to convey the Property to Developer for development of the Project, and not for speculation in undeveloped land or any other purpose.

The provisions of Sections 9.5-9.7 and 9.9 shall automatically terminate on the recordation of a Certificate of Completion for the Project (or applicable phase).

10. GENERAL PROVISIONS.

10.1 Notice, Demands and Communication. All notices, elections, requests, acceptances, demands, instructions or other communications ("notice" or "notices") to be given to any party under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if personally served on the party to whom notice is to be given; (ii) within forty-eight (48) hours after mailing, if mailed to the party to whom notice is to be given, by first class mail which is either registered or certified, postage prepaid, return receipt requested; (iii) within twenty-four (24) hours after being deposited with a recognized private courier service (e.g. Federal Express), if delivered by a private courier service to the party to whom notice is to be given, all charges prepaid; or (iv) when sent, if given by electronic format that provides verification of successful transmission. All notices shall be properly addressed to the party receiving notice as follows:

CITY:

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

WITH COPIES TO:

City Attorney
2600 Fresno Street
Fresno CA 93721-3602
Facsimile No.: (559) 498-1815

DEVELOPER:

Noyan Frazier Capital, L.P.
685 W. Alluvial Avenue, Suite 101
Fresno, California 93711

A party may change its address by notice given according to this subsection.

10.2 Conflict of Interests. No member, official, officer or employee of the Developer or City shall have any direct or indirect interest in this Agreement, or shall participate in any decision relating to this Agreement where such interest or participation is prohibited by law. No officer, employee, or agent of City who exercises any function or responsibility concerning the planning and carrying out of the Project, or any other person who exercises any function or responsibility concerning any aspect of this Agreement or the Project, shall have any personal financial interest, direct or indirect, in this Agreement or the Project.

10.2.1 Developer represents and warrants that it has not paid or given, and will not pay or give, to any third party any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys.

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

10.3 Nonliability of Officials, Employees and Agents. No member, official, officer, employee or agent of City shall be personally liable to the Developer, or any successor in interest, for any default or breach by City.

10.4 Counterparts. This Agreement may be executed in counterparts, and together each executed counterpart shall constitute one Agreement.

10.5 Waiver. A party's waiver of the other's breach of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement. No provision of this Agreement may be waived except in a writing signed by all the parties. Waiver of any one provision shall not be deemed to be a waiver of any other provision herein.

10.6 Attorneys' Fees. If a party initiates or defends litigation or any legal proceeding regarding the enforcement of this Agreement, the prevailing party in such litigation or proceeding, in addition to any other relief that may be granted, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal. A party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating the action, retaining expert witnesses, taking depositions and discovery, and all other necessary costs incurred with respect to the action. All such fees shall be deemed

to have accrued on commencement of the action and shall be enforceable whether or not such action is prosecuted to judgment.

10.7 Governing Law. This Agreement shall be interpreted and enforced, and the rights and duties of the parties under this Agreement (both procedural and substantive) shall be determined according to California law.

10.8 Further Assurances. Each party will take any further acts and will sign and deliver any further instruments required to carry out the intent and purposes of this Agreement.

10.9 Entire Understanding of the Parties. The exhibits referenced as attached are by such references incorporated into this Agreement. This Agreement, including exhibits, is the entire understanding and agreement of the parties. All prior discussions, understandings, and written agreements are superseded by this Agreement. This Agreement shall not be modified except by written instrument duly approved as required by law and executed by authorized representatives of the parties. Should the terms of any exhibit conflict with the body of this Agreement, the body of this Agreement shall govern.

10.10 Consent, Reasonableness. Unless this Agreement specifically authorizes a party to withhold its approval, consent or satisfaction in its sole discretion, any consent, or approval, or satisfaction to be requested or required of a party, shall not be unreasonably withheld, conditioned or delayed.

10.11 Partial Invalidity. If any part of this Agreement is held to be invalid, void or unenforceable in any legal, equitable or arbitration proceeding, the remainder of the Agreement shall continue in effect, unless not giving effect to the invalid or unenforceable part would prevent effecting the purposes of the Project and this Agreement.

10.12 Ambiguity. This Agreement is the result of the combined efforts of the parties. Should any provision of this Agreement be found ambiguous, the ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but by construing the terms according to their generally accepted meaning, considering the objective of the Agreement.

10.13 Number and Gender. Masculine, feminine or neuter gender terms and singular or plural numbers will include others when the context so indicates.

10.14 Headings. All headings are for convenience only, are not a part of this Agreement, and are not to be used in construing this Agreement.

10.15 Binding Upon Successors. This Agreement shall bind and inure to the benefit of the successors in interest, personal representatives, and assigns of each party, subject to the limitation on transfer and assignment contained in this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor, representative, or assign of the party who has acquired an interest in compliance with the terms of this Agreement, or under law.

10.16 Relationship of the Parties. Nothing in this Agreement, the Grant Deed, or any other document executed in connection with this Agreement shall be construed as creating a partnership, joint venture, agency, employment relationship, or similar relationship between City and the Developer or any of the Developer's contractors, subcontractors, employees, agents, representatives, transferees, successors-in-interest or

assigns. Nothing in this Agreement establishes a principal and agent relationship between the parties.

10.17 Nature of the Project. The Project is a private undertaking of the Developer. After City conveys title or possession of the property to Developer, the Developer shall have exclusive control over the Property, subject to the terms of this Agreement and all applicable Federal, State and local laws, ordinances, codes, regulations, standards and policies.

10.18 Time of Essence. Time is of the essence of each term, condition, and covenant contained in this Agreement.

10.19 Survival of Provisions. Those provisions expressly surviving expiration or earlier termination, including each indemnification provision, shall survive the Closing and expiration or earlier termination of this Agreement, and shall not merge with the Grant Deed or other document evidencing any interest in real property.

IN WITNESS WHEREOF, City and Developer have executed this Agreement on the dates set forth below.

DEVELOPER:
NOYAN FRAZIER CAPITAL, L.P,
A California Limited Partnership

CITY:
CITY OF FRESNO,
A Municipal Corporation

By: 
Mehmet Noyan

By: _____
Wilma Quan, City Manager

Its: MANAGING MEMBER

Dated: 11-10-2020

Dated: _____

By: 
Terance Frazier

By: _____
Marlene Murphey, Executive Director

Its: Managing Member

City in its capacity as Housing Successor

Dated: 11-10-20

Dated: _____

The above persons to execute this agreement before a Notary Public and attach the notary acknowledgments.

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 10, 2020, before me, DARRYL EVANS, Notary Public, personally appeared **Mehmet Noyan**, 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: _____

Darryl Evans



(affix seal in above space)

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

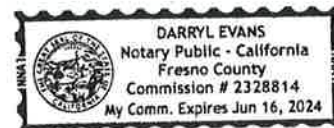
On November 10, 2020, before me, DARRYL EVANS, Notary Public, personally appeared Terance Francis, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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: _____

Darryl Evans



(affix seal in above space)

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 ____, 2020, before me, _____,

Notary Public, personally appeared **Wilma Quan**, 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: _____

(affix seal in above space)

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 ____, 2020, before me, _____,

Notary Public, personally appeared **Marlene Murphey**, 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: _____

(affix seal in above space)

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By _____
(Deputy)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By 
Laurie Avedisian-Favini, Assistant

Attachments: Exhibit A Site Map

 Exhibit A-1 Legal Description

 Exhibit B Scope of Development and Basic Design

 Exhibit C Budget/Financial Plan

 Exhibit D Performance Schedule

 Exhibit E Certificate of Completion

 Exhibit F Grant Deed

 Exhibit G Affordability Restrictions/Exhibits

EXHIBIT A
SITE MAP

835 Fulton – APN 468-282-22T

829 Fulton – APN 468-282-05T

Parking lot at Fulton & Inyo – APN 468-282-23T

EXHIBIT A-1
LEGAL DESCRIPTION

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

APN 468-282-22T:

Lot 8 and the Southeasterly 1.2 feet of Lot 7 in Block 74 of the Town (now City) of Fresno, in the county of Fresno, State of California, as per map thereof recorded June 8, 1876, in Book 1 of Plats at page 2, Fresno County Records.

The above legal description is also known as Parcel B of Parcel Map 70-52 recorded October 14, 1970 in Book II (2) of Parcel Maps at page 30, Fresno County Records.

APN 468-282-05T:

Lot 9 in Block 74 of the Town (now city) of Fresno, according to the map thereof recorded in the office of the County Recorder of Fresno County, California, June 8, 1876, in Volume 1 of Maps at page 2, Fresno County Records.

APN 468-282-23T:

Lot 10 and the Northwest 8 1/3 feet of Lot 11 in Block 74 of the Town of Fresno, in the City of Fresno, County of Fresno, State of California, according to the map recorded in Book 1 Page 2 of Plats, Fresno County Records.

Lots 12 and 13 and the Southeasterly 16-2/3 feet of Lot 11 in Block 74 of the Town (now city) of Fresno, County of Fresno, State of California, as per map recorded in Book 1 Page 2 of Plats, Fresno County Records.

Lots 14, 15 and 16 in Block 74 of the Town of Fresno, in the City of Fresno, County of Fresno, State of California, according to the map recorded in Book 1 Page 2 of Plats, Fresno County Records.

EXHIBIT B

SCOPE OF DEVELOPMENT

The **South Fulton Street Project** pertains to 1.03 acres of property located on both sides of Fulton Street between Kern and Inyo Streets, a portion of a property located on the northwesterly corner of Inyo and Home Run Alley, and a portion of property located on Fulton Street nearest to Kern Street and Homerun Alley. A mixed use project is proposed on these sites as noted below:

Phase 1 will cover .79 acres of property located on the northwest corner of Fulton and Inyo Streets, and proposes up to a five-story mixed use building that will include 54 multiple family residential units and up to 15,000 square feet of ground floor retail and will involve the demolition of two existing vacant buildings totaling 6,500 square feet. Outdoor/sidewalk dining may be a part of this phase.

Phase 2 This phase, previously referred to as Phase 4, is the subject of an Exclusive Negotiating Agreement which is separate from this Agreement, but contingent upon, satisfaction of obligations under this Agreement. Phase 2 will cover .24 acres and is located on the southwest corner of Fulton and Kern Streets, 887 Fulton Mall. This phase is proposed to entail the adaptive reuse of the existing Berkeley's building 33,750 square feet for retail use. A new 9,000 square foot roof deck is also proposed. Any work performed on the Berkeley building's character defining features that form the basis for this building's potential historic significance shall follow the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Restoring and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer. Outdoor/sidewalk dining may be a part of this phase.

EXHIBIT C
Budget/Financial Plan

Sources	<i>Amount</i>
LAND	\$432,280
AHSC Grant	\$1,945,352
AHSC Loan	\$1,324,543
Housing Successor Assistance Grant	\$659,298
4% Tax Credit Equity	\$694,763
Impact Fee Waiver	\$495,270
Developer Equity	\$1,496,000
Air Pollution Control District	\$1,889,511
<i>Subtotal</i>	<i>\$8,504,737</i>
Perm Loan	\$8,496,472
Total Sources	\$17,433,489

Uses	<i>Amount</i>
Land Acquisition + Closing Costs	\$432,280
Soft Costs	\$911,329
Hard Costs	\$14,502,223
Developer Fee	\$282,236
Financing Costs	\$1,305,421
Total Uses	\$17,433,489

ADH and Transportation Infrastructure	
Measure C TOD	\$ 711,085.00
Measure Bikeways	\$25,000.00
AHSC - Sustainable Transportation Infrastructure	\$2,345,836.00
AHSC - Transportation Related Amenities	<u>\$ 122,999.00</u>
	\$ 3,204,920.00

TOTAL DEVELOPMENT PROJECT

\$20,638,409.00

**EXHIBIT D
PERFORMANCE SCHEDULE**

<u>Items Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>	<u>Outside Date</u>
City approves Amended and Restated Disposition and Development Agreement (DDA) with Developer for Project	February 25, 2016	November 19, 2020	
City executes Agreement.	Within 15 days after approval of this Agreement by City Council.	November 2020	
Escrow opens	Subject to securing of all financing sources necessary to move forward with construction.	April 2021	
Escrow closes	Subject to satisfaction of all conditions precedent.	August 2021	August 31, 2021
<u>Commencement of Construction of Developer's Improvements.</u>	Within 30 days of Close of Escrow.	September 1, 2021	September 30, 2021
<u>Completion of Construction of Developer's Improvements.</u> The Developer shall complete construction of the improvements to be constructed on the Project Site.	Within 27 months after commencement of construction	January 2024	January 1, 2024
<u>Issuance – Certificate of Completion.</u> City shall furnish the Developer with a Certificate of Completion on the Project.	Promptly after completion of all construction and upon written request thereof by the Developer.	January 2024	January 31, 2024

**EXHIBIT E
CERTIFICATE OF COMPLETION**

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN
TO:

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

No Fee-Govt. Code Sections 6103-
27383

(SPACE ABOVE THIS LINE FOR RECORDER'S
USE)

APNs: []

This **Release of Construction Covenants and Certificate of Completion** is recorded at the request and for the benefit of the City of Fresno.

- A. As agreed in a Disposition and Development Agreement including covenants, conditions and restrictions, ("DDA") dated [], 20__ entered by the CITY OF FRESNO, a municipal corporation, ("CITY"), and NOYAN FRAZIER CAPITAL, L.P., a California limited partnership ("DEVELOPER"), CITY conveyed certain real property to DEVELOPER under a Grant Deed, dated [], recorded in the Official Records of Fresno County on [] as Document No. [] (the "DEED"), and the DEVELOPER agreed to complete/cause the completion of the of construction of certain improvements described therein (the "Project") upon the premises described therein as the "Property" according to the terms and conditions of the DDA and the documents and instruments referenced therein, incorporated herein.
- B. The DDA or a memorandum of it was recorded [] 20__ as Instrument No. [] in the Official Records of Fresno County, California.
- C. Under the terms of the DDA, after DEVELOPER completes/causes completion of construction of a Phase of the Project on the Property/portion thereof, DEVELOPER may ask CITY to record an instrument certifying that DEVELOPER has completed the required improvements for such Phase of development in the form of a Release of Construction Covenants and Certificate of Completion.
- D. DEVELOPER has asked CITY to furnish DEVELOPER with a recordable Release of Construction Covenants and Certificate of Completion for a Phase of development.
- E. CITY'S issuance of this Release of Construction Covenants and Certificate of Completion is conclusive evidence that DEVELOPER has completed the construction on a Phase of development of the Property to terminate and release DEVELOPER from the construction/improvement covenants in the DDA pertaining to such Phase.

NOW THEREFORE:

1. As provided in Section 4.4 of the DDA, the City does hereby certify that construction of all of the improvements required by the DDA on the portion of the Property

described in Attachment A, attached hereto and incorporated herein by this reference, has been satisfactorily completed.

2. The DDA is therefore of no further force and effect as to such Phase of Development of the Property, and all rights, duties, obligations and liabilities of the City and the Developer thereunder with respect to such Phase of Development shall cease to exist. Any continuing and existing rights, duties, obligations and liabilities of the City and the Developer (and its successors) pertaining such Phase of development are provided in the Grant Deed conveying the Property from the City to the Developer.
3. This Release of Construction Covenants and Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the construction of the improvements on the Property or permanent financing of the Project. This Release of Construction Covenants and Certificate of Completion, is not a notice of completion as referred to in Section 3093 of the California Civil Code.

IN WITNESS WHEREOF, CITY has executed this Release of Construction Covenants and Certificate of Completion as of this ____ day of [_____, 20__.]

CITY OF FRESNO,
A municipal corporation

By: _____
Its: _____

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

Dated: _____, 201__

Noyan Frazier Capital, L.P.
a California limited partnership

By: _____
Name: _____
Title: _____

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

ATTEST:
CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Deputy Date

By: _____
Deputy Date

EXHIBIT F

FREE RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

City of Fresno
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721
Attn: Bruce Rudd

(Space Above This Line For Recorder's Office Use Only)

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

CITY OF FRESNO, a municipal corporation ("Grantor"), hereby grants to NOYAN FRAZIER CAPITAL, L.P., a California limited partnership ("Grantee"), the real property ("Property") legally described in Exhibit "A" attached hereto and incorporated herein by this reference.

Consistent with the Disposition and Development Agreement including covenants, conditions and restrictions, ("DDA") dated [___, 20__] entered by Grantor and Grantee, all incorporated herein by this reference, the Grantee herein covenants by and for itself and its successors, transferees, vendees, administrators, and assigns, and all persons claiming under or through it that:

1. There shall be no discrimination against or segregation of, any person or group of persons on account of any bases listed in subdivision (a) or (d) of Section 12995 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

2. The Grantor may reenter pursuant to a reserved power of termination and take possession of the Property, or part of it, and all improvements on it, terminate the estate conveyed to Grantee by this Grant Deed, and revert the estate in the Grantor if, before recording a Certificate of Completion, as defined in the DDA, any of the following occurs:

a. Grantee does not begin and complete construction on the Property, or part of it, within the times specified and as provide in the DDA; or

b. Grantee abandons or substantially suspends construction on the Property, or part of it, for 30 days after the Grantor gives written notice of the abandonment or suspension; or

c. Grantee assigns or transfers, or suffers an involuntary transfer or any rights or obligations under the DDA, or in the Property, or part of it, in violation of the DDA including assignment provisions therein.

Such right to reenter, repossess, terminate and revest shall be subject to, limited by, and shall not defeat, render invalid or limit: (i) any mortgage, deed of trust or other Security Financing Interest permitted by the DDA; or (ii) any provision of the DDA protecting the holder's Security Financing Interest.

When title to the Property reverts in Grantor, Grantor may, but is not required to, use its best efforts to resell the Property to a qualified and responsible party (as determined by the Grantor). The transferee will assume the obligation of completing the development of the Property, satisfactory to the Grantor. Upon any resale of the Property, or part of it, the proceeds shall be applied as follows:

i. First, to reimburse the Grantor for (a) all commercially reasonable costs and expenses incurred (including, without limitation, salaries of personnel, and reimbursements to California Department of Housing and Community Development, if any) in connection with the recapture/reverter, management and resale of the Property, or part of it, less any income Grantor derived from the Property in connection with the management; (b) all taxes, assessments, and water and sewer charges respecting the Property (or, if exempt due to Grantor's ownership, then such taxes, assessments or charges as would have been payable if the Property were not so exempt); (c) any payments necessary to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults or acts of Grantee, its successors or transferees from attaching or being made; (d) any expenditures made or obligations incurred to complete development of the Property; and any amounts otherwise owing to Grantor from Grantee or by its successor or transferee; and

ii. Second, to reimburse Grantee, its successors or transferee, up to the amount equal to the sum of (a) the purchase price paid to Grantor for the Property; and (b) the out-of-pocket costs incurred to develop and improve the Property, less (c) any gains or income to Grantee from the Property or the improvements on it. Notwithstanding the foregoing, the amount calculated pursuant to this paragraph shall not exceed the price that the Grantee paid the Grantor for the Property plus the fair market value of the improvements on it when the default or failure to cure, which led to the Grantors exercise of the right of reverter.

iii. Any balance remaining after such reimbursement shall be retained by Grantor.

The rights established in this section 2 shall be interpreted considering Grantor's intent to convey the Property to Grantee for development of the Property, and not for speculation in undeveloped land or any other purpose. The rights established in this section 2 shall automatically terminate as to a particular Phase of the Project (as defined in the DDA) upon recording of a Certificate of Completion as to such phase or as to the entire Project when all Certificates of Completion for all phases have been recorded, and, upon request by Grantee, Grantor will promptly execute and record reasonable instruments evidencing the termination of the rights described in section 2.

3. a. Grantee will take all commercially reasonable precautions to prevent the release into the environment of any Hazardous Materials (as defined in the DDA) in, on or under the Property. Grantee will comply with all governmental requirements with respect to Hazardous Materials.

b. Until a Certificate of Completion is recorded as to the Property/portion thereof, Grantee will notify Grantor and give Grantor a copy or copies of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Property including, without limitation, notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any governmental requirement relating to Hazardous Materials and underground tanks. Immediately after each incident, Grantee will report any unusual or potentially important incidents respecting the environmental condition of the Property to Grantor.

c. If a release of any Hazardous Materials into the environment occurs after the date of recordation of this Grant Deed, Grantee will, as soon as possible after the release, furnish Grantor with a copy of any reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Grantee will furnish Grantor with a copy of any other environmental entitlements or inquiries relating to or affecting the Property, including, without limitation, all permit applications, permits and reports, including reports and other matters, which may be characterized as confidential.

4. Grantor is the beneficiary of the covenants running with the land for itself and for protecting the interest of the community and other parties, public or private, in whose favor and for whose benefit the covenants are provided, without regard to whether Grantor has been, remains, or is in ownership of any land on the Property/portion thereof. Grantor may exercise all rights and remedies, and maintain any actions or suits at law or in equity or other proceedings to enforce the covenants for itself or any other beneficiaries. The provisions of the DDA which by their terms or nature are intended to survive completion of the Project are fully enforceable under and shall not merge with this Deed, but shall terminate on the recordation of a Certificate of Completion for the Project.

5. If a conflict exists or arises between the provisions of this Deed and the DDA, the DDA shall control.

The obligations of the Grantee hereunder are covenants or conditions running with the land enforceable by Grantor through a reserved right to re-entry and reverter.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed on its behalf by its respective officers thereunto duly authorized, this _____ day of _____, 201__.

"GRANTOR"

CITY OF FRESNO
a municipal corporation

By: _____

Its: _____

Date: _____

**ATTACHMENT NO. 1 to GRANT DEED
NOYAN/FRAZIER PROPERTIES, L.P.**

EXHIBIT G

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

**FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

CITY OF FRESNO, HOUSING SUCCESSOR
848 M Street
Fresno, CA 93721
Attn: Executive Director

(Space Above This Line for Recorder's Office Use Only)

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this ____ day of _____, _____, by and between the CITY OF FRESNO in its capacity as Housing Successor, a public body, corporate and politic ("City"), and NOYAN FRAZIER CAPITAL, L.P., a California limited partnership ("Owner").

R E C I T A L S:

A. Pursuant to a Disposition and Development Agreement by and between City and Owner dated _____, 201__, as amended (the "DDA"), City, in its capacity as Housing Successor, has provided to Owner financial assistance in the amount of approximately \$100,000 in in-kind assistance and housing funds in the amount of \$659,298 (the "Housing Successor Assistance"), for the purpose of assisting Owner in developing ten affordable residential rental units that will be restricted to household income levels no greater than 50% of AMI or below, on that certain real property located in the City of Fresno, County of Fresno, State of California, more particularly described in Exhibit "1" attached hereto and incorporated herein by reference (the "Property").

B. Pursuant to the DDA, Owner has agreed to construct and maintain a rental apartment housing project consisting of fifty four (54) total residential units (hereinafter referred to collectively as the "Project") on the Property. The Project is also referred to in the DDA as the "Project," and is further described in the Scope of Development and Project Design attached to the DDA.

C. City and Owner now desire to place restrictions upon the use and operation of the Project, in order to ensure that the Project shall be operated continuously as a rental apartment housing project with at least ten (10) of the units available for rental by low income persons for the term of this Agreement.

A G R E E M E N T:

NOW, THEREFORE, the Owner and City declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Property shall be held, transferred, encumbered, used,

sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Property, and are established expressly and exclusively for the use and benefit of the City, the residents of the City of Fresno, and every person renting a dwelling unit on the Property.

AFFORDABILITY RESTRICTIONS RUNNING WITH LAND

In addition to the covenants and conditions contained in the DDA, the following California Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.) affordability requirements shall be imposed upon the ten (10) Affordable Units on the Property funded under the Agreement and shall bind the Owner and all purchasers of the Property and their successors until the date that is fifty-five (55) years following recordation of the City's Certificate of Completion as defined in the OPA.

The Affordable Units on the Property are held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Agreement, all of which are in furtherance of the Project, the Community Redevelopment Law including City's obligations set forth at California Health & Safety Code respect to Low and Moderate Income Housing Asset Funds. 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 Affordable Units upon 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 or other transferee of an interest covering any right, title or interest in any part of the Affordable Units upon 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, covenants, and limitations set forth in this Agreement until the date that is fifty-five (55) years following recordation of the City's Certificate of Completion.

1. Restrictions. The following covenants and restrictions ("Restrictions") on the use and enjoyment of the Affordable Units upon 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 Affordable Units upon the Property and be binding on any future owners of the Property and inure to the benefit of and be enforceable by City. These covenants and restrictions are as follows:

a. From the date of recordation of this Agreement until the expiration of the Affordability Period, the ten (10) Affordable Units funded under the DDA are to be used as Low Income Affordable Rental Housing and affordable replacement dwellings as provided for in the DDA and this Agreement. Owner agrees to file a recordable document setting forth the Project Completion Date and the Affordability Period as and when determined by the City. Unless otherwise provided in the Agreement, the term "Affordable Rental Housing" shall include without limitation compliance with the following requirements:

Nondiscrimination. There shall be no discrimination against nor segregation of any person 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 Owner or any person claiming under the Owner, 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 Property.

Principal Residence. Each of the Affordable Units upon the Property shall be leased only to natural persons, who shall occupy such as a principal residence.

Income Requirements. The ten (10) Affordable Units constituting Low Income Affordable Rental Housing upon the Property may be leased only to (a) natural person(s) whose annual household income at the time of initial occupancy is not greater than fifty percent (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 for very low income households, consistent with the applicable California Redevelopment Law, including California Health & Safety Code Section 50053(b). The income requirements referenced in this paragraph shall be referred to collectively as the "Low-Income Requirements."

Injunctive Relief and Recapture. Should any of the ten (10) Affordable Units constituting Low Income Affordable Rental Housing upon the Property not continue, at the time of initial occupancy, to satisfy the Low-Income Requirements, then, during the Affordability Period, such Unit(s) shall be made available for subsequent lease only to Households that qualify as a required Extremely Low, Very Low-, Lower, or Moderate-Income Household, as defined in California Health & Safety Code Sections 50106, 50105, and 50079.5 for use as the Household's principal residence.

2. 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 this Agreement, including the Restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof.

3. Income Computation and Certification Reporting Requirements. Prior to each Household's occupancy of an Affordable Unit, Owner shall comply with all of the following requirements:

a. Income Computation. Immediately prior to a Household's occupancy of an Affordable Unit, Owner shall obtain and maintain on file an Income Computation and Certification form, attached hereto as Exhibit "2," from each such Household dated immediately prior to the date of initial occupancy in the Project by such Household. In addition, the Owner will provide such further information as may be required in the future by the City. Owner shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income as is satisfactory to the City; and (v) obtain such other information as may be requested by the City. A copy of each such completed Income Computation and Certification form shall be filed with the City prior to the occupancy of an Affordable Unit by a Household whenever

possible, but in no event more than thirty (30) days after initial occupancy by said Household.

b. **Income Recertification.** Immediately prior to the first anniversary date of the occupancy of an Affordable Unit by a Household and on each anniversary date thereafter, Owner shall recertify the income of such Household by obtaining a completed Income Computation and Certification form based upon the current income of each occupant of the Affordable Unit.

In the event the recertification demonstrates that such Household's income exceeds the income at which such Household would qualify to rent the Affordable Unit, such Household will no longer qualify for Affordable Rent. Owner shall provide the City with a copy of each such completed recertification with the next submission of Certificate of Continuing Program Compliance, as specified herein.

c. **Certificate of Continuing Program Compliance.** Upon the issuance of the Certificate of Completion and annually by October 31 of each year, or at any time upon the written request of City, Owner shall advise the City of the occupancy of the Project by delivering a Certificate of Continuing Program Compliance, attached hereto as Exhibit "3," certifying: (i) the number of Affordable Units of the Project which were occupied or deemed occupied pursuant to this Agreement by a Household during such period; and (ii) to the knowledge of Owner either: (a) no unremedied default has occurred under this Agreement; or (b) a default has occurred, in which event the Certificate of Continuing Program Compliance shall describe the nature of the default and set forth the measures being taken by the Owner to remedy such default.

d. **Maintenance of Records.** Owner shall maintain complete and accurate records pertaining to the Affordable Units, and shall permit any duly authorized representative of the City to inspect the books and records of Owner pertaining to the Project including, but not limited to, those records pertaining to the occupancy of the Affordable Units.

e. **Reliance on Tenant Representations.** Each lease between Owner and a Household shall contain a provision to the effect that Owner has relied on the income certification and supporting information supplied by the Household in determining qualification for occupancy of the Affordable Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

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 above Restrictions. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Restrictions, as such may be amended or supplemented from time to time, is accepted and ratified by such future owners, tenant or occupant, and such Restrictions 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 Restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

5 **Benefit.** This Agreement and the Restrictions herein shall run with and bind the Property for a term commencing on the date this Agreement is recorded in the Office of the

Recorder of the County of Fresno, State of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of City and/or any other person entitled to enforce these 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.

6. Costs and Attorney's Fees. In any proceeding arising because of failure of Owner or any future owner of the Property to comply with the Restrictions required by this Agreement, as may be amended from time to time, 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 Owner nor any future owner of the Property may exempt itself from liability for failure to comply with the Restrictions required in this Agreement.

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

9. Pronouns. Any reference in this Agreement and the Restrictions herein 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 Agreement are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Agreement or any provision hereof.

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

12. Amendments. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Fresno.

13. Notice. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, or by certified or registered 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 hereto:

City:

City of Fresno as Housing Successor
848 M Street, 3rd Floor
Fresno, CA 93721
Attn: Executive Director

Copy to:

City Manager
Fresno City Hall
2600 Fresno Street
Fresno, CA 93721

Copy to:

City Attorney
Fresno City Hall
2600 Fresno Street
Fresno, CA 93721

Owner:

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

14. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California.

15. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

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

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Owner have executed this Regulatory Agreement and Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

ATTEST:
CITY CLERK

Deputy

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

By: _____

Marlene Murphey
Executive Director

APPROVED AS TO FORM:
CITY ATTORNEY

Deputy

NOYAN FRAZIER CAPITAL, L.P., a
California limited partnership

By: _____
Date: _____
Name: _____
Title: _____

[END OF SIGNATURES]

Attachments:

- Exhibit 1: Legal Description of Property
- Exhibit 2: Income Computation and Certification Form
- Exhibit 3: Certificate of Continuing Program Compliance

**EXHIBIT "1" to REGULATORY AGREEMENT
AND DECLARATION OF COVENANTS
AND RESTRICTIONS**

LEGAL DESCRIPTION

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

APN 468-282-22T:

Lot 8 and the Southeasterly 1.2 feet of Lot 7 in Block 74 of the Town (now City) of Fresno, in the county of Fresno, State of California, as per map thereof recorded June 8, 1876, in Book 1 of Plats at page 2, Fresno County Records.

The above legal description is also known as Parcel B of Parcel Map 70-52 recorded October 14, 1970 in Book II (2) of Parcel Maps at page 30, Fresno County Records.

APN 468-282-05T:

Lot 9 in Block 74 of the Town (now city) of Fresno, according to the map thereof recorded in the office of the County Recorder of Fresno County, California, June 8, 1876, in Volume 1 of Maps at page 2, Fresno County Records.

APN 468-282-23T:

Lot 10 and the Northwest 8 1/3 feet of Lot 11 in Block 74 of the Town of Fresno, in the City of Fresno, County of Fresno, State of California, according to the map recorded in Book 1 Page 2 of Plats, Fresno County Records.

Lots 12 and 13 and the Southeasterly 16-2/3 feet of Lot 11 in Block 74 of the Town (now city) of Fresno, County of Fresno, State of California, as per map recorded in Book 1 Page 2 of Plats, Fresno County Records.

Lots 14, 15 and 16 in Block 74 of the Town of Fresno, in the City of Fresno, County of Fresno, State of California, according to the map recorded in Book 1 Page 2 of Plats, Fresno County Records.

EXHIBIT "2" to REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS



City of Fresno as Housing Successor to
the Redevelopment Agency
of the City of Fresno

848 M Street
3rd Floor
Fresno, CA 93721
www.fresnorda.com
559.621.7600

Multi-Family Housing Program INCOME COMPUTATION AND CERTIFICATION

Property Information

Name of Property:	Number of Bedrooms (see table for allowable rents)	Income Category	Maximum Income Level of Household (percent of Area Median Income)
Property Address:			
Rental Agent (Name):	☐ 0 (studio)	Extremely Low	☐ 30% of AMI
	☐ 1 bedroom	Very Low	☐ 50% of AMI
Owner Certification (Signature):	☐ 2 bedrooms	Lower	☐ 80% of AMI
	☐ 3 bedrooms	Moderate	☐ 120% of AMI
Owner has relied on the income certification and supporting information supplied by the Applicant in determining qualification for occupancy of the Affordable Unit, and any material misstatement in such certification by Applicant (whether or not intentional) may be cause for immediate termination of such lease.			☐
			☐
			☐

Applicant Contact Information

Information on primary lease applicant(s).

Name (LAST, FIRST, M.I.)	Current Address City, State, Zip	Contact Phone No.	Other Phone No.
1.	1.	1.	1.
	(if different)	(if different)	(if different)
2.	2.	2.	2.

Household Information

List all members of the household* proposed to live at the address listed above.

Name (LAST, FIRST, MIDDLE INITIAL)	Social Security	Employer/ Contact Phone Number	Birth Date (mm/dd/yyyy)	Relationship
	CA Driver's License			
1.				Self
2.				
3.				

*Household is a group of related or unrelated persons occupying the same house with at least one member being the head of the household. If roommates, please complete above form as "Self" for each roommate. Use a separate page for additional household members.

Show income received from the following sources by all persons listed above. Do not show income from persons less than 14 years of age.

Yes	No	Source of Income	Gross Income (Current Year)	Person Receiving Income (As Shown Above)
☐	☐	Wages or salary from employment.		
☐	☐	Earnings from self-employment		
☐	☐	Unemployment Compensation		
☐	☐	Social Security or Supplemental Security Income (SSI)		
☐	☐	Veteran's Benefits		
☐	☐	Worker's Compensation		
☐	☐	Child support or alimony payments		
☐	☐	Pensions or Annuities/Railroad Retirement		
☐	☐	Property rental income		
☐	☐	Aid to Families w/Dependent Children(AFDC)		
☐	☐	Dividends/Interest		
☐	☐	Other types of income:		
Total Gross Income				
Total Household Members				

Statement and Signature(s)

I/we _____, being duly sworn, depose and say that I/we are year-round occupants of _____ (ADDRESS, CITY & ZIP CODE).

I/We the applicant(s) certify that all information in this certification and all information furnished in support of this certification is correct and complete to the best of my/our knowledge. I/We understand that the willful falsification of this information (whether or not intentional) will be cause for immediate termination of such lease. I/We agree to provide additional information that may be requested to process this income certification.

I certify that my income does not exceed the stated income level noted on page 1 of this document, and that I am eligible for a unit made available at affordable rent for lower income households and very low income households, as defined by California Health & Safety Code ("H.&S.C.") Section 50079.5, 50093, and 50105, as shown in the table below.

I/We have read the aforementioned statement and release, and understand all of the items. I/We execute it voluntarily, on the date listed below, with full knowledge of its significance. I/We certify under penalty of perjury that the facts and statements presented in this Income Computation and Certification, as well as the attached documents are true and accurate. Perjury is punishable by imprisonment in the state of California. (CA Penal Code Section 118 & 126).

APPLICANT

DATE

APPLICANT

DATE

Income Verification

Owner shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either City; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income; and (v) obtain such other information as may be requested by the City. A copy of each such completed Income Computation and Certification form shall be completed and made available for City review prior to the

occupancy of an Affordable Unit by a Household whenever possible, but in no event more than thirty (30) days after initial occupancy by said Household.

2019 Maximum Income Levels

	One Person	Two Person	Three Person	Four Person	Five Person	Six Person
Extremely Low (≤ 30% of AMI)	\$13,605	\$16,910	\$21,330	\$25,750	\$30,170	\$34,590
Very-Low (≤ 50% of AMI)	\$22,700	\$25,950	\$29,200	\$32,400	\$35,000	\$37,600
Lower Income (≤ 80% of AMI)	\$36,300	\$41,500	\$46,700	\$51,850	\$56,000	\$60,150
Moderate (≤ 120% of AMI)	\$54,450	\$62,200	\$70,000	\$77,750	\$83,950	\$90,200

2019 Maximum Rent Limits

- Affordable Rent for Extremely Low Income Households is the product of 30% times 30% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(1).
- Affordable Rent for Very Low Income Households is the product of 30% times 50% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(2).
- Affordable Rent for Lower Income Households is the product of 30% times 80% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(3).
- Affordable Rent for Moderate Income Households is the product of 30% times 120% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(4).
- Maximum Rents are calculated based on household sizes "appropriate to the unit" of 1 person for a studio unit; 2 persons for a one-bedroom apartment; 3 persons for a two bedroom apartment; 4 persons for a three bedroom apartment; 5 persons for a four bedroom apartment (Health & Safety Code Section 50052.5(h).

	Maximum	Est. Utility	Net
Maximum Rent for Extremely Low Income Households	Rent	Allowance*	Rent
Maximum Monthly Rent for a Studio Apartment	\$341.25	\$(38.00)	\$303.25
Maximum Monthly Rent for a One-Bedroom Apartment	\$422.75	\$(45.00)	\$377.75
Maximum Monthly Rent for a Two-Bedroom Apartment	\$533.25	\$(61.00)	\$472.25
Maximum Monthly Rent for a Three-Bedroom Apartment	\$643.75	\$(76.00)	\$567.75
Maximum Monthly Rent for a Four-Bedroom Apartment	\$754.25	\$(93.00)	\$661.25

	Maximum	Est. Utility	Net
Maximum Rent for Very Low Income Households	Rent	Allowance*	Rent
Maximum Monthly Rent for a Studio Apartment	\$567.50	\$(38.00)	\$529.50
Maximum Monthly Rent for a One-Bedroom Apartment	\$648.75	\$(45.00)	\$603.75
Maximum Monthly Rent for a Two-Bedroom Apartment	\$730.00	\$(61.00)	\$669.00
Maximum Monthly Rent for a Three-Bedroom Apartment	\$810.00	\$(76.00)	\$734.00
Maximum Monthly Rent for a Four-Bedroom Apartment	\$875.00	\$(93.00)	\$782.00

	Maximum	Est. Utility	Net
Maximum Rent for Lower Income Households	Rent	Allowance*	Rent
Maximum Monthly Rent for a Studio Apartment	\$907.50	\$(38.00)	\$869.50
Maximum Monthly Rent for a One-Bedroom Apartment	\$1,037.50	\$(45.00)	\$992.50
Maximum Monthly Rent for a Two-Bedroom Apartment	\$1,167.50	\$(61.00)	\$1,106.50
Maximum Monthly Rent for a Three-Bedroom Apartment	\$1,296.25	\$(76.00)	\$1,220.25
Maximum Monthly Rent for a Four-Bedroom Apartment	\$1,400.00	\$(93.00)	\$1,307.00

	Maximum	Est. Utility	Net
Maximum Rent for Moderate Income Households	Rent	Allowance*	Rent
Maximum Monthly Rent for a Studio Apartment	\$1,361.25	\$(38.00)	\$1,323.25
Maximum Monthly Rent for a One-Bedroom Apartment	\$1,555.00	\$(45.00)	\$1,510.00
Maximum Monthly Rent for a Two-Bedroom Apartment	\$1,750.00	\$(61.00)	\$1,689.00
Maximum Monthly Rent for a Three-Bedroom Apartment	\$1,943.75	\$(76.00)	\$1,867.75
Maximum Monthly Rent for a Four-Bedroom Apartment	\$2,098.75	\$(93.00)	\$2,005.75

* The utility allowance shown above is for Energy Efficient Multi-Family Mid-Rise (5 or More Units) projects.

See: <http://fresnohousing.org/wp-content/uploads/2019/01/2019-LIHTC-Utility-Allowance-Schedule-Energy-Efficient.pdf>

**EXHIBIT "3" to REGULATORY AGREEMENT
AND DECLARATION OF COVENANTS
AND RESTRICTIONS**



City of Fresno as Housing Successor to
the Redevelopment Agency
of the City of Fresno

**848 M Street
3rd Floor
Fresno, CA 93721
www.fresnorda.com
559.621.7600**

**Multi-Family Housing Program
CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

Period Covered from _____ to _____

The undersigned, NOYAN FRAZIER CAPITAL, L.P. a California Limited Partnership (the "Owner"), has read and is thoroughly familiar with the provisions of the Disposition and Development Agreement ("DDA") and documents referred to therein executed by Owner and the City of Fresno ("Agency") including but not limited to the Regulatory Agreement and Declaration of Covenants and Restrictions ("Regulatory Agreement"). As of the date of this Certificate, for the period shown above, the following number of Units in the Project are: (i) occupied by tenants satisfying the Low-Income Requirements (as defined in the Regulatory Agreement) as a principal residence ("Eligible Tenants"), or (ii) currently vacant and being held available for such occupancy and have been so held continuously since the date an Eligible Tenant vacated such Unit:

Occupied Affordable Units

Vacant Affordable Units

Property Information

Name of Property:	Number of Units by Bedrooms (see table for allowable rents)	Income Category	Number of Units by Income Level of Tenants (percent of AMI)
Property Address:	____ 0 (studio)	Extremely Low	____ 30% of AMI
	____ 1 bedroom	Very Low	____ 50% of AMI
	____ 2 bedrooms	Lower	____ 80% of AMI
	____ 3 bedrooms	Moderate	____ 120% of AMI
Owner completing this Certificate has relied on the income certification and supporting information supplied by each Applicant in determining qualification for occupancy of the Affordable Unit.			

NOYAN FRAZIER CAPITAL, L.P.
a California Limited Partnership

Its: _____

Date: _____

Its: _____

Date: _____

[illegible]

2019 Maximum Income Levels

	One Person	Two Person	Three Person	Four Person	Five Person	Six Person
Extremely Low (≤ 30% of AMI)	\$13,605	\$16,910	\$21,330	\$25,750	\$30,170	\$34,590
Very-Low (≤ 50% of AMI)	\$22,700	\$25,950	\$29,200	\$32,400	\$35,000	\$37,600
Lower Income (≤ 80% of AMI)	\$36,300	\$41,500	\$46,700	\$51,850	\$56,000	\$60,150
Moderate (≤ 120% AMI)	\$54,450	\$62,200	\$70,000	\$77,750	\$83,950	\$90,200

2019 Maximum Rent Limits

- Affordable Rent for Extremely Low Income Households is the product of 30% times 30% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(1).
- Affordable Rent for Very Low Income Households is the product of 30% times 50% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(2).
- Affordable Rent for Lower Income Households is the product of 30% times 80% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(3).
- Affordable Rent for Moderate Income Households is the product of 30% times 120% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(4).
- Maximum Rents are calculated based on household sizes "appropriate to the unit" of 1 person for a studio unit; 2 persons for a one-bedroom apartment; 3 persons for a two bedroom apartment; 4 persons for a three bedroom apartment; 5 persons for a four bedroom apartment (Health & Safety Code Section 50052.5(h).

	Maximum	Est. Utility	Net
Maximum Rent for Extremely Low Income Households	Rent	Allowance*	Rent
Maximum Monthly Rent for a Studio Apartment	\$341.25	\$(38.00)	\$303.25
Maximum Monthly Rent for a One-Bedroom Apartment	\$422.75	\$(45.00)	\$377.75
Maximum Monthly Rent for a Two-Bedroom Apartment	\$533.25	\$(61.00)	\$472.25
Maximum Monthly Rent for a Three-Bedroom Apartment	\$643.75	\$(76.00)	\$567.75
Maximum Monthly Rent for a Four-Bedroom Apartment	\$754.25	\$(93.00)	\$661.25

	Maximum	Est. Utility	Net
Maximum Rent for Very Low Income Households	Rent	Allowance*	Rent
Maximum Monthly Rent for a Studio Apartment	\$567.50	\$(38.00)	\$529.50
Maximum Monthly Rent for a One-Bedroom Apartment	\$648.75	\$(45.00)	\$603.75
Maximum Monthly Rent for a Two-Bedroom Apartment	\$730.00	\$(61.00)	\$669.00
Maximum Monthly Rent for a Three-Bedroom Apartment	\$810.00	\$(76.00)	\$734.00
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	Maximum	Est. Utility	Net
Maximum Rent for Lower Income Households	Rent	Allowance*	Rent
Maximum Monthly Rent for a Studio Apartment	\$907.50	\$(38.00)	\$869.50
Maximum Monthly Rent for a One-Bedroom Apartment	\$1,037.50	\$(45.00)	\$992.50
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Maximum Monthly Rent for a Four-Bedroom Apartment	\$1,400.00	\$(93.00)	\$1,307.00

	Maximum	Est. Utility	Net
Maximum Rent for Moderate Income Households	Rent	Allowance*	Rent
Maximum Monthly Rent for a Studio Apartment	\$1,361.25	\$(38.00)	\$1,323.25
Maximum Monthly Rent for a One-Bedroom Apartment	\$1,555.00	\$(45.00)	\$1,510.00
Maximum Monthly Rent for a Two-Bedroom Apartment	\$1,750.00	\$(61.00)	\$1,689.00
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See: <http://fresnohousing.org/wp-content/uploads/2019/01/2019-LIHTC-Utility-Allowance-Schedule-Energy-Efficient.pdf>