



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.:	IC
COUNCIL MEETING:	April 5, 2012
APPROVED BY	
DEPARTMENT DIRECTOR	MS
CITY MANAGER	Mark Scott

April 5, 2012

FROM: CRAIG SCHARTON, Assistant Director  
Development and Resource Management Department

BY: CLAUDIA CAZARES, Housing Manager  
Development and Resource Management/ Housing Division

CRYSTAL SMITH, Management Analyst III  
Finance Department/ CDBG Section

SUBJECT: AUTHORIZE MODIFICATIONS TO THE PREVIOUSLY APPROVED ASSIGNMENT/ASSUMPTION OF CITY NEIGHBORHOOD STABILIZATION PROGRAM AGREEMENT FROM THE FRESNO REVITALIZATION CORPORATION/FRC CANYON CREST, LLC TO ROEM DEVELOPMENT CORPORATION REGARDING THE AFFORDABLE MULTI-FAMILY HOUSING PROJECT LOCATED AT 3011-3057 E. PLATT AVENUE AND 206-210 S. CALLISCH STREET, INCLUDING SUBSTITUTION OF CANYON CREST FAMILY APARTMENTS, L.P. AS ASSIGNEE; AND AUTHORIZE THE CITY MANAGER TO SIGN ALL IMPLEMENTING DOCUMENTS AS APPROVED TO FORM BY THE CITY ATTORNEY

**RECOMMENDATION**

Staff requests the City Council authorize modifications to the previously approved Assignment/Assumption of the Neighborhood Stabilization Program (NSP) Agreement for the Canyon Crest Apartments to provide for the following:

- 1) Clarification of the maturity date of the \$2,772,253 NSP Loan;
- 2) Confirmation of the \$2,772,253 outstanding principal balance of the NSP Loan;
- 3) Modify the Assignment/Assumption to include the name of the limited partnership formed by ROEM Development Corporation, as required by the tax credit financing, for the long-term ownership of the property;
- 4) Confirm the non-recourse nature of the NSP loan; and,
- 5) Authorize the execution of an Estoppel Certificate and Subordination and Intercreditor Agreement as required by the tax credit investor and tax-exempt bond lender as a part of the assignment of the NSP Loan.

## **EXECUTIVE SUMMARY**

HUD requires jurisdictions receiving NSP funds to set aside twenty-five percent of the funding to address housing for persons earning at or below 50% of the area median income. To meet this requirement, on March 4, 2010, the City Council approved an NSP Agreement with the FRC for the purchase and rehabilitation of the Canyon Crest Apartments. The project is located near the southwest corner of First and Tulare Streets (Please see Exhibit A – Project Location Map). Final purchase on the property occurred May 28, 2010. As part of the Council action in 2010, staff included information regarding the subsequent sale of the property by the FRC to a qualified and experienced affordable housing developer for long-term ownership and management of the property. Through a Request For Proposals process, the FRC selected ROEM Development Corporation to purchase the property and assume the NSP requirements, as identified in the attached Exhibit B – Assignment/Assumption Agreement. The proposed assignment/assumption is a necessary component of such a transfer by FRC to ROEM. The Council item makes modifications to the assumption and assignment documents, and meets conditions of the tax credit investor to complete the transfer of the property.

## **BACKGROUND**

The federal Neighborhood Stabilization Program (NSP) results from the Congressional adoption of Title III of the Housing and Economic Recovery Act (HERA) of 2008. NSP is a subcomponent of the Community Development Block Grant Program (CDBG) and provides entitlement grants to state and local communities to purchase foreclosed or abandoned property to rehabilitate, resell, or redevelop homes in an effort to stabilize neighborhoods and arrest the decline of house values in neighboring homes. In fiscal year 2008, the City was the recipient of \$10,969,169 of NSP funds from the U.S. Department of Housing and Urban Development. The Budget and Management Studies Division and the Housing Division have collaborated in the set up and implementation of NSP. Additionally, HUD requires jurisdictions receiving NSP funds to set aside twenty-five of the funding to acquire foreclosed residential properties for sale or lease to persons earning at or below 50% of the area median income.

To meet this requirement, on March 4, 2010, the City Council approved an NSP Agreement with the FRC for \$2,772,253 to purchase of the Canyon Crest Apartments. Since that time, the Fresno Redevelopment Agency (RDA) acting as FRC's Manager, has facilitated the purchase of the Property. Renovated and placed back in service six (6) previously gutted units; completed deferred maintenance from the previous owner including unit turn repairs and general maintenance; screened the tenants and completed the affordable housing compliance; secured a welfare exemption from property taxes; and stabilized the operations of the property.

As part of the Council action in March 2010, Council was advised that the RDA as, FRC's Manager, intended to facilitate the sale of the property to an experienced and qualified affordable housing provider. To that end, in early spring through summer 2011, the RDA, as FRC's Manager, conducted a request for proposals for the sale of the Canyon Crest Apartments, and selected ROEM to purchase the property. On September 15, 2011, the City Council approved sale of the property to ROEM and the assignment and assumption and its assignment to a tax credit financing required limited partnership. ROEM also assumes the NSP requirements tied to the property. The NSP requirements include affordability covenants on 71 of the 118 units on the property. The affordability covenants require NSP assisted units to be rented at affordable rent levels (as prescribed by HUD) to the very-low income target group for a period of 55 years. This covenant runs with the land, thus the new owner is required to assume enforcement of the restrictions.

Currently, ROEM has secured approvals for tax credit and tax-exempt bond financing for the acquisition and rehabilitation of the Canyon Crest Apartments with escrow due to close on or about April 12, 2012. As a condition of closing, the tax credit investor and/or the tax-exempt bond lender is requesting a modification of the Assignment and Assumption Agreement, which requires Council approval. The Tax creditor and/or the tax-exempt bond lender requests the City provide for the following:

- a) Clarification of the maturity date of the \$2,772,253 NSP Loan as provided in the NSP Promissory Note.
- b) Confirmation of the outstanding NSP principal loan balance of \$2,772,253.
- c) Memorialize the name of the limited partnership formed by ROEM Development Corporation, as required by the tax credit financing, for the long-term ownership of the property.
- d) Confirm the non-recourse nature of the NSP loan.
- e) Authority to execute an Estoppel (Exhibit C) and Subordination and Intercreditor Agreement (Exhibit D) as required by the tax credit investor and tax exempt bond lender as a part of the assignment of the NSP Loan.
- f) The name of the limited partnership that will hold title to the property is Canyon Crest Family Apartments, a California limited partnership.

#### **HOUSING AND COMMUNITY DEVELOPMENT COMMISSION**

On September 14, 2011, HCDC recommended approval of the assignment and assumption of the NSP loan to ROEM Development Corporation. No additional action was required of the Housing and Community Development Commission.

#### **FISCAL IMPACT**

There is no fiscal impact in approving this agenda item.

#### **APPENDICES**

- Exhibit A – Project Location Map
- Exhibit B – Assignment/Assumption Agreement
- Exhibit C – Estoppel Certificate
- Exhibit D – Subordination and Intercreditor Agreement

Exhibit A to April 5, 2012 Report to City Council  
Project Location Map

Canyon Crest - apn 468-390-44s  
Location Map

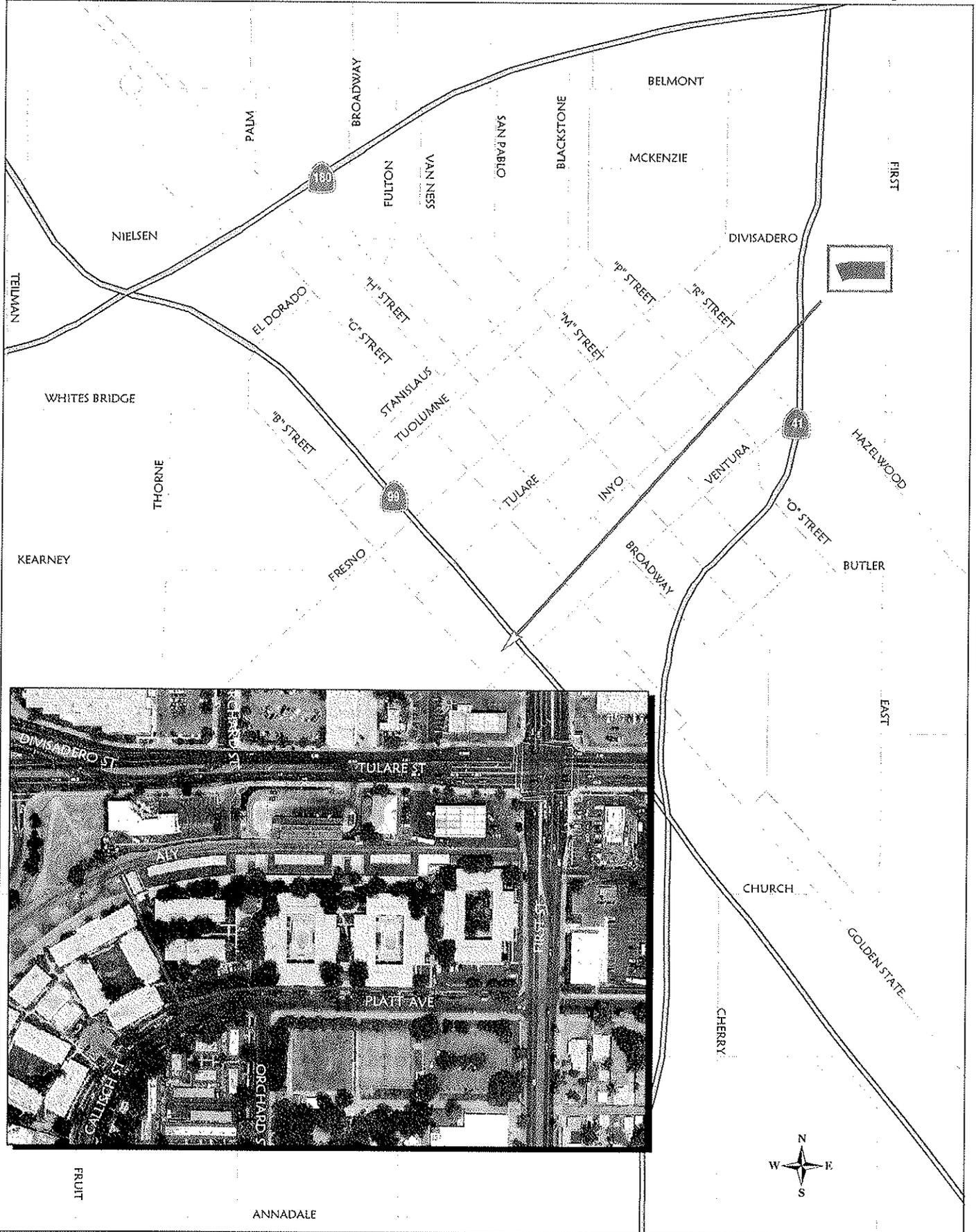


Exhibit B to April 5, 2012 Report to City Council  
Assignment/Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

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

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Assignment and Assumption 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.

APN: 468-390-44s

City of Fresno

By: \_\_\_\_\_  
Mark Scott, City Manager  
City of Fresno

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

ASSIGNMENT/ASSUMPTION OF  
NEIGHBORHOOD STABILIZATION PROGRAM AGREEMENT

By

Fresno Revitalization Corporation/FRC Canyon Crest, LLC

To

Canyon Crest Family Apartments, L.P.

Regarding

Canyon Crest Apartments  
APN: 468-390-44s  
an Affordable Multi-Family Housing Project

## Assignment and Assumption Agreement

APN: 468-390-44s

This Assignment/Assumption Agreement (this "Assignment"), dated for convenience as of \_\_\_\_\_, 20\_\_, is entered into between the Fresno Revitalization Corporation, a California nonprofit corporation and FRC CANYON CREST, LLC, a California limited liability company (collectively herein referred to as "Assignor") and CANYON CREST FAMILY APARTMENTS, L.P., a California limited partnership (herein referred to as "Assignee"), as consented to by the CITY OF FRESNO, a California municipal corporation, (herein referred to as "City") (sometimes Assignor and Assignee will be collectively referred to hereinafter as the "parties"), and further subject to any and all required HUD approvals.

### Recitals

A. City and Assignor are parties to a certain March 4, 2010, Neighborhood Stabilization Program Agreement, exhibits, attachments and Loan Documents thereunder including a Promissory Note secured by a Deed of Trust (collectively "Agreement"; capitalized terms used but not defined herein have the meanings set forth in the Agreement), true and correct copies of which are attached hereto as EXHIBIT "A" and incorporated herein, whereunder the City provided certain Neighborhood Stabilization Program funding assistance for acquisition and rehabilitation of the Canyon Crest Apartments ("Property") as Affordable Rental Housing for the Affordability Period specified therein ("Project") ; and

B. Assignor and Assignee will open an escrow (the "Escrow") whereunder Assignor will sell the fee interest to the Property to the Assignee whereupon Assignee will become the Project Developer; and

C. Assignor desires to assign the Agreement to Assignee and Assignee desires to assume such from Assignor, through the Escrow and upon the terms and conditions hereunder; and

C. City is willing to consent to such assignment and assumption of the Agreement in the public interest, upon the terms and conditions herein.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, Assignor and Assignee agree as follows:

#### Section 1. Assignment of Agreement.

Assignor, from and after the effective date, assigns and transfers to Assignee, and Assignee accepts and assumes all right, title, interest and obligations in, under and to the Agreement subject to the terms and conditions set forth in this Assignment. Assignor and Assignee, without waiver or limitation, jointly and severally agree to take any and all action required to bind Assignee to the Agreement and all applicable attachments thereto including the Loan Documents, at the request of and as requested by the City and such is an express condition precedent to the effectiveness hereof.

#### Section 2. Assumption of Obligations under the Agreement.

Assignee, from and after the effective date, assumes and agrees to perform and fulfill the terms, covenants, conditions, and obligations required to be performed and fulfilled by Assignor under the Agreement.

Section 3. Assignor's Covenants.

Assignor covenants that this Assignment constitutes the only assignment it has entered with regard to the rights it possesses under the Agreement.

Section 4. City's Consent and Clarification

By consenting to the assignment of the Loan to Assignee and repayment of the senior indebtedness encumbering the Property by the Assignor, the City acknowledges that the Loan did not mature as of this day but will mature 55 years from September 6, 2011, which is the date on which the City issued a Certificate of Completion for the Project. At such time, the Loan will mature and be unconditionally due and payable by the Assignee. In addition, the City acknowledges that the last sentence in the first paragraph of the Promissory Note (under the section heading Promise to Pay) is intended to limit the liability of the Borrower (and its partners) under the Loan Documents to the property encumbered by the Deed of Trust and any other security granted to the City under the Loan Documents. Accordingly, neither the Assignee nor its partners has any personal liability for repayment of the Loan. The City also hereby confirms that the current outstanding balance of the Loan is \$2,772,253.

Section 5. Litigation Costs.

If any litigation between Assignor and Assignee arises out of this Assignment or concerning the meaning of interpretation of this Assignment, the Assignor and Assignee shall share equally costs and expenses of this litigation and each bear their respective attorneys' fees.

Section 6. Indemnification.

Assignee agrees to indemnify and hold harmless Assignor, any manager, member, officer, director, shareholder, employee, contractor, or agent of Assignor and its members and managers, the City, the Redevelopment Agency of the City of Fresno, and any official, employee, contractor or agent of the City or the Redevelopment Agency of the City of Fresno, from and against any liability, claim, demand, damage, loss, cost, or expense, including attorneys' fees arising in connection with the failure of Assignee to fulfill any obligations under the Agreement.

Section 7. Successors and Assigns.

This Assignment shall be binding on and inure to the benefit of the parties to it, their heirs, executors, administrators, successors in interest, and assigns.

Section 8. Governing Law.

This Assignment shall be governed by and construed in accordance with California law.

Section 9. Effective Date.

The effective date of this Assignment shall be the date the Escrow closes, provided Escrow shall not close until the City Manager and/or designee thereof confirms in writing to the Escrow officer that HUD has provided any and all required approvals, and the parties' have completely executed this Assignment, and all conditions precedent herein have been met, and the City has consent thereto. This Assignment controls any/all prior in time negotiations/agreements in the event of any conflict.

Section 10. HUD Provisions.

In no event shall HUD have any liability under the terms of this Assignment.

Section 11. Subsequent Assignment.

Assignee may assign the Agreement to a limited partnership to be formed by Assignee, as required for Project tax credit financing, upon the consent of the City Manager/designee(s) thereof.

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///  
///

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

ASSIGNOR: FRC CANYON CREST, LLC,  
a California Limited Liability company

By: Fresno Revitalization Corporation, a  
California nonprofit public benefit corporation,  
its sole member

By: \_\_\_\_\_  
(Attach notary certificate of acknowledgment)

Name: Marlene Murphey  
Title: Director/President

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

ASSIGNOR: FRESNO REVITALIZATION CORPORATION.  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
(Attach notary certificate of acknowledgment)

Name: Marlene Murphey  
Title: Director/President

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

ASSIGNEE: CANYON CREST FAMILY APARTMENTS, L.P.  
California limited partnership

By: ROEM Canyon Crest Family Apartments, LLC, a  
California limited liability company, its Co-General  
Partner, by ROEM Development Corporation, a  
California corporation, its sole member and manager

By: \_\_\_\_\_  
(Attach notary certificate of acknowledgment)

Name: Robert Emami  
Title: President

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

By: PH Canyon Crest Holdings, LLC, a California limited liability company, its Managing General Partner, by Pacific Housing, Inc., a California nonprofit public benefit corporation, its sole member

By: \_\_\_\_\_  
(Attach notary certificate of acknowledgment)

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

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

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

**APPROVAL OF CITY TO ASSIGNMENT**

The City of Fresno, through its City Manager, consents to the foregoing assignment to Assignee of all of the Assignor's right, title, interest and obligations in, to and under the Neighborhood Stabilization Program Agreement all exhibits and attachments thereto, and the "Loan Documents" thereunder including a Promissory Note secured by a Deed of Trust, and Assignee's assumption thereof, and the transfer of the underlying Property interest to Assignee, upon the terms and conditions in the foregoing Assignment, and upon such assignment and assumption Assignor shall be automatically released from any further obligations or liabilities whatsoever under the Agreement.

**APPROVED:  
CITY OF FRESNO**

By: \_\_\_\_\_  
(Attach notary certificate of acknowledgment)

Name: Mark Scott

Title: City Manager

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

**ATTEST:**

**CITY CLERK**

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

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

**APPROVED TO FORM:**

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

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

**Exhibit A: Neighborhood Stabilization Program Agreement  
Exhibit B: Legal Description**

Exhibit A to Assignment/Assumption Agreement -  
Neighborhood Stabilization Program Agreement



FRESNO REVITALIZATION CORPORATION  
2344 Tulare Street, Suite 200  
Fresno, CA 93721

May 18, 2010

Claudia Cazares  
Manager  
Housing and Community Development Division  
Planning and Development Department  
City of Fresno  
2600 Fresno Street, Room 3076  
Fresno, CA 93721

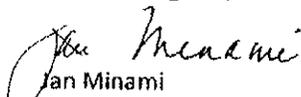
RE: ASSIGNMENT OF CITY OF FRESNO NEIGHBORHOOD STABILIZATION PROGRAM AGREEMENT BY AND  
BETWEEN CITY OF FRESNO AND FRESNO REVITALIZATION CORPORATION

Dear Claudia,

This letter shall serve to request your approval of an assignment of the referenced agreement from the Fresno Revitalization Corporation to FRC Canyon Crest, LLC, a for profit, single member, single purpose, limited liability company, with FRC as its sole member. It is understood that said assignment shall not release Fresno Revitalization Corporation from liability or responsibility under the terms of said agreement.

If this is acceptable to you, please so acknowledge in the space provided below.

Sincerest regards,

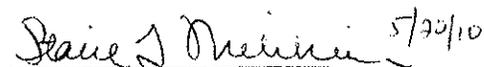
  
Jan Minami  
President

APPROVED AND ACCEPTED THIS 19<sup>TH</sup> DAY OF MAY, 2010

cc By:   
Bruce Rudd, Assistant City Manager

APPROVED AS TO FORM

CITY ATTORNEY'S OFFICE

By:  5/20/10  
Deputy

**EXHIBIT "A"**

ASSIGNMENT OF CITY OF FRESNO NEIGHBORHOOD STABILIZATION PROGRAM AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF CITY OF FRESNO NEIGHBORHOOD STABILIZATION PROGRAM AGREEMENT ("Assignment") is made and entered into as of May 24, 2010, by and between Fresno Revitalization Corporation, a California nonprofit public benefit corporation, ("Assignor") and FRC Canyon Crest, LLC, a California limited liability company ("Assignee").

RECITALS:

WHEREAS, Assignor entered into that certain City of Fresno Neighborhood Stabilization Program Agreement ("Agreement") with City of Fresno, a municipal corporation ("City") which Agreement was executed on May 24, 2010, to provide Assignor with a \$2,772,253 deferred payment zero interest loan for the purchase and rehabilitation of that certain real property located in Fresno County, California, and more particularly described in said Agreement, a copy of which is attached hereto as Exhibit "A"; and,

WHEREAS, Assignor desires to assign, transfer and convey to Assignee all of Assignor's right, title and interest in, to and under said Agreement, without a release from liability for the performance of Assignor's obligations thereunder; and,

WHEREAS, Assignee is desirous of receiving all of Assignor's right, title and interest in, to and under said Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign, transfer and convey unto Assignee all of Assignor's right, title and interest in, to and under said Agreement, without a release from liability for the performance of Assignor's obligations thereunder. Assignee hereby assumes all of Assignor's duties and obligations under said Agreement. This Assignment, and the acceptance hereof, shall be binding upon and shall inure to the benefit of each of the respective parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of this \_\_\_\_ day of May, 2010.

FRESNO REVITALIZATION CORPORATION, a California nonprofit public benefit corporation

By: Jan Minami

Name: Jan Minami

Its: President

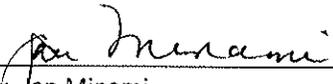
By: Sally M. Caglia

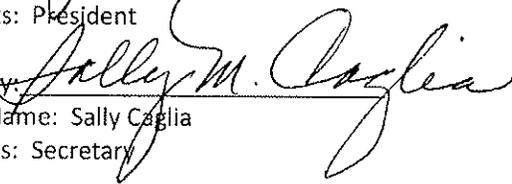
Name: Sally Caglia

Its: Secretary

FRC CANYON CREST, LLC, a California limited liability company

BY: FRESNO REVITALIZATION CORPORATION, a California nonprofit  
public benefit corporation, its sole member

By:   
Name: Jan Minami  
Its: President

By:   
Name: Sally Caglia  
Its: Secretary

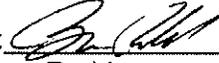


Recorded at the Request of  
and When Recorded Return to:

City of Fresno  
Planning and Development Department  
Housing and Community Development  
Division  
Attention: Housing Manager  
2600 Fresno Street, Room 3070  
Fresno, CA 93721-3605

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

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

By:   
Bruce Rudd  
Assistant City Manager

Date: 5/24/10

CITY OF FRESNO  
NEIGHBORHOOD STABILIZATION PROGRAM AGREEMENT

by and between

CITY OF FRESNO,  
a municipal corporation

and

FRESNO REVITALIZATION CORPORATION  
a nonprofit public benefit corporation

regarding

"Canyon Crest Apartments"  
APN: 468-390-44s

An Affordable Multi-Family Apartment Project



**AGREEMENT BETWEEN THE FRESNO REVITALIZATION CORPORATION AND  
THE CITY OF FRESNO REGARDING THE ACQUISITION OF 118 MULTI-FAMILY  
HOUSING UNITS**

THIS AGREEMENT is made and entered into, effective the 4th day of March 2010, by and between the CITY OF FRESNO, California, a municipal corporation, hereinafter referred to as the "City", and the Fresno Revitalization Corporation of the City of Fresno, a nonprofit public benefit corporation, hereinafter referred to as the "DEVELOPER".

**RECITALS**

WHEREAS, the U.S. Department of Housing and Urban Development, hereinafter referred to as "HUD", provides funding under its Neighborhood Stabilization Program, hereinafter "NSP" as authorized under Title III of Division B of the Housing and Economic Recovery Act of 2008, for the purpose of assisting in the redevelopment of abandoned and foreclosed homes under the Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes heading, hereinafter referred to as the "Act", incorporated herein by its reference; and

WHEREAS, City is a recipient of NSP funding under the Act for use in funding eligible activities furthering established national objectives to benefit its low, moderate and middle income residents as defined in the Act; and

WHEREAS, the NSP requires no less than twenty five percent (25%) of the CITY's NSP allocation be used for the benefit of households that earn not more than fifty percent (50%) of the area median income, by family size; and

WHEREAS, to advance the supply of Affordable Housing within the City of Fresno, the CITY desires, among other things, to encourage private investment in the affordable rental housing market; and

WHEREAS, the City in accordance with its 2006-2010 Consolidated Plan and Annual Action Plan, as amended, desires to provide NSP funds in the amount of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars (\$2,772,253) to the DEVELOPER, as more fully described in Exhibit A, Project Description, upon the terms and conditions in this Agreement; and

WHEREAS, to further its goal to increase the supply of Affordable Rental Housing within the City of Fresno, the CITY desires to assist DEVELOPER by providing a Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars (\$2,772,253) deferred payment, zero interest Loan to the Project (hereinafter referred to as "Loan"), for a term of fifty-five (55) years, for payment of NSP eligible Project costs, as further identified in Exhibit C (Project Budget and Cash Flow Statement), variously to be secured by the underlying real property and the Affordable Rental Housing covenants, upon the terms and conditions in this Agreement, for the acquisition of a

foreclosed 118-unit multi-family rental housing project, located at 3033 E. Platt Avenue, Fresno, CA 93721. The Loan will be due and payable at the earlier of fifty five (55) years from the City issued Certificate of Completion or the date upon which the DEVELOPER has completed payment on other property acquisition lien(s); and

WHEREAS, the City has determined that this Agreement is in the best interests of, and will materially contribute to, the Housing Element of the General Plan. Further, the CITY has found that the Project (i) will have a positive influence in the neighborhood and surrounding environs, (ii) is in the vital and best interests of the CITY, and the health, safety, and welfare of City residents, (iii) complies with applicable federal, state, and local laws and requirements, including NSP guidelines and NSP national objectives (iv) will increase, improve, and preserve the community's supply of Low, Moderate and Middle Income Housing available at affordable housing cost to persons and families of Low, Moderate and Middle Income, as defined hereunder, (v) planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of Low, Moderate and Middle Income Housing, and (vi) will comply with any and all owner participation rules and criteria applicable thereto; and

WHEREAS, the CITY and DEVELOPER have determined that the NSP Assisted Units constitutes routine programmatic/grantee lender activities utilizing available and allocated program/grantee funding, outside the reach of California Constitution Article XXXIV and enabling legislation; and

WHEREAS, on February 24, 2010, the Housing and Community Development Commission of the City of Fresno reviewed this Agreement and recommended approval; and

WHEREAS, pursuant to City Resolution No. 2009-153, the City Manager is authorized to execute, on behalf of the City, NSP agreements that are within available allocated NSP funding and in a standard form approved by the City Attorney; and

WHEREAS, on March 4, 2010, the Fresno City Council provided project approval

### **AGREEMENT**

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

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

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

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

C. "Affirmative Marketing" means a good faith effort to attract eligible persons of all racial, ethnic and gender groups, in the housing market area, to rent the proposed Affordable Rental Housing Project, as hereinafter defined.

D. "Affordability Period" means the fifty-five (55) year period commencing from the date of issuance of the Certificate of Completion of the Project Property.

E. "Affordable Rental Housing" means all the rental housing units located at the Project Property, of which seventy one (71) will be NSP assisted units, each of which will be required to meet the affordability requirements of this Agreement. A total of forty-six [46] units will be required to meet the affordability requirements of the Housing Set Aside Program.

F. "Budget" means the Budget, and any changes thereto, approved by the CITY's Housing and Community Development Division Manager provided the total amount of NSP Funding allocated to the Project shall not be increased without City Council approval, attached hereto as Exhibit C.

G. "Certificate of Completion" means that certificate issued, in the form attached as Exhibit D, to DEVELOPER by the CITY evidencing the City-approved completion of the Project for purposes of this Agreement.

H. "CFR" means the Code of Federal Regulations.

I. "Current Market Appraised Value" means the value of a foreclosed upon NSP or residential property that is established through an appraisal made in conformity with the appraisal requirements of URA at 49 CFR 24.103 and completed within 60 days prior to a final offer being made for the property by a grantee, or DEVELOPER.

J. "Declaration of Restrictions" means the Declaration of Restrictions in the form attached hereto as Exhibit B, which shall be recorded against the Property upon the close of escrow, setting out the Affordable Rental Housing covenants and requirements of this Agreement which shall run with the land.

K. "Deed of Trust" means that standard, subordinate second (2<sup>nd</sup>) but no worse than third (3<sup>rd</sup>) position Deed of Trust (including security agreement) given by DEVELOPER as Trustor, to the CITY as beneficiary, through an escrow established by DEVELOPER with a City-approved title company, and recorded against the Property, insured in the full amount of the Loan, and acceptable to the City Attorney, as well as any amendments to, modifications of and restatements of said Deed of Trust. The terms of any such Deed of Trust are hereby incorporated into this Agreement by this reference.

L. "Eligible Costs" means the NSP eligible costs funded by the Loan, consistent with the Budget attached as Exhibit C, as authorized under Title III of Division B of the Housing and Economic Recovery Act of 2008, for the purpose of assisting in the redevelopment of abandoned and foreclosed homes under the Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes, provided, however, that costs incurred in connection with any activity that is determined to be ineligible under the Program by HUD or the CITY shall not constitute Eligible Costs.

M. "Event of Default" shall have the meaning assigned to such term under Section 36.A.i hereunder.

N. "Family" has the same meaning given that term in 24 CFR 5.403.

O. "Foreclosed" means a property that has been foreclosed upon, and is at the point that, under state or local law, the mortgage or tax foreclosure is complete.

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

Q. "Household" means one or more persons occupying a Project Property.

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

S. "Loan" means the loan of NSP Funds, in the total amount not to exceed Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars and 00/100 (\$2,772,253) for eligible NSP costs, made available by the CITY to the Project pursuant to this Agreement, as more specifically described in Exhibit A, Project Description, and as authorized in the Exhibit C, Budget and in the Promissory Note attached hereto as Exhibit E. The Loan shall be payable in accordance with the terms of the Note, and shall be secured by a Deed of Trust recorded against the property.

T. "Loan Documents" are collectively this Agreement, the Note(s), Deed(s) of Trust, Declaration(s) of Restrictions and all related documents/instruments as they may be amended, modified or restated from time to time along with all exhibits and attachments thereto, relative to the Loan.

U. "Neighborhood Stabilization Program Funds" (also referred to in this Agreement as "NSP Funds") means the NSP monies constituting the Loan, in an amount not to exceed the sum of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars and 00/100 (\$2,772,253), used for NSP eligible costs.

V. "Project" means the purchase of one hundred eighteen (118) foreclosed Affordable Rental Housing Units located at 3033 E. Platt Ave., Fresno, CA 93721, of which seventy one (71) units will be leased to very low income households, all as described in the Project Description attached hereto and incorporated herein as Exhibit A.

W. "Project Completion Date" means the date by which the DEVELOPER has acquired the Project Property, expended NSP funds on eligible activities in accordance with this Agreement, and provided the City verification of the very low income household status for seventy one (71) housing units in the Project. The Project Completion Date for this project is August 31, 2010.

X. "Project Property" means the abandoned and/or foreclosed property to be purchased by the DEVELOPER according to NSP guidelines, and managed as a mixed income housing project as provided herein.

Y. "Project Schedule" means the schedule for completion of the Project included within the Exhibit A, Project Description and Schedule, consistent with the above Project Completion Date.

Z. "Promissory Note" means the Project Note in the amount of the total NSP funds to the DEVELOPER, substantially in the form attached hereto/incorporated herein as Exhibit E in principal amount of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars (\$2,772,253), given by DEVELOPER as promisor, in favor of the CITY, as promisee, evidencing the Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement, secured by a standard Deed of Trust as 2<sup>nd</sup> but no worse than 3<sup>rd</sup> position lien upon the Property, naming the CITY as beneficiary and provided to the CITY no later than the date of initial disbursement hereunder, as well as any amendments to, modifications of and restatements of said Note consented to by CITY.

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

BB. "Revenue" has the same meaning as Program Income, as defined at 24 CFR 570.500(a) with the modifications as identified in the Federal Register, Volume 73, No. 194, Docket No. FR-5255-N-01.

CC. "Unit" means a dwelling unit of the Affordable Rental Housing.

DD. "Very Low Income Families" means families whose annual income does not exceed fifty percent (50%) of the median income for the Fresno, California area as determined by HUD.

2. Term. This Agreement and the NSP grant provided hereunder shall be for the period commencing upon the date of execution, and shall remain in force for the duration of the longer of the Affordability Period and the Loan unless earlier terminated as provided herein.

3. Timeframe for Completing Project.

A. DEVELOPER's daily schedule and hours worked under this Agreement on a given day shall generally be subject to DEVELOPER's discretion and Exhibit A, provided that DEVELOPER shall devote sufficient time as is reasonably necessary to fulfill the spirit and purpose of this Agreement. The DEVELOPER agrees to acquire the Property with NSP funds and verify very low income household status for at least seventy one (71) households within the Project Property, not later than August 31, 2010. Extensions may be granted by the City in its discretion upon DEVELOPER's successful completion of the Agreement requirements, and only to allow for the DEVELOPER's further utilization of Program Income as allowed by HUD and/or in this Agreement.

B. This Section shall survive termination or expiration of this Agreement.

4. Loan Terms.

A. The City agrees to provide a NSP Loan to the DEVELOPER in the amount of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars and 00/100 (\$2,772,253) for eligible costs. The DEVELOPER shall execute and deliver to the City the Loan Documents including the Note, and notarized Deed of Trust, for recordation against the Property.

B. The NSP Loan will be due and payable in accordance with the Note and not later than the maturity date provided in the Note.

5. Subordination. The Deed of Trust and/or Declaration of Restrictions may be subordinated to certain approved financing (in each case, a "Senior Loan"), to 2<sup>nd</sup> but no worse than 3<sup>rd</sup> position, but only on condition that all of the following conditions are satisfied: (a) all of the proceeds of the proposed Senior Loan, less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for

the Project consistent with an approved financing plan; (b) DEVELOPER must demonstrate to the CITY's reasonable satisfaction that subordination of the Deed of Trust and/or Declaration of Restrictions is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project; (c) the subordination agreement must provide the CITY with adequate rights to cure any defaults by DEVELOPER including providing the CITY or its successor with copies of any notices of default. Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval, subject to prior approval to form by the Fresno City Attorney.

6. No Litigation Material to Financial Condition. DEVELOPER represents and warrants as of the date hereof that, except as disclosed to and approved by CITY in writing, no litigation or administrative proceeding before any court or governmental body or agency is now pending, nor, to the best of DEVELOPER's knowledge, is any such litigation or proceeding now threatened, or anticipated against DEVELOPER that, if adversely determined, would have a material adverse effect on the financial condition, business, or assets of DEVELOPER or on the operation of the Project.

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

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

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

10. No Litigation Material to Project. DEVELOPER represents and warrants as of the date hereof that, except as disclosed to, and approved by the CITY in writing, there is no action, proceeding, or investigation now pending, or any basis therefor known or believed to exist by DEVELOPER that questions the validity of this Agreement, or of any

action to be taken under this Agreement, that would, if adversely determined, materially or substantially impair DEVELOPER's ability to perform and observe its obligations under this Agreement, or that would either directly or indirectly have an adverse effect on or impair the completion of the Project.

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

12. Reporting Requirements.

A. DEVELOPER shall provide CITY with the following written performance reports on or before the dates indicated:

i. From the date of Commencement of the Project, until issuance of the final Certificate of Completion, DEVELOPER shall submit a Monthly Report, in a form approved by the CITY, which will include, at a minimum, the following information: progress of the Project and affirmative marketing efforts (as applicable), and provide a final report submitted within 45 days of the end of the term hereof and at any time hereunder upon written request of the City.

ii. Annually, beginning on the first day of the month following the CITY's issuance of the final Certificate of Completion, and continuing until the termination of the Agreement, DEVELOPER shall submit an Annual Report to the CITY, in a form approved by the CITY. The Annual Report shall include, at a minimum, the following information: the rent, the annual income and the family size of the Households. The report shall also state the date tenancy commenced for each rental Unit, certification from an officer of DEVELOPER that the Project is in compliance with the Affordable Rental Housing Requirements, and such other information the CITY may be required by law to obtain. DEVELOPER shall provide any additional information reasonably requested by the CITY.

iii. Annually, beginning on the first day of the month following the CITY's issuance of the final Certificate of Completion, and continuing until the expiration of the Agreement, DEVELOPER shall submit proof of insurance as required in Paragraph 47 below.

13. Project Property Purchase and Appraisal Requirements.

A. DEVELOPER is required to ensure the purchase of the Foreclosed-upon Property be at a minimum discount of one percent (1%) from the current market-appraised value of the Property.

B. DEVELOPER will be required to perform an appraisal to support their determination of fair market value, for purposes of calculating the purchase discount. The appraisal requirement applies to any NSP-assisted acquisition of a foreclosed-upon home or residential property (including voluntary acquisitions). The appraisal performed must be in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within sixty (60) days prior to a final offer being made for the property by the DEVELOPER. Additional requirements regarding appraisals are included as Exhibit G: Appraisal Requirements.

14. NSP Funds Disbursement.

A. NSP funds shall be disbursed into escrow to assist the DEVELOPER in purchasing the Project Property and/or to reimburse DEVELOPER for incurred eligible rehabilitation costs, in accordance with the Proposed Budget attached hereto as Exhibit C and incorporated herein, provided that the specific line item amounts in said Budget may be varied, added and/or stricken by the City's Housing and Community Development Division Manager, and further provided that in any event total NSP funds disbursed in pursuit of said Budget shall not exceed in the aggregate the lesser of the NSP Loan amount or the CITY's available and allocated NSP Funding during the term hereof.

B. NSP funds shall be disbursed only as authorized above, upon verification satisfactory to CITY that expenses to be incurred in performing the Project are eligible under the Act, according to the following schedule and conditions precedent to disbursement, as applicable:

i. Upon written request to CITY and within 30 days thereof, provided that CITY's receipt of substantiating invoices, accounts, documents and records for the disbursement request shall all be express conditions precedent to any payment obligation by CITY.

ii. Except to the extent expressly provided for herein, all costs/expenses incurred by DEVELOPER hereunder shall be the sole responsibility and liability of DEVELOPER.

iii. All funds are paid contingent upon DEVELOPER's continuous compliance with all applicable, uniform administrative requirements, program regulations, and recapture and reversion requirements set out in the Act.

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

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

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

vii. Loan disbursement requested will be used solely for NSP eligible costs that have been properly incurred and are properly chargeable in connection with the Project.

15. Use of Funds. The DEVELOPER shall use the funds provided by the CITY solely in pursuit of the Project.

16. Availability of NSP Entitlement Funds. DEVELOPER acknowledges and agrees that the NSP funding hereunder is subject to the control of HUD and may be encumbered, withdrawn, or otherwise made unavailable to the CITY (whether earned or promised to, or by, the DEVELOPER). The DEVELOPER shall not be paid such funds unless and until they are made available for payment to the CITY by HUD and allocated and available per CITY Council Action. No other funds owned or controlled by the CITY shall be obligated under this Agreement unless specifically approved and permitted by the Fresno CITY Council. Nothing herein constitutes a pledging or obligating of CITY funds, its General Fund, or any real and personal property taxes, sales taxes or any other tax revenues. The CITY will provide prompt notice to the DEVELOPER, upon CITY's notice from HUD, indicating NSP funds may be unavailable to the CITY.

17. Construction Standards.

A. DEVELOPER shall rehabilitate the proposed housing units assisted under this Agreement in compliance with all applicable local codes, ordinances and zoning requirements in effect at the time of issuance of Certification of Completion.

B. DEVELOPER, during its time on title, shall maintain Project Properties in a safe and secure state, while complying with all applicable codes, laws, and ordinances.

18. Identification Signage. The DEVELOPER shall place a poster or sign, identifying the City of Fresno, as a Project participant. The sign shall also include the CITY'S Housing Logo, as well as the Equal Housing Opportunity logo, as mandated by HUD. The poster/sign shall be appropriately placed, and shall be in place for 5 months following Property acquisition.

19. Contracts and Subcontracts. Consistent with this Agreement, all demolition, hazardous waste abatement, construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise legally authorized to perform the applicable work or service in the State of California and the City of Fresno. The DEVELOPER shall require that each contractor and subcontractor agreement contain a provision whereby the party(ies) to the agreement other than the DEVELOPER agree to (i) notify the CITY immediately of any event of default by the

DEVELOPER thereunder; (ii) notify the CITY immediately of the filing of a mechanic's lien, (iii) notify the CITY immediately of termination or cancellation of the agreement; and (iv) provide the CITY, upon the CITY's request, an Estoppel Certificate certifying that the agreement is in full force and effect and the DEVELOPER is not in default thereunder. The DEVELOPER agrees to notify the CITY immediately of termination or cancellation of any such agreement(s), notice of filing of a mechanic's lien, or breach or default by other party(ies) thereto.

20. Mechanic's Liens and Stop Notices.

A. If any claim of lien is filed against the Property or a stop notice affecting any financing, NSP Funds or Funding Sources for the Project is served on the CITY or any other third party in connection with the Project, the DEVELOPER shall, within twenty (20) days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the CITY a surety bond in sufficient form and amount, or provide the CITY with other assurance satisfactory to the CITY that the claim of lien or stop notice will be paid or discharged.

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

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

22. Fees, Taxes and Other Levies. The DEVELOPER shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, the DEVELOPER shall not be required to

pay and discharge any such charge so long as; (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the CITY, the DEVELOPER deposits with the CITY any funds or other forms of assurances that the CITY, in good faith, may determine from time to time are appropriate to protect the CITY from the consequences of the contest being unsuccessful.

23. Covenants and Restrictions to Run with the Land.

A. The CITY and DEVELOPER expressly warrant, covenant and agree to ensure that the covenants and restrictions set forth in this Agreement are recorded and will run with the land, provided, however, that, on expiration of this Agreement and the Affordable Rental Housing requirements therein, said covenants and restrictions shall expire. DEVELOPER further warrants, covenants and agrees to ensure that the covenants and restrictions set forth herein shall run in favor of the CITY.

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

C. The DEVELOPER covenants and agrees that until the expiration of the Affordability Period it shall cause the Affordable Rental Housing to be used for Affordable Housing.

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

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

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

24. Displacement of Persons. DEVELOPER warrants, covenants and agrees that it will take all reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations and farms).

25. Initial and Annual Income Certification. DEVELOPER warrants, covenants and agrees that it shall comply with the procedures for annual income determinations as set forth by the U.S. Department of Housing and Urban Development for the Neighborhood Stabilization Program. DEVELOPER shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from each tenant Household renting any Unit. DEVELOPER shall make a good faith effort to verify that the income provided by an applicant or occupying Household in an income certification is accurate by taking one or more of the following steps as part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income verification form from the applicant's current employer; (3) obtain an income verification form from the Social Security Administration and California Department of Social Services if the applicant receives assistance from either of such agencies; (4) obtain an income tax return for the most recent tax year, or (5) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of household income certification and verification must be available for review and approval by the CITY. DEVELOPER further warrants, covenants and agrees that it shall cooperate with the CITY in the CITY's income certification/affordability monitoring activities.

26. Lead-Based Paint. The DEVELOPER warrants, covenants and agrees that it shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 CFR Part 35 including the HUD 1012 Rule, and 24 CFR 982.401(j), including any amendments thereto, in the Affordable Housing Project. These requirements apply to all units and common areas in the Project Property. DEVELOPER shall incorporate or cause incorporation of this provision in all contracts and subcontracts for work performed on the Project, which involve the application of paint. DEVELOPER shall be responsible for all disclosure, inspection, testing, evaluation, control and abatement activities.

27. Affordable Rental Housing.

A. DEVELOPER covenants and agrees that the Project shall constitute Affordable Rental Housing with at least seventy one (71) units preserved as Very Low Income Rental Housing during the entire Affordability Period. This covenant as to Affordable Rental Housing shall remain in effect and run with and restrict the land during the entirety of the Affordability Period. In the event that DEVELOPER fails to comply with the time period in which the Project must constitute Affordable Rental Housing, CITY shall without waiver or limitation be entitled to injunctive relief, as DEVELOPER acknowledges that damages are not an adequate remedy at law for such breach.

28. Compliance with Environmental Laws.

A. The DEVELOPER shall cause the Project to be in compliance with, and not to cause or permit the housing project to be in violation of, any environmental law, rule, regulation, ordinance, or statute. Although the CITY may utilize its employees and agents for regular inspection and testing of the eligible Property, the DEVELOPER agrees that, if the CITY has reasonable grounds to suspect any such violation, the DEVELOPER shall be entitled to thirty (30) days' notice and opportunity to cure such violation. If the suspected violation is not cured, the CITY shall have the right to retain an independent consultant to inspect and test the eligible Property for such violation. If a violation is discovered, the DEVELOPER shall pay for the reasonable cost of the independent consultant.

B. Additionally, the DEVELOPER agrees:

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

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

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

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

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

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

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

29. Certificate of Completion. Upon completion of the acquisition of the Project, DEVELOPER shall certify in writing to the CITY that the Affordable Rental Housing has been acquired. Upon completion of the Affordable Rental Housing, DEVELOPER shall also submit to the CITY a cost-certifying final budget where DEVELOPER shall identify the actual costs of construction of the Project. This final cost-certification shall identify costs in line-item format, consistent with the Project Budget. Upon a determination by the CITY that DEVELOPER is in compliance with all of DEVELOPER construction obligations, as specified in this Agreement, the CITY shall furnish, within 30 calendar days of a written request by DEVELOPER, a recordable Certificate of Completion for the Project in the form attached hereto as Exhibit D. The CITY will not unreasonably withhold or delay furnishing the Certificate of Completion. If the CITY fails to provide the Certificate of Completion within the specified time, it shall provide DEVELOPER with a written statement indicating in what respects DEVELOPER has failed to complete the Project in conformance with this Agreement or has otherwise failed to comply with the terms of this Agreement, and what measures DEVELOPER will need to take or what standards it will need to meet in order to obtain the Certificate of Completion. Upon DEVELOPER taking the specified measures and meeting the specified standards, DEVELOPER will certify to the CITY in writing of such compliance and the CITY shall deliver the recordable Certificate of Completion to DEVELOPER in accordance with the provisions of this section.

30. Property Management.

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

B. Occupancy Requirements. Seventy One (71) Project Units shall be rented and occupied by, or if vacant, available for rental occupancy by (a) 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 price, for the Affordability Period, except upon foreclosure by a lender or transfer in lieu of foreclosure following default under a Deed of Trust. However, if at any time following transfer by foreclosure or transfer in lieu of foreclosure, but still during the Affordability Period, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes such owner of record or those

whom such owner of record has or had family or business ties, obtains an ownership interest in the Project or Property, the Affordability Period shall be revived according to its original terms. In the event DEVELOPER fails to comply with this Section or the Affordability Period is not revived following transfer by foreclosure or transfer in lieu of foreclosure, DEVELOPER shall return to CITY all NSP Funds disbursed to DEVELOPER by CITY. Affordable rents will be set at HUD fair market rents, and will not exceed thirty-five percent (35%) of the tenant's household income, including utilities, for the term of this Agreement. Forty Six (46) Project Units shall be required to meet the affordable housing income restrictions as required by the Housing Set Aside program.

C. Leasing the Project. Before leasing any Units, DEVELOPER shall submit its proposed form of Lease for CITY's review and approval. DEVELOPER covenants and agrees to utilize only Leases that have been approved in advance by CITY. The CITY shall respond to DEVELOPER submission of a sample Lease within thirty (30) days. Should CITY not respond within thirty (30) days of Lease submittal, DEVELOPER shall be authorized to use the submitted sample Lease. Additionally, DEVELOPER agrees not to terminate the tenancy or to refuse to renew a Lease with a tenant of the Affordable Rental Housing assisted with NSP Funds except for serious or repeated violation of the terms and conditions of the Lease, for violation of applicable federal, state, or local law, or for other good cause. Any such termination or refusal to renew must be preceded by not less than 30 days written notice served by DEVELOPER or its authorized management entity upon the tenant specifying the grounds for such action. DEVELOPER agrees it shall annually report to CITY the number of Leases that were not renewed or terminated and the reason for such non-renewal or termination.

D. Lease Provisions. Leases are subject to the following:

i. DEVELOPER shall include in Leases for all Units, provisions which authorize DEVELOPER to immediately terminate the tenancy of any Household one or more of whose members misrepresented any fact material to the Household's qualification as a Household for Very Low-Income Families. Each such Lease shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for Very Low-Income Families such Household's rent may be subject to increase to the lesser of (1) the amount payable by tenant under state or local law; or (2) thirty-five percent (35%) of the Household's actual adjusted monthly income.

E. Final Management Plan. Within sixty (60) calendar following property purchase, DEVELOPER shall submit to the CITY, for review and approval, a plan for marketing and managing the proposed Affordable Rental Housing ("Final Management Plan"). The Final Management Plan shall address in detail how DEVELOPER or its designated management entity plans to market the availability of Units to prospective tenants and how DEVELOPER plans to certify the eligibility of potential tenants. The Final Management Plan shall also address how DEVELOPER and/or the management entity plan to manage and maintain the Affordable Rental Housing, and shall include appropriate financial information and documentation. The Final Management Plan shall

contain detailed descriptions of policies and procedures with respect to tenant selections and evictions. Topics to be covered in these procedures shall include at a minimum the following:

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

i. The Final Management Plan shall contain copies of all standardized forms associated with the above listed topics. The Final Management Plan shall include a form Lease agreement that DEVELOPER propose to enter into with Project tenants. DEVELOPER shall abide by the terms of this Final Management Plan, approved by the CITY, in marketing, managing and maintaining the Housing.

ii. At least ninety (90) calendar days prior to the Project Completion Date, DEVELOPER shall also submit any proposed management contract to the CITY for prior review. The CITY shall have the right to review any proposed amendments, other than renewals to the management contract, and any new management contracts during the term of this Agreement. Such management contract(s) shall contain a provision expressing this right.

F. Property Management. With respect to the Project, DEVELOPER shall comply with the following:

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

G. Maintenance and Security. DEVELOPER shall at its own expense maintain the Affordable Rental Housing in good condition, in good repair and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of the Unit occupants. DEVELOPER shall not commit or permit any waste on or to the Affordable

Rental Housing, and shall prevent and/or rectify any physical deterioration of the housing. DEVELOPER shall maintain the housing in conformance with all applicable federal, state and local laws, ordinances, codes and regulations, the Final Management Plan, and this Agreement.

H. Damage to Property. To the extent consistent with the requirements of any permitted encumbrance, or as otherwise approved by the CITY, and subject to the insurance requirements of this Agreement, if any building or improvement constructed on the Property is damaged or destroyed by an insurable cause, DEVELOPER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications of the Project Unit. Such work or repair shall commence within ninety (90) days after the insurance proceeds are made available to DEVELOPER and shall be complete within one (1) year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, DEVELOPER shall make up the deficiency.

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

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

J. Rent Schedule and Utility Allowances. DEVELOPER covenants and agrees not to charge rent for Units in an amount which exceeds those rents as established by HUD to be fair market rent for the Fresno, California area and further covenants and agrees not to impose a monthly allowance for utility services to tenants of such Units in excess of an amount approved by HUD in accordance with 24 CFR

92.252. DEVELOPER agrees to furnish to the CITY a certificate setting forth the maximum monthly rentals for Units and the monthly allowances for utilities and services to be charged during any annual period until the expiration of the Affordability Period.

K. Fees, Taxes and Other Levies. DEVELOPER shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, DEVELOPER shall not be required to pay and discharge any such charge so long as; (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the CITY, DEVELOPER deposit with the CITY any funds or other forms of assurances that the CITY, in good faith, may determine from time to time are appropriate to protect the CITY from the consequences of the contest being unsuccessful.

L. Financing. DEVELOPER shall promptly inform the CITY of any new financing or funding, and DEVELOPER shall provide the CITY copies of all agreements with any and all Funding Sources for this Project. DEVELOPER agrees to notify the CITY immediately of termination or cancellation of any such agreement(s) or receipt of notice of default/default thereunder. DEVELOPER shall comply with all obligations of any such agreement(s) with any and all Funding Sources until the respective expiration of such agreement(s). In the event DEVELOPER fails to comply with its obligations of this section, the loan shall become immediately due and payable as provided for in this Agreement. This section shall survive expiration or termination of this Agreement.

31. Financial Statements and Audits.

A. The DEVELOPER, as a recipient of federal financial assistance, is required to comply with the provisions of the Single Audit Act of 1984 (31 U.S.C. Sections 7501 et seq.), as amended. Annually, within one hundred and eighty (180) days following: 1) the end of fiscal year(s) in which the NSP Funds are disbursed hereunder, and 2) the end of fiscal year(s) in which this contract shall terminate, and otherwise upon the City's, written request during the term of this Agreement, DEVELOPER, at its sole cost and expense shall submit to the City:

i. Audited annual financial statements that are current, signed, and prepared according to generally accepted accounting principles consistently applied (except as otherwise disclosed therein); and

ii. Audited Financial Statements covering the income and expenses, and the financial transactions for the Project during the prior fiscal year.

32. Inspection and Audit of Books, Records and Documents.

A. The DEVELOPER shall be accountable to the CITY for all NSP Funds disbursed for this project pursuant to this Agreement. Any duly authorized representative of the CITY, the State, or HUD shall, at all reasonable times, have

access to and the right to inspect, copy, make excerpts or transcripts, audit, and examine all books of accounts, records, files and other papers or property, and other documents of the DEVELOPER pertaining to the Project or all matters covered in this Agreement and for up to five (5) years after the expiration or termination of this Agreement.

B. The DEVELOPER will maintain books and records for the Project using generally accepted accounting principles. The DEVELOPER agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with NSP Funds and to keep all invoices, receipts and other documents related to expenditures financed with NSP Funds for not less than five (5) years after the expiration or termination of the Agreement. Books and records must be kept accurate and current. For purposes of this section, "books, records and documents" include, without limitation; plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, funding applications, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda, and electronically stored versions of the foregoing. This section shall survive the termination of this Agreement.

C. The CITY may audit any conditions relating to this Agreement at the CITY's expense, unless such audit shows a significant discrepancy in information reported by the DEVELOPER in which case the DEVELOPER shall bear the cost of such audit. This section shall survive the termination of this Agreement.

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

33. Inspection of Property. Any duly authorized representative of the CITY, the State, or HUD shall, at all reasonable times, have access and the right to inspect the Property until completion of the Project.

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

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

36. Termination of Agreement.

A. This Agreement shall terminate upon the earlier of:

i. DEVELOPER's Default. The parties agree that each of the following shall constitute a default by DEVELOPER for purposes of this Agreement where such breach remains uncured for thirty (30) calendar days following City's notice to DEVELOPER describing such breach, or if such breach is not reasonably susceptible of cure, immediately upon notice of breach by City to DEVELOPER:

1. The DEVELOPER's use of NSP funds for other uses than described in the Scope of Work.

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

3. Except as otherwise provided in this Agreement, the failure of the DEVELOPER to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following:

a. Failure to meet performance measures and schedule.

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

c. DEVELOPER shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within fourteen (14) days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within fourteen (14) days.

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

e. A receiver, trustee, or liquidator shall be appointed for DEVELOPER or any substantial part of DEVELOPER's assets or properties, and not be removed within ten (10) days.

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

- ii. Written notice by either party to the other without cause.
- iii. Complete performance by each party hereto.
- iv. Expiration.

B. Upon the happening of a default by DEVELOPER and a failure to cure said default within 30 days of the date of the notice of default (or a more immediate date if the default is related to imminent health and/or safety concerns), City's obligation to disburse NSP funding shall terminate, and City may also at its option and without notice institute any action, suit, or other proceeding in law, in equity or otherwise, which it shall deem necessary or proper for the protection of its interests and may without limitation proceed with any or all of the following remedies in any order or combination City may choose in its sole discretion:

i. Terminate this Agreement immediately upon written notice to DEVELOPER, in which event any unearned and improperly NSP funds disbursed to DEVELOPER by City shall be returned to City;

ii. Bring an action in equitable relief (1) seeking specific performance by DEVELOPER of the terms and conditions of this Agreement, and/or (2) enjoining, abating or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

iii. Pursue any other remedy allowed at law or in equity or under this Agreement.

C. Upon any termination, the City's obligations hereunder shall terminate and all unexpended or improperly expended NSP funds subject to this Agreement shall revert to and/or be recaptured for the City's NSP Program, provided that if the DEVELOPER is not in default at the time of termination the DEVELOPER shall be reimbursed for eligible project activities satisfactorily performed prior to the effective date of the notice of termination.

D. Notwithstanding the foregoing and without waiver or limitation, in accordance with the Act including 24 CFR 85.43, suspension or termination of this Agreement may occur if the DEVELOPER materially fails to comply with any term of the

NSP grant, and the grant may be terminated for convenience in accordance with 24 CFR 85.44.

E. Those provisions of this Agreement intended by its terms therein to survive the termination of this Agreement shall so survive.

37. On-Site Monitoring. Authorized representatives of HUD or the City shall have the right to monitor the DEVELOPER's performance under this Agreement. Such monitoring may include inspection activities, review of records, and attendance at meetings.

38. Records.

A. The DEVELOPER shall maintain all necessary books and records with respect to disbursement of money, to property, and to personnel in accordance with usual and customary business accounting practices. The DEVELOPER shall document all DEVELOPER expenditures under this Agreement with properly executed payroll, time records, invoices, contracts, vouchers, or other official documentation evidencing the nature and propriety of the charges. All such materials shall be retained by the DEVELOPER for a period of not less than five (5) years from termination of this Agreement.

B. The DEVELOPER shall, at such time and in such forms as the City or HUD may require, furnish statements, records, data, copies, and information pertaining to matters covered by this Agreement. The City has the right, upon request, to inspect and copy all DEVELOPER documents and records pertaining to this Agreement.

39. Compliance with Governmental Regulations.

A. The DEVELOPER shall, at its sole cost and expense, comply with applicable municipal, county, state, and federal law, regulations, rules and requirements now in force, or which may hereafter be in force, pertaining to any and all activities under this Agreement. The DEVELOPER shall comply with all applicable provisions of 24 CFR 570, et seq., including Subpart K thereof; except that the DEVELOPER does not assume the CITY's non-delegable environmental responsibilities described in 24 CFR 58 and/or 24 CFR 570-604, and does not assume the City's responsibility for initiating the review process under Executive Order 12372.

i. Both City and DEVELOPER agree to jointly and severally comply with the requirements of the Office of Management and Budget Circular A-87, "Cost principles for State, Local, and Indian Tribal Governments"; OMB Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations"; 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; and 24 CFR Part 570.502 "Applicability of Uniform Administrative Requirements". Each party shall be responsible for determining the applicability of the foregoing.

ii. The DEVELOPER agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973 and HUD implementing regulation 24 CFR Part 8.

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

41. Contract Award.

A. The DEVELOPER will be responsible for all aspects of the project contract award and management including any compliance with all applicable laws and regulations. The DEVELOPER shall verify with the Labor Relations and Equal Opportunity Division of the U.S. Department of Housing & Urban Development (HUD) Area Office that any low bidder has not been debarred or suspended from participating in the federal project.

i. Any such award shall be subject to all the terms and conditions herein.

42. Accessibility

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

i. At least five percent (5%) of the dwelling units, or at least eleven (11) units, whichever is greater, must be constructed to be accessible for persons with mobility disabilities. An additional two percent (2%) of the dwelling units, or at least four (4) units, whichever is greater, must be accessible for persons with hearing or visual disabilities. These units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) or a standard that is equivalent or stricter. These mandates can be found in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

ii. The design and construction requirements of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended), including the following seven (7) requirements of the Fair Housing Accessibility Guidelines:

1. Provide at least one accessible building entrance on an accessible route.
2. Construct accessible and usable public and common use areas.
3. Construct all doors to be accessible and usable by persons in wheelchairs.
4. Provide an accessible route into and through the covered dwelling unit.
5. Provide light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
6. Construct reinforced bathroom walls for later installation of grab bars around toilets, tubs, shower stalls and shower seats, where such facilities are provided.
7. Provide usable kitchens and bathrooms such that an individual who uses a wheelchair can maneuver about the space.

43. Discrimination Prohibited.

A. The DEVELOPER agrees to comply with the City's Fair Employment Practices and shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, religion, sex, national origin, ancestry, or physical or mental handicapped. More specifically, the DEVELOPER agrees as follows:

i. The DEVELOPER warrants, covenants and agrees that it shall comply with the CITY's "Affirmative Marketing Policy" document, incorporated herein, as amended from time to time. DEVELOPER shall maintain records of actions taken to affirmatively market units purchased and rehabilitated in the future, and to assess the results of these actions.

ii. No person in the United States shall, on the grounds of race, color, religion, national origin, sex or sexual preference, ancestry, or physical or mental handicap be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

iii. The DEVELOPER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual preference, national origin, ancestry, or physical or mental handicap. The DEVELOPER shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, or physical or mental handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The DEVELOPER agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

iv. The DEVELOPER will, in all solicitation or advertisements for employees placed by or on behalf of the DEVELOPER, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual preference, national origin, ancestry or physical or mental handicap.

B. The DEVELOPER will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the such labor union or workers' representatives of the DEVELOPER'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

#### 44. Conflict of Interest.

A. Prior to City's execution of this Agreement, DEVELOPER shall complete a City of Fresno Conflict of Interest Disclosure Statement. Said Statement is attached hereto as Exhibit F and incorporated herein by reference. During the term of this Agreement, DEVELOPER shall have the obligation and duty to immediately notify City in writing of any change to the information provided by DEVELOPER on Exhibit F.

i. No member, officer, or employee of the DEVELOPER or its designees or agents who exercise any function or responsibility with respect to the programs during his/her tenure or for one (1) year thereafter, shall have any interest,

direct or indirect, in any contract or subcontract, or the proceeds thereof, for Services to be performed in connection with this Agreement. The DEVELOPER shall incorporate, or cause to be incorporated, in all contracts and subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

ii. DEVELOPER shall not employ or retain the services of any person while such person either is employed by City or is a member of any City commission, board, committee, or similar City body. This requirement may be waived by the City's Chief Administrative Officer if no actual or potential conflict is involved.

iii. DEVELOPER shall comply with all applicable laws, rules, regulations and requirements governing avoidance of impermissible conflicts, including without limitation Government Code 1090 et seq., the requirements of the California Political Reform Act (Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.).

iv. DEVELOPER represents and warrants that as of the effective date hereof, it represents no client or customer whose interests are adverse to the City's.

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

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

46. Indemnification.

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

B. If DEVELOPER should contract or subcontract all or any portion of the work to be performed under this Agreement, DEVELOPER shall require each contractor

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

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

47. Insurance and Bonds.

A. Insurance. Throughout the life of this Agreement, the DEVELOPER shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with (an) insurance company(ies) either (1) 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 (2) authorized by the CITY's Risk Manager. The following policies of insurance are required:

i. Prior to repair and rehabilitation of the Project Property and until issuance of Certificate(s) of Completion, BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

ii. Following acquisition of the Project Property COMMERCIAL PROPERTY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 10 30 (Cause of Loss – Special Form), with limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of the Project Property with no coinsurance penalty provisions. Such insurance shall include coverage for business income, including "rental value", in an amount equal to the two (2) years of annual Rent. Coverage for business income, including "rental value," shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 00 30.

iii. The above described policy(ies) of insurance shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, change or reduction in coverage, the DEVELOPER or its contractors/subcontractors, as the case may be, shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event the policy is due to expire during the term of this Agreement, DEVELOPER shall provide a new certificate, and applicable endorsements, a new certificate evidencing renewal of such policy shall be provided not less than fifteen (15) days prior to the expiration date of the expiring policy. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, the DEVELOPER or its contractors/subcontractors, as the case may be, shall file with the CITY a certified copy of the new or renewal policy and certificates for such policy.

iv. The Builders Risk (Course of Construction) and Fire and Extended Coverage insurance policies shall be endorsed to name the City as a loss payee.

v. DEVELOPER shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or his/her designee prior to DEVELOPER'S execution of this Agreement.

vi. The fact that insurance is obtained by DEVELOPER shall not be deemed to release or diminish the liability of DEVELOPER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and each of its officials, officers, employees, agents 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. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of DEVELOPER.

vii. Upon request of City, DEVELOPER shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

viii. If at any time during the life of this Agreement or any extension, the DEVELOPER fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, until notice is received by the CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the CITY. Any failure to maintain the required insurance, subject to notice and cure requirements herein, shall be sufficient cause for the CITY to terminate this Agreement.

B. Bonds. The DEVELOPER shall pay for and maintain good and sufficient surety bonds from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California and Treasury-listed, in a form satisfactory to the CITY and naming the CITY as Co-Obligee.

i. The "Faithful Performance Bond" shall be at least equal to 100% of DEVELOPER'S estimated construction costs to guarantee faithful performance of the Project, within the time prescribed, in a manner satisfactory to the CITY, and that all materials and workmanship will be free from original or developed defects.

ii. The "Material and Labor Bond" shall be at least equal to 100% of DEVELOPER'S estimated construction costs to satisfy claims of material supplies and of mechanics and laborers employed for this Project. The bond shall be maintained by DEVELOPER in full force and effect until the Project is completed, and until all claims

for materials and labor are paid, released, or time barred, and shall otherwise comply with any applicable provisions of the California Civil Code.

iii. In lieu of the bonds required above, CITY, in its sole discretion, may accept from Developer an Irrevocable Standby Letter of Credit issued with the CITY named as the sole beneficiary in the amount(s) of the bonds required above. The Irrevocable Standby Letter of Credit is to be issued by a bank, and in a form, acceptable to CITY. This Irrevocable Standby Letter of Credit shall be maintained by Developer in full force and effect until CITY is provided with a recorded Notice of Completion for construction of the Project and shall be subject to and governed by the laws of the State of California.

48. DEVELOPER Certification.

A. The DEVELOPER certifies to the best of its knowledge and belief that no federally appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, or a member of Congress, or an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federally appropriated funds have been paid or will be paid to a person for influencing an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the DEVELOPER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The DEVELOPER shall require that the language of the above certification be included in the documents for all DEVELOPER tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all developers/contractors shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement.

49. Independent Contractor. In the furnishing of the services provided for herein, the DEVELOPER is acting as an independent contractor. Neither the DEVELOPER, nor any of its officers, associates, agents or employees shall be deemed an employee or agent of the City for any purpose. Nothing in this Agreement shall create a limited or general partnership or joint venture. DEVELOPER shall have no authority to bind the

City absent City's express written consent. Except to the extent otherwise provided in this Agreement, DEVELOPER shall bear its own costs/expenses in pursuit hereof.

50. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

51. Binding. Subject to Section 52 below ("Assignment"), once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

52. Assignment. This Agreement is personal to the DEVELOPER and there shall be no assignment by the DEVELOPER of its rights or obligations under this Agreement without the prior written approval of the City. Any attempted assignment by the DEVELOPER, its successors or assigns, shall be null and void unless approved in writing by the City. Notwithstanding the above, DEVELOPER may assign its rights, duties and obligations, title and interest under this Agreement to a wholly owned single purpose subsidiary of DEVELOPER, subject to written approval by City. However, in the event of such assignment as provided herein, DEVELOPER is in no way relieved of any of its responsibilities, and shall remain fully responsible and liable to City under the terms of this Agreement and all related agreements, and DEVELOPER shall retain full control and responsibility for the Project.

53. Waiver.

A. The waiver by either party of a breach by the other of any provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

i. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

54. Heading. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

55. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

56. Interpretation. The parties acknowledge that this agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of, or against any party, but rather by construing the terms in accordance with their generally accepted meaning. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of this Agreement shall control and take precedence.

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

58. Time of Essence. Time is of the essence for the performance of this Agreement.

59. Extent of Agreement. Each party acknowledges that they have read and fully understands the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement maybe modified only by written instrument duly authorized and executed by both the City and the DEVELOPER.

60. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit hereto, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within the exhibit. Furthermore, in the event of any conflict between the body of this Agreement and any document or instrument referenced therein, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within said document or instrument.

///

**CLERK'S CERTIFICATION**

State of California)  
County of Fresno )

On May 26, 2010, before me, Cindy Bruer, Deputy City Clerk, personally appeared Bruce Rudd, Assistant City Manager of the City of Fresno who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to be 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), acted, executed the instrument.

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

WITNESS my hand and official seal.

REBECCA E. KLISCH, CMC  
CITY CLERK, City of Fresno

By Cindy Bruer  
Deputy

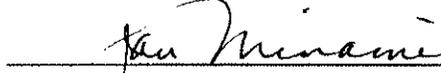
IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO

FRESNO REVITALIZATION CORPORATION  
a California nonprofit public benefit corporation



Bruce Rudd  
Assistant City Manager

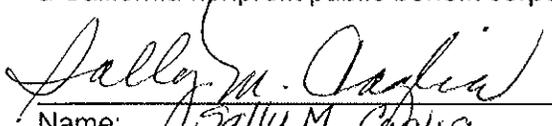


Name: Jan Minami  
Title: President

ATTEST:  
REBECCA E. KLISCH  
CITY CLERK

FRESNO REVITALIZATION CORPORATION  
a California nonprofit public benefit corporation

By: Cindy Buer 5/26/10  
Deputy



Name: Sally M. Caglia  
Title: Secretary

APPROVED AS TO FORM:  
JAMES SANCHEZ  
CITY ATTORNEY

By: Blaine J. Melnik 5/19/10  
Deputy

ADDRESSES:

CITY:  
Housing and Community Development Division  
Planning and Development Department  
Attn: Housing Manager  
2600 Fresno St., Room 3070  
Fresno, CA 93721

FRESNO REVITALIZATION CORPORATION:  
2344 Tulare Street, Suite 200  
Fresno, CA 93721

Attachments:

- Exhibit A – Project Description, Schedule and Legal Description
- Exhibit B – Declaration of Restrictions
- Exhibit C – Budget and Cash Flow
- Exhibit D – Certificate of Completion
- Exhibit E – Promissory Note
- Exhibit F – Disclosure of Conflict of Interest
- Exhibit G – Appraisal Requirements

**EXHIBIT A**  
**Project Description, Schedule and Legal Description**

A. The Agreement provides for the use of Neighborhood Stabilization Program (NSP) funds in the amount of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars (\$2,772,253), by the DEVELOPER, for the purchase and rehabilitation of a one hundred eighteen (118) unit multi-family rental housing project.

B. The project is located at 3033 E. Platt Avenue, Fresno, CA 93721, with APN 468-390-44s.

NSP FUNDED UNITS			
% of Median	One Bedroom Units	Two Bedroom Units	Totals
50% or less	52	19	71
Affordable per Housing Set Aside Requirements	34	12	46

**Schedule**

Activity	Timeline
Open Escrow	No later than April 30, 2010
Close Escrow	May 31, 2010
Confirm Very Low Income Households on 71 units	August 31, 2010

### **Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lots 1, 2, 3, 4 and 5 of Tract No 1938, Huntington Holmes Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded April 26, 1963 in Volume 21 Pages 66, 67 and 68 of Plats, Fresno County Records.

Excepting therefrom all oil, gas, other hydrocarbon substances and minerals of any kind or character, in, on, or thereunder, as reserved in deeds of record.

APN: 468-390-44s

**EXHIBIT B  
EXEMPLAR DECLARATION OF RESTRICTIONS**

RECORDING REQUESTED BY AND for the benefit of the City of Fresno and is exempt from the payment of a recording fee in accordance with Government Code Sections 6103 and 27383.

AND WHEN RECORDED MAIL TO:

CITY OF FRESNO  
Housing and Community Development Division  
2600 Fresno Street, Room 3070  
Fresno, CA 93721

Title Order No.\_\_\_\_ Escrow No.\_\_\_\_\_

APN: 468-390-44s

**DECLARATION OF RESTRICTIONS**

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this \_\_\_\_\_, by [\_\_\_\_\_], ("Declarant"), or assignees, in favor of the City of Fresno, acting by and through its Planning and Development Department, Housing and Community Development Division ("City").

WHEREAS, Declarant is the owner of the real estate in the county of Fresno, state of California, consisting of APN 468-390-44s, which is more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, Pursuant to a certain Neighborhood Stabilization Program Agreement dated \_\_\_\_\_, 2010, incorporated herein, ("NSP Agreement") and instruments referenced therein, Declarant agrees to utilize and City agrees to provide certain NSP Funds from the United States Department of Housing and Urban Development, to Declarant for certain affordable housing (the "Project") upon the Property to be rented and maintained as affordable to very low income families, subject to the terms and conditions set forth in the NSP Agreement; and

WHEREAS, the NSP regulations promulgated by HUD, and the NSP Agreement impose certain affordability requirements upon property benefited thereby, which affordability restrictions shall be enforceable for a fifty five (55) year period; and

WHEREAS, these restrictions are intended to bind all purchasers and their successors.

NOW THEREFORE, Declarant declares that the Project upon the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied

subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the plan for the acquisition, rental and occupancy of the Property. 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 Project upon the Property or any part thereof, will inure to the benefit of the future Owners of the Property or any part thereof, the United States and the City, and will be enforceable by any of them. Any purchaser under a contract of sale covering any right, title or interest in any part of the Project Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration for the period of fifty five (55) years constituting the Affordability Period.

**Period of Affordability:** The Neighborhood Stabilization Program requires the City to set periods of affordability as provided in NSP regulations. The minimum period of affordability for this program is fifty five (55 years). Year one shall be the 12-month period following issuance of the Certificate of Completion of the Project Property, with each succeeding year beginning on the anniversary thereof and ending 12 month hence. There will be no partial years.

1. **Declarations.** Declarant hereby declares that the Property is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Project and the NSP Agreement, and are established and agreed upon for the purpose of enhancing and protecting the value of the Project Property and in consideration for City entering into the NSP Agreement with Declarant. All terms not otherwise defined herein shall have the meaning ascribed to such term in the NSP Agreement.

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

a. Declarant for itself and its successor(s) on title covenants and agrees that it shall cause the Project Property to be used as Affordable Housing for the duration of the Affordability Period. Declarant further agrees to file a recordable document setting forth the Project Completion Date(s) and the Affordability Period when determined by the City. Unless otherwise provided in the NSP Agreement, the term Affordable 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 Project Property, nor shall Declarant or

any person claiming under the Declarant, establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Project Property.

Principal Residence. Each unit constituting the Project upon the Property shall be rented only to natural persons, who shall occupy the Unit as the principal residence. The foregoing requirement that the tenant of each Unit constituting the Project Property occupy the Unit as the tenant's principal residence does not apply to persons, other than natural persons, who acquire the Project Property or portion thereof by foreclosure or deed in lieu of foreclosure; or (ii) HUD qualified entities that acquire the Project Property or portion thereof, with the consent of the City.

Income Requirements. The NSP funded units constituting the Project upon the Property and each of them may be rented only to (a) natural person(s) whose annual household income at the time 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. A total of seventy one (71) floating units are NSP funded units.

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

3. Enforcement of Restrictions. Without waiver or limitation, the City shall be entitled to injunctive or other equitable relief against any violation or attempted violation of any Covenant and Restriction, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof.

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

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

business ties, obtains an ownership interest in the Project or the Property, and the Affordability Period shall be revived according to its original terms.

5. Benefit. This Declaration shall run with and bind the seventy one (71) Project Units for a term commencing on the date this Declaration is recorded in the Office of the Recorder of the county Fresno, state of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of City or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

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

7. Waiver. Neither Declarant nor any future owner of the Project Property may exempt itself from liability for failure to comply with the Covenant and Restrictions required in this Declaration.

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

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

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

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

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

13. Capitalized Terms. All capitalized terms used in this Declaration, unless otherwise defined herein, shall have the meanings assigned to such terms in that certain NSP Agreement by and between Declarant and City, of even date.

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

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

"DECLARANT"

FRESNO REVITALIZATION CORPORATION  
a California non-profit public benefit corporation

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

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

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

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

**Exhibit C**

**NSP Budget and Cash Flow**

Use	NSP Amount	Private Financing
Acquisition	\$ 2,480,204	\$1,937,796
Rehabilitation and Closing Costs	\$292,049	0
<b>Total</b>	<b>\$2,772,253</b>	<b>\$1,937,796</b>

<b>Proposed Rehabilitation Costs</b>			
	<b>REHAB SIX UNITS</b>	<b>EXTERIOR WORK</b>	<b>TOTAL</b>
SITE ACQUISITIONS	0	0	0
SITE IMPROVEMENTS	0	8500	8500
CONCRETE	0	24286	24286
PLUMBING	22740	0	22740
WOOD FRAMING	5050	14000	19050
WINDOWS	3000	0	3000
ELECTRICAL	6380	0	6380
MECHANICAL	9230	0	9230
BUILDING	6000	12470	18470
EXTERIOR	800	26380	27180
INTERIOR	56796	0	56796
PERMITS	4000	2500	6500
OVERHEAD EXPENSES	1500	5500	7000
CLOSING EXPENSES	0	0	0
DEVELOPER FEE	11549	9363	20912
PEST CONTROL WORK		17,000	
POOL REPAIRS		20,000	
CONTINGENCY		10,003	
<b>GRAND TOTAL</b>	<b>\$127,046</b>	<b>\$ 150,003</b>	<b>\$ 277,049</b>

<b>Operating Pro Forma</b>		
	<b>Pro Forma Monthly</b>	<b>Pro Forma Annually</b>
<b>RENTAL INCOME</b>		
GROSS RESIDENTIAL RENT	65,950.00	791,400.00
LESS VACANCY ADJUSTMENTS	(6,595.00)	(79,140.00)
EFFECTIVE GROSS INCOME (EGI)	59,355.00	712,260.00
<b>OPERATING EXPENSES</b>		
PAYROLL EXPENSES ON-SITE MANAGER	(4,166.67)	(50,000.00)
PAYROLL EXPENSES ON-SITE MAINTENANCE	(2,716.67)	(32,600.00)
ADMIN EXPENSES (NET OF MGMT FEE)	(1,229.17)	(14,750.00)
MANAGEMENT FEES (4% of EGI)	(2,374.20)	(28,490.40)
MARKETING/RETENTION	(1,180.00)	(14,160.00)
MAINTENANCE & REPAIR	(2,950.00)	(35,400.00)
TURNOVER EXPENSES	(1,966.67)	(23,600.00)
UTILITIES	(6,432.58)	(77,191.00)
RESERVES FOR REPLACEMENT	(1,966.67)	(23,600.00)
INSURANCE	(2,500.00)	(30,000.00)
PROPERTY TAXES	(4,174.50)	(50,094.00)
<b>TOTAL OPERATING EXPENSES</b>	<b>(31,657.12)</b>	<b>(379,885.40)</b>
<b>NET OPERATING INCOME</b>	<b>27,697.88</b>	<b>332,374.60</b>
INTEREST EXPENSE	(10,254.17)	(123,050.05)
<b>NET INCOME/CASH FLOW</b>	<b>\$ 17,443.71</b>	<b>\$ 209,324.55</b>

**Exhibit D**  
**EXEMPLAR CERTIFICATE OF COMPLETION**

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

City of Fresno  
Housing Division  
2600 Fresno Street, Room 3070  
Fresno, CA 93721

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

APN: 468-390-44s

City of Fresno

By: \_\_\_\_\_, Director  
Planning and Development Department

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

**CERTIFICATE OF COMPLETION**

APN: \_\_\_\_\_

Recitals:

A. By a Neighborhood Stabilization Program Agreement dated \_\_\_\_\_, 2010, ("NSP Agreement") between the City of Fresno, a municipal corporation ("CITY"), and \_\_\_\_\_, a California Corporation, ("DEVELOPER"), the DEVELOPER agreed to acquire a one hundred eighteen (118) unit multi-family rental housing project ("Project"), upon the premises legally described in Exhibit A, attached to the NSP Agreement, made a part hereof my this reference, (the "Property"), for the purposes of Affordable Rental Housing, with the assistance of NSP funds while meeting the affordable housing, income targeting and other requirements of the NSP, according to the terms and conditions of the NSP Agreement and the Loan Documents and other document/instruments referenced therein.

B. The NSP Agreement or a memorandum of it was recorded on \_\_\_\_\_, 2010 as Instrument No. \_\_\_\_\_ in the Official Records of Fresno County, California.

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

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

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

NOW THEREFORE:

1. CITY certifies that the DEVELOPER commenced the Project on the Project Property on \_\_\_\_\_, 2010 and completed the Project on the Project Property on \_\_\_\_\_, 2010, and has done so in full compliance with the NSP Agreement.

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

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

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

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

CITY OF FRESNO

By: \_\_\_\_\_,  
\_\_\_\_\_, Director  
Planning and Development Department

ATTEST:  
CITY CLERK

APPROVED AS TO FORM:  
JAMES C. SANCHEZ

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

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

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

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

CONSENT OF DEVELOPER

FRESNO REVITALIZATION CORPORATION

By signing below, the owner(s) of the property consent(s) to recording this Certificate of Completion against the Property described herein.

\_\_\_\_\_  
(Attach notary certificate of acknowledgment)

\_\_\_\_\_  
(Attach notary certificate of acknowledgment)

**Exhibit E  
EXEMPLAR PROMISSORY NOTE**

**(Program: Neighborhood Stabilization Program)**

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

\$2,772,253

Fresno, California, \_\_\_\_\_, 2010

Promise to Pay. For value received, the undersigned, \_\_\_\_\_, a California Company ("Developer" or "Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation, ("Lender"), the sum of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty Three Dollars and 00/100 (\$2,772,253.00) at zero percent interest, due and payable at the earlier of (i) 55 years from the City issued Certificate of Completion (the Affordability Period) or (ii) the date upon which the Borrower has completed payment on other property acquisition lien(s). On or before the earliest of (i) or (ii) above (the "Maturity Date"), and pursuant to the parties' Neighborhood Stabilization Program Agreement dated \_\_\_\_\_, 2010 ("NSP Agreement"), on which date the unpaid principal balance together with interest and unpaid penalties or late charges where applicable thereon shall be due and payable in a lump sum, along with attorney's fees and costs of collection, without relief from valuation and appraisal laws; provided that, in the event the Developer is not then in default of the NSP Agreement, the Developer may at any time pay off the principal prior to the Maturity Date. If, upon sale of the Project Property, by Borrower, and the repayment of the Note associated with the First Deed of Trust, there are inadequate proceeds to pay Lender the full principal and interest due under this Promissory Note solely from the proceeds of the sale, Lender shall accept such payment from Borrower as full repayment of all unpaid principal due without any further recourse to Borrower.

Any failure to make a payment required hereunder shall constitute a default under this Note.

Definitions. All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the NSP Agreement.

Business Day means any day other than Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day. However, if the extension would cause the payment to be made in a new calendar month, that payment will be made on the next preceding Business Day.

Affordability Period. The minimum period of affordability for this Program is fifty five (55) years. Year one shall be the 12-month period following issuance of the Certificate of

Completion for the Project, with each succeeding year beginning on the anniversary thereof and ending 12 month hence. There will be no partial years.

Security. Lender, by any and all UCC-1 Financing Statement(s) filed, may perfect Lender's security interest in this Note, the NSP Agreement, and any extensions or renewals hereof, and any and all accounts, chattel paper, payment intangibles, or promissory notes.

Time is of the Essence. It will be a default under this Note if Borrower defaults under the NSP Agreement, defaults under any other Program documents, or if Borrower fails to pay when due any sum payable under this Note. In the event of a default by Borrower, the Borrower shall pay a late charge equal to the lesser of 2% of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Program documents and then to principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the loan documents give rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind.

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

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

City of Fresno – Finance Department  
Finance/Treasury Section  
2600 Fresno Street, Room 2156  
Fresno, CA 93721

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

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

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

Terms of Security Instruments. The Deed of Trust securing this note shall provide as follows:

**DUE ON SALE--CONSENT BY BENEFICIARY.** Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer of all or any portion of the Property, or any interest therein, without the Beneficiary's prior consent. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of land interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

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

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

Governing Law. Borrower agrees that this Note will be deemed to have been made under and will be governed by the laws of California in all respects, including matters of construction, validity, and performance, and that none of its terms or provisions may be

waived, altered, modified, or amended except as Lender may consent to in a writing duly signed by Lender or its authorized agents.

In witness whereof, Borrower has caused this Note to be executed by its authorized agent as of the date and year first above written.

Fresno Revitalization Corporation, Borrower

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

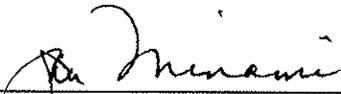
Name: \_\_\_\_\_

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

(Attach notary certificate of acknowledgment)

**Exhibit F  
DISCLOSURE OF CONFLICT OF INTEREST**

		YES*	NO
1.	Are you currently in litigation with the City of Fresno or any of its agents?		✓
2.	Do you represent any firm, organization or person who is in litigation with the City of Fresno?		✓
3.	Do you currently represent or perform work for any clients who do business with the City of Fresno?		✓
4.	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City, or in a business which is in litigation with the City?		✓
5.	Are you or any of your principals, managers or professionals, related by blood or marriage to any City employee who has any significant role in the subject matter of this service?		✓
6.	Are you employed by any other jurisdictions or agencies?		✓
<p>* If the answer to any question is yes, please explain in full.</p>			



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Name: Jan Minami  
Title: President

## **EXHIBIT G**

### Appraisal Requirements

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and its implementing regulations (49 CFR Part 24) set forth minimum requirements for real property acquisition appraisals for Federal and federally-assisted programs. Appraisals subject to the URA must be prepared according to these requirements.

The acquiring DEVELOPER has a legitimate role in contributing to the appraisal process, especially in developing a scope of work and defining the appraisal task. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal task.

The scope of work is a written set of expectations that form an agreement or understanding between the appraiser and the DEVELOPER as to the specific requirements of the appraisal, resulting in a report to be delivered to the DEVELOPER by the appraiser. The scope of work must address the unique, unusual and variable appraisal performance requirements of the appraisal. Either the appraiser or the DEVELOPER may recommend modifications to the initial scope of work, but both parties must approve changes.

#### **SCOPE OF WORK**

The appraiser must, at a minimum:

1. Provide an appraisal meeting the definition of an appraisal found at 49 CFR 24.2(a)(3) which is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.
2. Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property.
3. Perform an inspection of the subject property. The inspection should be appropriate for the appraisal task, and the scope of work should address:
  - The extent of the inspection and description of the neighborhood and proposed project area,
  - The extent of the subject property inspection, including interior and exterior areas,
  - The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property.)

4. The appraisal must have been completed within 60 days of the offer made for the property.
5. The acquiring DEVELOPER has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal stated above and the five following requirements:
  - (i) An adequate description of the physical characteristics of the property being appraised including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.
  - (ii) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.
  - (iii) A description of comparable sales, including a description of all relevant physical, legal and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
  - (iv) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
  - (v) The effective date of the valuation, date of appraisal, signature, and certification of the appraiser (see attached sample).
6. The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

## CERTIFICATE OF APPRAISER

I hereby certify:

That on \_\_\_\_\_ date(s), I personally made a field inspection of the property herein appraised and have afforded the owner or a designated representative the opportunity to accompany me on this inspection. I have also personally made a field inspection of the comparable sales relied upon in making said appraisal. The property being appraised and the comparable sales relied upon in making this appraisal were as represented in the appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct; subject to the limiting conditions therein set forth.

That I understand that such appraisal may be used in connection with the acquisition of property for a project utilizing U.S. Department of Housing and Urban Development funds.

That such appraisal has been made in conformity with appropriate laws, regulations, and policies and procedures applicable to appraisal of property for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said State.

That any decrease or increase in the fair market value of real property prior to the date of valuation caused by the project for which such property is acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner, was disregarded in determining the compensation for the property.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the acquiring DEVELOPER or officials of the U.S. Department of Housing and Urban Development and I will not do so until so authorized by said officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That I have not given consideration to, or included in my appraisal, any allowance for relocation assistance benefits.

That my opinion of the fair market value of the property to be acquired as of \_\_\_\_\_ is \$ \_\_\_\_\_ based upon my independent appraisal and the exercise of my professional judgment.

Name \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

Exhibit B to Assignment/Assumption Agreement -  
Legal Description

## **EXHIBIT B**

### **LEGAL DESCRIPTION**

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

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lots 1, 2, 3, 4 and 5 of Tract No. 1938, Huntington Holmes Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded April 26, 1963 in Volume 21 Pages 66, 67 and 68 of Plats, Fresno County Records.

Excepting therefrom all oil, gas, other hydrocarbon substances and minerals of any kind or character, in, on, or thereunder, as reserved in deeds of record.

APN: 468-390-44s

Exhibit C to April 5, 2012 Report to City Council  
Estoppel Certificate

CITY ESTOPPEL CERTIFICATE  
(Canyon Crest Apartments)

March \_\_\_\_, 2012

Canyon Crest Family Apartments, L.P.  
c/o ROEM Development Corporation  
1650 Lafayette Street  
Santa Clara, California 95050

Garnet LIHTC Fund XXXI, LLC  
Transamerica Affordable Housing, Inc.  
c/o AEGON USA Realty Advisors, LLC  
Mail Drop 5553  
4333 Edgewood Road NE  
Cedar Rapids, Iowa 52499-5553

Re: **Canyon Crest Apartments, a 118-unit multi-family residential housing project located at 3033 E. Platt Avenue, Fresno (Fresno County), California (the "Project")**

Gentlemen and Ladies:

Reference is hereby made to (i) that certain Agreement between the Fresno Revitalization Corporation and the City of Fresno Regarding the Acquisition of 118 Multi-Family Housing Units (the "NSP Agreement") dated March 4, 2010 by and between the Fresno Revitalization Corporation of the City of Fresno, a nonprofit public benefit corporation ("FRC") and the City of Fresno, California, a municipal corporation (the "City"), as subsequently assigned by FRC to FRC Canyon Crest, LLC, a California limited liability company (the "Seller"), (ii) that certain Promissory Note dated May 26, 2010 executed by the Seller in favor of the City in the original principal amount of \$2,772,253 (the "NSP Loan Note"), (iii) that certain Short Form Deed of Trust and Assignment of Rents dated May 29, 2010 executed by the Seller, as trustor, for the benefit of the City, as beneficiary (the "NSP Loan Mortgage"), (iv) that certain Declaration of Restrictions dated May 29, 2010 by and between the Seller and the City (the "NSP Regulatory Agreement"). The NSP Agreement, the NSP Loan Note, the NSP Loan Mortgage and the NSP Regulatory Agreement are sometimes referred to collectively herein as the "NSP Loan Documents".

The undersigned has been advised that Canyon Crest Family Apartments, L.P., a California limited partnership (the "New Owner") will be purchasing the Project from the Seller and that Garnet LIHTC Fund XXXI, LLC, a Delaware limited liability company, and Transamerica Affordable Housing, Inc., a California corporation (together, the "Limited

Partners”) will be acquiring partnership interests in the New Owner in connection with the tax credit financing for the Project. As a condition precedent to such acquisition and investment, you have asked us to acknowledge and confirm certain information about the NSP Loan Documents.

Accordingly, the undersigned hereby certifies to the New Owner and the Limited Partners, together with their respective affiliates, successors and assigns, as follows:

1. No default has occurred and is continuing under the NSP Loan Documents, and to the City’s actual knowledge, there does not exist any event or condition which, with the passage of time or the giving of notice or both, would constitute a default under the NSP Loan Documents.
2. The Certificate of Completion described in Section 29 of the NSP Agreement was issued by the City on September 6, 2011.
3. All of the consents and/or approvals of the City required under the NSP Loan Documents with respect to the sale of the Project to the New Owner, the admission of the Limited Partners to the New Owner, and the financing for the acquisition and rehabilitation of the Project by the New Owner have been obtained.
4. The City hereby consents to any transfer of the partnership interests in the New Owner, in whole or in part, to any entity or entities that directly or indirectly through one or more intermediaries is controlling, controlled by or under common control with the Limited Partners. The foregoing affirmation is not intended, and shall not be construed, as a limitation of the transfer rights expressly set forth in the NSP Loan Documents.
5. The City hereby consents to a refinancing of the permanent loan made by California Communities Development Authority to the New Owner (the “Senior Loan”) upon its maturity by a new mortgage loan in the amount of the then-outstanding balance of the Senior Loan (the “Refinanced Loan”), and NSP Loan Documents shall remain subordinate to any such Refinanced Loan.
6. The addresses for notice to the New Owner under the NSP Loan Documents is as follows:

If to the New Owner:

**Canyon Crest Family Apartments, L.P.**  
c/o ROEM Development Corporation  
1650 Lafayette Street  
Santa Clara, CA 95050  
Attn: Jonathan Emami  
Facsimile: (408) 984-3111  
Email: [jemami@roemcorp.com](mailto:jemami@roemcorp.com)

With copies to:

**Nixon Peabody, LLP**  
One Embarcadero Center, 18<sup>th</sup> Floor  
San Francisco, CA 94111  
Attn: Gary Downs, Esq.  
Facsimile: (866) 705-8314  
E-mail: [gdowns@nixonpeabody.com](mailto:gdowns@nixonpeabody.com)

If to the Limited Partners:

**Garnet LIHTC Fund XXXI, LLC**  
c/o AEGON USA Realty Advisors, LLC  
Mail Drop 5553  
4333 Edgewood Road NE  
Cedar Rapids, IA 52499-5553  
Attn: LIHTC Reporting  
Facsimile: (319) 355-8030  
E-mail: [lihtcreporting@aegonusa.com](mailto:lihtcreporting@aegonusa.com)

**Transamerica Affordable Housing, Inc.**  
c/o AEGON USA Realty Advisors, LLC  
Mail Drop 5553  
4333 Edgewood Road NE  
Cedar Rapids, IA 52499-5553  
Attn: LIHTC Reporting  
Facsimile: (319) 355-8030  
E-mail: [lihtcreporting@aegonusa.com](mailto:lihtcreporting@aegonusa.com)

With a copy to:

**Holland & Knight LLP**  
10 St. James Avenue  
Boston, MA 02116  
Attn: James E. McDermott, Esq.  
Facsimile: (617) 523-6850  
Email: [james.mcdermott@hklaw.com](mailto:james.mcdermott@hklaw.com)

The City will provide the Limited Partners with notice and a reasonable opportunity to cure any defaults by the New Owner arising under the NSP Loan Documents. Any cure made or tendered by the Limited Partners shall be accepted or reject by the City on the same basis as if made by the New Owner. Copies of all notices which are sent to the New Owner in connection with the NSP Loan Documents shall be sent simultaneously to the Limited Partners.

7. The City is executing and delivering this Certificate with the knowledge that it will be relied upon by the New Owner in connection with its acquisition of the Project and by the Limited Partners in connection with their admission to the New Owner and agrees that the certifications set forth herein shall be binding on the City, together with its respective successors and assigns.

Very truly yours,

CITY OF FRESNO, CALIFORNIA, a municipal  
corporation

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

Exhibit D to April 5, 2012 Report to City Council  
Subordination and Intercreditor Agreement



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

Citibank, N.A.  
Transaction Management Group/Post Closing  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Joanne Marcino

Citi #: 10-7043086

**SUBORDINATION AND INTERCREDITOR AGREEMENT**

This **SUBORDINATION AND INTERCREDITOR AGREEMENT** (this "**Agreement**") dated as of April 1, 2012, is made by and among the **CITY OF FRESNO**, a California municipal corporation ("**City**" and/or Junior Lender), **CITY OF FRESNO**, a California municipal corporation as Successor Agency of the former **REDEVELOPMENT AGENCY OF THE CITY OF FRESNO**, a public body, corporate and politic ), **CITY OF FRESNO**, a California municipal corporation in its capacity as the entity assuming the housing functions previously performed by the former Redevelopment Agency pursuant to Health & Safety Code Section 31476 (City in both its capacity as Successor Agency to the Redevelopment Agency and as the entity assuming said housing functions is hereafter referred to as "**Agency**"), and **CITIBANK, N.A.**, a national banking association ("**Senior Lender**").

**RECITALS:**

A. Canyon Crest Family Apartments, L.P., a California limited partnership ("**Borrower**"), has applied to California Statewide Communities Development Authority, a joint exercise of powers agency duly organized and existing under the laws of the State of California ("**Governmental Lender**"), for a loan in the maximum principal amount of [\$6,180,000] (the "**Senior Loan**"), for the acquisition, construction, rehabilitation, development, equipping and/or operation of a 118-unit multifamily residential project located in the City of Fresno, Fresno County, California, known or to be known as the Canyon Crest Family Apartments.

B. The Senior Loan is evidenced by that certain Multifamily Note, dated as of April [\_\_\_], 2012, in the maximum principal amount of the Senior Loan, made by Borrower payable to the order of Governmental Lender (as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended, restated and/or supplemented, the "**Senior Note**"), and that certain Borrower Loan Agreement, dated as of April 1, 2012, between Borrower and Governmental Lender (the "**Borrower Loan Agreement**").

C. The Senior Loan is secured by, among other things, that certain Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of April 1, 2012, executed by Borrower for the benefit of Governmental Lender (as the same may from time to

time be extended, consolidated, substituted for, modified, increased, amended and supplemented, the "**Senior Security Instrument**") which Senior Security Instrument encumbers the Mortgaged Property.

D. Borrower has requested that Senior Lender enter into that certain Funding Loan Agreement, dated as of April 1, 2012, between Governmental Lender and Senior Lender, pursuant to which Senior Lender will make a loan to Governmental Lender (the "**Funding Loan**"), the proceeds of which will be used to make the Senior Loan to Borrower.

E. The Senior Note, the Senior Security Instrument and the Borrower Loan Agreement will each be assigned by Governmental Lender to Senior Lender to secure the Funding Loan. The Borrower and Senior Lender have entered into that certain Construction Funding Agreement dated as of April 1, 2012 (the "**Construction Funding Agreement**") regarding the manner in which the Project will be completed and paid for.

F. Citibank, N.A. (together with its successors and assigns, "**Servicer**"), will act as the initial servicer of the Senior Loan.

G. City has made a loan (the "**Junior Loan**") to FRC Canyon Crest, LLC, a California limited liability company ("**Prior Owner**"), the prior owner of the fee interest in the Property, in the original principal amount of \$2,772,253, which Junior Loan is evidenced by a certain Promissory Note (Neighborhood Stabilization Program) dated May 26, 2010 made by Prior Owner to City (the "**Junior Note**") and secured by that certain Short Form Deed of Trust and Assignment of Rents dated May 29, 2010 made by Prior Owner to City, encumbering the Property, and recorded in the Official Records of Fresno County, California (the "**Official Records**") on June 8, 2010 as document number 2010-0072761 (the "**Junior Security Instrument**"). Prior Owner has transferred its fee interest in the Property to Borrower and, in connection therewith, Prior Owner has assigned to Borrower, and Borrower has assumed, all of Prior Owner's right, title, interest and obligations under the Junior Loan and the Junior Loan Documents (as defined herein) pursuant to the terms of that certain Assignment and Assumption Agreement dated as of April [ ], 2012 by and between Prior Owner and Borrower and consented to by City (the "**Assignment Agreement**").

H. In connection with the foregoing, Prior Owner and the Redevelopment Agency of the City of Fresno entered into that certain Regulatory Agreement and Declaration of Restrictive Covenants and Restrictions dated May 29, 2010 and recorded in the Official Records on June 8, 2010 as document number 2010-0072763 (the "**Agency Regulatory Agreement**"). The covenants, reservations and restrictions set forth in the Agency Regulatory Agreement are binding upon the Borrower as Prior Owner's successor-in-interest to the Property, and continue to encumber the Property.

I. As a condition to the making of the Senior Loan, Senior Lender requires that Junior Lender and Agency execute and deliver this Agreement.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the making of the Senior Loan, Junior Lender and Borrower hereby agree as follows:

1. **Definitions.** Capitalized terms used but not defined in this Agreement shall have the meanings ascribed thereto in the Senior Security Instrument. As used in this Agreement, the terms set forth below shall have the respective meanings indicated below:

**“City Restrictions”** means, collectively, (i) the City of Fresno Neighborhood Stabilization Program Agreement dated as of March 4, 2010, by and between City and Prior Owner, and (ii) the Declaration of Restrictions, dated as of May 29, 2010, made by Prior Owner in favor of City and recorded in the Official Records on June 8, 2010 as document number 2010-0072762, each as assigned to and assumed by Borrower pursuant to the Assignment Agreement, in respect to the Junior Loan.

**“Bankruptcy Proceeding”** means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

**“Casualty”** means the occurrence of damage to or loss of any of the Property by fire or other casualty.

**“Condemnation”** means any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Property, whether direct or indirect.

**“Enforcement Action”** means the acceleration of all or any part of the Junior Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon any of the Junior Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the taking of any other enforcement action against Borrower, any other party liable for any of the Junior Indebtedness or obligated under any of the Junior Loan Documents, or the Property.

**“Enforcement Action Notice”** means a written notice from Junior Lender to Senior Lender, given following a Junior Loan Default and the expiration of any notice or cure periods provided for such Junior Loan Default in the Junior Loan Documents, setting forth in reasonable detail the Enforcement Action proposed to be taken by Junior Lender.

**“Junior Indebtedness”** means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Junior City Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

**“Junior Loan Default”** means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Junior Security Instrument.

**“Junior City Loan Documents”** means, collectively, the Junior Note, the Junior Security Instrument, the Assignment Agreement, the City Restrictions, and all other documents evidencing, securing or delivered in connection with the Junior Loan, together with such modifications, amendments and supplements thereto as are approved in writing by Senior Lender prior to their execution.

**“Junior Loan Documents”** means the Junior City Loan Documents , together with such modifications, amendments and supplements thereto as are approved in writing by Senior Lender prior to their execution.

**“Loss Proceeds”** means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

**“Person”** means any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

**“Property”** means (i) the land and improvements known or to be known as the Canyon Crest Family Apartments, located in the City of Fresno, Fresno County, California, which Property is more particularly described on Exhibit A attached hereto, and (ii) all furniture, fixtures and equipment located at such apartments and other property, accounts, deposits and rights and interests of Borrower encumbered by the Senior Security Instrument and/or the other Senior Loan Documents.

**“Senior Indebtedness”** means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Senior Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

**“Senior Loan Documents”** means, collectively, the Senior Note, Senior Security Instrument, the Borrower Loan Agreement, the Construction Funding Agreement, and all of the other documents, instruments and agreements now or hereafter evidencing, securing or otherwise executed in connection with the Senior Loan, as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented in accordance with the provisions of this Agreement.

**“Senior Loan Default”** means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Security Instrument.

## **2. Junior Loan, Junior Loan Documents and Agency Regulatory Agreement Subordinate; Acts by Senior Lender do not Affect Subordination.**

(a) (i) City hereby covenants and agrees on behalf of itself and its successors and permitted assigns that the Junior Indebtedness is and shall at all times continue to be, subordinate, subject and inferior (in payment and priority) to the prior payment in full of the Senior Indebtedness, and that the liens, rights, payment interests, priority interests and

security interests granted to City in connection with the Junior Loan and under the Junior City Loan Documents are, and are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights, payment, priority and security interests granted to Senior Lender under the Senior Loan and the Senior Loan Documents and the terms, covenants, conditions, operations and effects thereof, and (ii) Agency hereby covenants and agrees on behalf of itself and its successors and permitted assigns that the Agency Regulatory Agreement is hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights, payment, priority and security interests granted to Senior Lender under the Senior Loan and the Senior Loan Documents and the terms, covenants, conditions, operations and effects thereof.

(b) Except as expressly set forth herein, repayment of the Junior Indebtedness, is and shall be postponed and subordinated to repayment in full of the Senior Loan. Prior to a Senior Loan Default (regardless of whether such Default occurs prior to or during the pendency of a Bankruptcy Proceeding), City shall be entitled to receive and retain payments made pursuant to and in accordance with the terms of the Junior City Loan Documents; provided, however, that no such payment is made more than ten (10) days in advance of the due date thereof. City agrees that from and after such time as it has received from either Senior Lender or Borrower written notice that a Senior Loan Default then exists (which has not been expressly waived in writing by Senior Lender) or otherwise has actual knowledge of such a Senior Loan Default, City shall not receive or accept any payments under the Junior Loan. If (i) City receives any payment, property, or asset of any kind or in any form on account of the Junior Indebtedness (including, without limitation, any proceeds from any Enforcement Action) after a Senior Loan Default of which City has actual knowledge or has been given notice of, or (ii) City receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any Bankruptcy Proceeding, such payment, property, or asset will be received and held in trust for Senior Lender, City will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to Senior Lender. Senior Lender shall apply any payment, asset, or property so received from City to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender shall determine in its sole and absolute discretion.

(c) Without limiting the complete subordination of the Junior Indebtedness to the payment in full of the Senior Indebtedness, in any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) the Senior Indebtedness shall first be paid in full in cash before City shall be entitled to receive any payment or other distribution on account of or in respect of the Junior Indebtedness, and (ii) until all of the Senior Indebtedness is paid in full in cash, any payment or distribution to which City would be entitled but for this Agreement (whether in cash, property, or other assets) shall be made to Senior Lender.

(d) The subordination of the Junior Indebtedness shall continue in the event that any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is

for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

(e) The subordination of the Junior Loan Documents, the Junior Indebtedness and the Agency Regulatory Agreement shall apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of the Senior Security Instrument and other Senior Loan Documents and of the Junior Security Instrument, Junior Loan Documents and the Agency Regulatory Agreement, and (ii) the availability of any collateral to Senior Lender, including the availability of any collateral other than the Property.

(f) By reason of, and without in any way limiting, the full subordination of the Junior Indebtedness, the Junior Loan Documents and the Agency Regulatory Agreement provided for in this Agreement, all rights and claims of Junior Lender under the Junior Security Instrument or under the Junior Loan Documents and of Agency under the Agency Regulatory Agreement in or to the Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto, are expressly subject and subordinate in all respects to the rights and claims of Senior Lender under the Senior Loan Documents in and to the Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto.

(g) If Junior Lender or Agency, by indemnification, subrogation or otherwise, shall acquire any lien, estate, right or other interest in any of the Property, that lien, estate, right or other interest shall be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Junior Indebtedness and the Junior Loan Documents are subordinate pursuant to this Agreement.

(h) At the request of the Borrower or the Senior Lender, Junior Lender agrees to subordinate the Junior Loan and the Junior Loan Documents and Agency agrees to subordinate the Agency Regulatory Agreement to new indebtedness incurred by the Borrower to refinance and pay in full the Senior Loan and to any loan documents related to such refinancing. Junior Lender and Agency agree to execute a subordination agreement recognizing the rights of the lender providing such refinancing, which subordination agreement shall be on substantially the same terms as this Agreement, and to execute such other documents as may reasonably be required by the Senior Lender or the lender providing such refinancing.

(i) Intentionally Omitted.

(j) Junior Lender and Agency hereby acknowledge and agree that Senior Lender may, without the consent or approval of Junior Lender or Agency, agree with

Borrower to extend, consolidate, modify, increase or amend any or all the Senior Loan Documents and otherwise act or fail to act with respect to any matter set forth in any Senior Loan Document (including, without limitation, the exercise of any rights or remedies, waiver, forbearance or delay in enforcing any rights or remedies, the declaration of acceleration, the declaration of defaults or events of default, the release, in whole or in part, of any collateral or other property, and any consent, approval or waiver), and all such extensions, consolidations, modifications, amendments acts and omissions shall not release, impair or otherwise affect Junior Lender's or Agency's obligations and agreements hereunder.

### 3. **Junior Lender Agreements.**

(a) Without the prior written consent of Senior Lender in each instance, Junior Lender shall not (i) amend, modify, waive, extend, renew or replace any provision of any of the Junior Loan Documents, or (ii) pledge, assign, transfer, convey, or sell any interest in the Junior Indebtedness or any of the Junior Loan Documents; or (iii) accept any payment on account of the Junior Indebtedness other than a regularly scheduled payment of interest or principal and interest made not earlier than ten (10) days prior to the due date thereof; or (iv) take any action which has the effect of increasing the Junior Indebtedness; or (v) appear in, defend or bring any action in connection with the Property; or (vi) take any action concerning environmental matters affecting the Property. Regardless of any contrary provision in the Junior Loan Documents, Junior Lender shall not collect payments for the purpose of escrowing for any cost or expense related to the Property or for any portion of the Junior Indebtedness.

(b) Junior Lender hereby agrees that Senior Lender may, at its option (but without any obligation to do so), at any time (including during the pendency of a Bankruptcy Proceeding), purchase the Junior Loan at par (and without liability for any prepayment premiums or liquidated damages set forth in the Junior Loan Documents). Such transfer and assignment of the Junior Loan shall be without representation or recourse, except that Junior Lender shall represent that it is the sole holder of the Junior Loan, that it has authority to assign and convey the Junior Loan Documents, that, to the best of its knowledge, there are no defaults or breaches under the Junior Loan Documents, and as to the total amount then outstanding under the Junior Loan. Additionally, Senior Lender shall have the right, but shall not have any obligation, to cure any Junior Loan Default until ninety (90) days following Senior Lender's receipt of an Enforcement Action Notice given by Junior Lender as a consequence of the Junior Loan Default. Senior Lender shall not be subrogated to the rights of Junior Lender under the Junior Loan Documents by reason of Senior Lender having cured any Junior Loan Default. However, Junior Lender acknowledges that all amounts advanced or expended by Senior Lender to cure a Junior Loan Default shall be added to and become a part of the Senior Indebtedness pursuant to the terms of the Senior Security Instrument.

(c) In the event and to the extent that each of Senior Lender and Junior Lender have under their respective loan documents certain approval or consent rights over the

same subject matters (regardless of whether the obligations or rights are identical or substantially identical), Junior Lender agrees that Senior Lender shall exercise such approval rights on behalf of both Senior Lender and Junior Lender, and Junior Lender shall have no right to object to any such action or approval taken by Senior Lender and shall consent thereto and be bound thereby. Without limiting the generality of the foregoing and notwithstanding any provisions in the Junior Loan Documents to the contrary, Senior Lender shall have all approval, consent and oversight rights in connection with any insurance claims relating to the Property, any decisions regarding the use of insurance proceeds after a casualty loss or condemnation awards, the hiring or firing of property managers, approval of transfers or otherwise related in any way to the Property, and Junior Lender shall have no right to object to any such action or approval taken by Senior Lender and shall consent thereto and be bound thereby.

(d) Junior Lender agrees that, notwithstanding any provision to the contrary contained in the Junior Loan Documents, in any action commenced to enforce the obligation of Borrower to pay any portion of the Junior Indebtedness, the judgment shall not be enforceable personally against Borrower or Borrower's assets, and the recourse of Junior Lender for the collection of the Junior Indebtedness shall be limited to actions against the Property and the rents, profits, issues, products, and income from the Property.

(e) Junior Lender shall not commence or join with any other creditor in commencing any Bankruptcy Proceeding involving Borrower, and Junior Lender shall not initiate and shall not be a party to any action, motion or request, in a Bankruptcy Proceeding involving any other person or entity, which seeks the consolidation of some or all of the assets of Borrower into such Bankruptcy Proceeding. In the event of any Bankruptcy Proceeding relating to Borrower or the Property or, in the event of any Bankruptcy Proceeding relating to any other person or entity into which (notwithstanding the covenant in the first sentence of this clause) the assets or interests of Borrower are consolidated, then in either event, the Senior Loan shall first be paid in full before Junior Lender shall be entitled to receive and retain any payment or distribution in respect to the Junior Loan. Junior Lender agrees that (i) Senior Lender shall receive all payments and distributions of every kind or character in respect of the Junior Loan to which Junior Lender would otherwise be entitled, but for the subordination provisions of this Agreement (including without limitation, any payments or distributions during the pendency of a Bankruptcy Proceeding involving Borrower or the Property), and (ii) the subordination of the Junior Loan and the Junior Loan Documents shall not be affected in any way by Senior Lender electing, under Section 1111(b) of the federal bankruptcy code, to have its claim treated as being a fully secured claim. In addition, Junior Lender hereby covenants and agrees that, in connection with a Bankruptcy Proceeding involving Borrower, neither Junior Lender nor any of its affiliates shall (i) make or participate in a loan facility to or for the benefit of Borrower on a basis that is senior to or pari passu with the liens and interests held by Senior Lender pursuant to the Senior Loan Documents, (ii) not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior has also voted affirmatively in favor of such plan, and (iii) not contest the continued accrual of interest on the Senior Indebtedness, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the

commencement of such Bankruptcy Proceedings. Junior Lender shall execute and deliver to Senior Lender powers of attorney, assignments or other instruments as may be requested by Senior Lender in order to enable it to exercise the above-described authority or powers with respect to any or all of the Junior Loan Documents, and to collect and receive any and all payments or distributions which may be payable or deliverable at any time upon or with respect to any of the Junior Loan Documents to Junior Lender.

(f) Junior Lender covenants and agrees that the effectiveness of this Agreement and the rights of Senior Lender hereunder shall be in no way impaired, affected, diminished or released by any renewal or extension of the time of payment of the Senior Loan, by any delay, forbearance, failure, neglect or refusal of Senior Lender in enforcing payment thereof or in enforcing the lien of or attempting to realize upon the Senior Loan Documents or any other security which may have been given or may hereafter be given for the Senior Loan, by any waiver or failure to exercise any right or remedy under the Senior Loan Documents, or by any other act or failure to act by Senior Lender. Junior Lender acknowledges that Senior Lender, at its sole option, may release all or any portion of the Property from the lien of the Senior Security Instrument, and may release or waive any guaranty, surety or indemnity providing additional collateral to Senior Lender, and Junior Lender hereby waives any legal or equitable right in respect of marshaling it might have, in connection with any release of all or any portion of the Property by Senior Lender, to require the separate sales of any portion of the Property or to require Senior Lender to exhaust its remedies against any portion of the Property or any other collateral before proceeding against any other portion of the Property or other collateral (including guarantees) for the Senior Loan. Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Junior Lender. At any time or from time to time and any number of times, without notice to Junior Lender and without affecting the liability of Junior Lender, (a) the time for payment of the Senior Indebtedness may be extended or the Senior Indebtedness may be renewed in whole or in part; (b) the time for Borrower's performance of or compliance with any covenant or agreement contained in the Senior Loan Documents, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (c) the maturity of the Senior Indebtedness may be accelerated as provided in the Senior Loan Documents; (d) any Senior Loan Document may be modified or amended by Senior Lender and Borrower in any respect, including, but not limited to, an increase in the principal amount; and (e) any security for the Senior Indebtedness may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Senior Indebtedness. If, after the occurrence of a Senior Loan Default, Senior Lender acquires title to any of the Property pursuant to a mortgage foreclosure conducted in accordance with applicable law, the lien, operation, and effect of the Junior Security Instrument and other Junior Loan Documents automatically shall terminate with respect to such Property upon Senior Lender's acquisition of title.

(g) Junior Lender acknowledges that it entered into the transactions contemplated by the Junior Loan Documents and that City made the Junior Loan to Borrower without reliance upon any information or advice from Senior Lender. City

made its own underwriting analysis in connection with the Junior Loan, its own credit review of Borrower, and investigated all matters pertinent, in City's judgment, to its determination to make the Junior Loan to Borrower. City acknowledges that it is a sophisticated, experienced commercial lender, and was represented by competent counsel in connection with this Agreement.

(h) (A) City hereby represents and warrants that, as of the date hereof, the entire proceeds of the Junior Loan have been disbursed to Borrower. City hereby further represents and warrants that: (i) City is now the owner and holder of the Junior City Loan Documents; (ii) the Junior City Loan Documents are now in full force and effect; (iii) the Junior City Loan Documents have not been modified or amended; (iv) no default or event which, with the passing of time or giving of notice would constitute a default, under the Junior City Loan Documents has occurred; (v) the current outstanding principal balance of the Junior Loan is \$2,772,253; (vi) no scheduled monthly payments under the Junior City Loan Documents have been or will be prepaid except with the prior written consent of Senior Lender; and (vii) none of the rights of City under any of the Junior City Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise, and (B) Agency hereby represents and warrants that: (i) Agency is now the owner and holder of the Agency Regulatory Agreement; (ii) the Agency Regulatory Agreement is now in full force and effect; (iii) the Agency Regulatory Agreement has not been modified or amended; (iv) no default or event which, with the passing of time or giving of notice would constitute a default, under the Agency Regulatory Agreement has occurred; and (v) none of the rights of Agency under the Agency Regulatory Agreement are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise. Borrower further represents and warrants that it has provided to Senior Lender a true, complete, and correct copy of the Junior Loan Documents.

(i) City hereby agrees that notwithstanding anything to the contrary in the Junior City Loan Documents, for so long as the Senior Loan is outstanding, (i) the maturity date of the Junior Note shall occur no earlier than one (1) month after the maturity date of the Senior Note, and (ii) Borrower shall not be obligated to pay more than seventy-five percent (75%) of Excess Cash Flow (as defined herein) in payments under the Junior Note. For the purposes hereof, the following definitions shall apply:

**"Excess Cash Flow"** shall mean, for any period, Gross Revenues for such period less the sum of (i) Expenses of the Property for such period, and (ii) without duplication, all amounts due on the Senior Loan Obligations for such period.

**"Expenses of the Property"** shall mean, for any period, the current expenses, paid or accrued, of operation, maintenance and current repair of the Property, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Loan Documents), a management fee (however characterized) not to

exceed [4%] of Gross Revenues, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Property shall not include any payments, however characterized, on account of the Junior Loan or any other subordinate financing in respect of the Property or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

“**Gross Revenues**” shall mean all receipts, revenues, income and other moneys received by or on behalf of Borrower and derived from the ownership or operation of the Property, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Property. Gross Revenues shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by Borrower in accordance with the applicable law.

“**Senior Loan Obligations**” shall mean and includes, collectively, and without limitation, each of the following: (A) all debt service payments due on the Senior Indebtedness, (B) all obligations of Borrower under the Senior Loan Documents, (C) all capital expenditures required for the proper maintenance of the Property in accordance with the Senior Loan Documents, as calculated by Borrower in accordance with customarily accepted cash basis accounting principles, consistently applied, and in accordance with the terms of the Senior Loan Documents; (D) all amounts required to be deposited into any replacement reserve, completion/repair reserve, operating deficit reserve, principal repayment reserve, replacement hedge reserve or other reserve or escrow established or required by Senior Lender or Servicer in connection with the Senior Loan and the Senior Loan Documents, including the Senior Security Instrument, and (E) all fees, costs and expenses of Senior Lender and Servicer in connection with the Senior Loan.

#### 4. **Standstill Agreement; Right to Cure Senior Loan Default.**

(a) Until such time as any of the Senior Indebtedness has been repaid in full and the Senior Security Instrument has been released and discharged, City and/or Agency, as applicable, shall not without the prior written consent of Senior Lender, which may be withheld in Senior Lender’s sole and absolute discretion, (i) accelerate the Junior Loan, (ii) exercise any of Junior Lender’s remedies under the Junior Security Instrument or any of the other Junior Loan Documents (including, without limitation, the commencement of any judicial or non-judicial action of proceeding (a) to enforce any obligation of Borrower under any of the Junior Loan Documents, (b) to collect any monies payable to Borrower, (c) to have a receiver appointed to collect any monies payable to Borrower; or (d) to foreclose the lien(s) created by the Junior Security Instrument) or (iii) file or join in the filing of any involuntary Bankruptcy Proceeding against Borrower or any person or entity which owns a direct or indirect interest in Borrower; provided, however, that such limitation on the remedies of Junior Lender shall not derogate or otherwise limit Junior Lender’s rights, following an event of default under the Junior Loan Documents to (a) compute interest on all amounts due and payable under the Junior Loan at the default rate described in the Junior Loan Documents, (b)

compute prepayment premiums and late charges, (c) enforce against any person, other than Borrower and any guarantors or indemnitors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Junior Loan, and (d) enforce any affordability restrictions in the City Restrictions and the Agency Regulatory Agreement.

(b) Senior Lender shall, simultaneously with the sending of any notice of a Senior Loan Default to Borrower, send to Junior Lender a copy of said notice under the Senior Loan Documents; provided, however, failure to do so shall not affect the validity of such notice or any obligation of Borrower to Senior Lender and shall not affect the relative priorities between the Senior Loan and the Junior Loan as set forth herein. Borrower covenants and agrees to forward to Junior Lender, within three (3) business days of Borrower's receipt thereof, a copy of any notice of a Senior Loan Default Borrower receives from Senior Lender.

(c) Junior Lender shall have the right, but shall have no obligation, to cure any Senior Loan Default; provided, if Junior Lender shall elect to cure any such Default, it shall so notify Senior Lender and shall commence and complete such curing within any applicable notice or grace period, if any, as Borrower is permitted by the terms of the Senior Loan Documents to cure such Senior Loan Default. Junior Lender shall not be subrogated to the rights of Senior Lender under the Senior Loan Documents by reason of Junior Lender having cured any Senior Loan Default. However, Senior Lender acknowledges that, to the extent so provided in the Junior Loan Documents, amounts advanced or expended by Junior Lender to cure a Senior Loan Default may be added to and become a part of the Junior Indebtedness.

(d) Junior Lender agrees that, notwithstanding any contrary provision contained in the Junior Loan Documents, a Senior Loan Default shall not constitute a default under the Junior Loan Documents if no other default occurred under the Junior Loan Documents.

(e) Junior Lender acknowledges that any conveyance or other transfer of title to the Property pursuant to a foreclosure of the Junior Security Instrument (including a conveyance or other transfer of title pursuant to the exercise of a power of sale contained in the Junior Security Instrument), or any deed or assignment in lieu of foreclosure or similar arrangement, shall be subject to the transfer provisions of the Senior Loan Documents; and the person (including Junior Lender) who acquires title to the Property pursuant to the foreclosure proceeding (or pursuant to the exercise of a power of sale contained in the Junior Security Instrument) shall not be deemed to be automatically approved by Senior Lender.

5. **Insurance.** Junior Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Junior Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named

as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Property.

6. **Default.** Junior Lender and Borrower acknowledge and agree that a default by either such party under this Agreement shall, at the sole option of Senior Lender, constitute a default under the Senior Loan Documents. Each party hereto acknowledges that in the event any party fails to comply with its obligations hereunder, the other parties shall have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

7. **Enforcement Costs.** Borrower and Junior Lender agree to reimburse Senior Lender for any and all costs and expenses (including reasonable attorneys' fees) incurred by Senior Lender in connection with enforcing its rights against Junior Lender under this Agreement.

8. **Notices.** Any notice which any party hereto may be required or may desire to give hereunder shall be deemed to have been given and shall be effective only if it is in writing and (i) delivered personally, (ii) mailed, postage prepaid, by United State registered or certified mail, return receipts requested, (iii) delivered by overnight express courier or (iv) sent by telecopier, in each instance addressed as follows:

To Junior Lender:                      City of Fresno  
Housing and Community Development Division  
Attention: Housing Manager  
2600 Fresno Street, Room 3070  
Fresno, California 93721

To Agency:  
Redevelopment Agency of the City of Fresno

Attention: Executive Director  
2344 Tulare Street, Suite 200  
Fresno, California 93721

To Senior Lender:                      Citibank, N.A.  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Desk Head, Transaction Management Group  
Loan # 10-7043086  
Facsimile: (212) 723-8642

AND

Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Loan # 10-7043086  
Facsimile: (805) 557-0924

AND

Citibank, N.A.  
One Sansome Street, 26<sup>th</sup> Floor  
San Francisco, California 94104  
Attention: Marla Victorio  
Loan # 10-7043086  
Facsimile: (415) 627-6387

AND

Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Loan # 10-7043086  
Facsimile: (212) 723-8939

or at such other addresses or to the attention of such other persons as may from time to time be designated by the party to be addressed by written notice to the other in the manner herein provided. Notices, demands and requests given in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder when received or when delivery is refused or when the same are returned to sender for failure to be called for.

9. **WAIVER OF TRIAL BY JURY.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

10. **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Junior City Loan Documents, other than by reason of payments which City is obligated to remit to Senior Lender pursuant to the terms hereof; (iii) the acquisition by Senior Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Senior Security Instrument; or (iv) the acquisition by City of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Junior Security Instrument, but only if such acquisition of title does not violate any of the terms of this Agreement.

11. **Miscellaneous.**

(a) Junior Lender shall, within ten (10) business days following a request from Senior Lender, provide Senior Lender with a written statement setting forth the then current outstanding principal balance of the Junior Loan, the aggregate accrued and unpaid interest under the Junior Loan, and stating whether, to the knowledge of Junior Lender, any default or event of default exists under the Junior Loan, and containing such other information with respect to the Junior Indebtedness as Senior Lender may require. Upon notice from Senior Lender from time to time, Junior Lender shall execute and deliver such additional instruments and documents, and shall take such actions, as are required by Senior Lender in order to further evidence or effectuate the provisions and intent of this Agreement.

(b) Junior Lender shall give Senior Lender a concurrent copy of each notice of a Junior Loan Default or other material notice given by Junior Lender under the Junior Loan Documents.

(c) This Agreement shall bind and inure to the benefit of all successors and assigns of Junior Lender and Senior Lender. Senior Lender may assign its interest in the Senior Loan Documents without notice to or consent of Junior Lender. Junior Lender may only assign its rights and interests hereunder following the prior written consent of Senior Lender, which consent may be withheld or conditioned in its sole and absolute discretion.

(d) Senior Lender hereby consents to the Junior Loan and the Junior Loan Documents; provided, however, that this Agreement does not constitute an approval by Senior Lender of the terms of the Junior Loan Documents. Junior Lender hereby consents to the Senior Loan and the Senior Loan Documents; provided, however, that this Agreement does not constitute an approval by Junior Lender of the terms of the Senior Loan Documents.

(e) This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

(f) IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER, THIS AGREEMENT HAS BEEN ENTERED INTO AND DELIVERED IN, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED, WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAW.

(g) Time is of the essence in the performance of every covenant and agreement contained in this Agreement.

(h) If any provision or remedy set forth in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or remedy of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or remedy had never been set forth herein, but only to the extent of such invalidity, illegality or unenforceability.

(i) Each party hereto hereby represents and warrants that this Agreement has been duly authorized, executed and delivered by it and constitutes a legal, valid and binding agreement enforceable in all material respects in accordance with its terms.

(j) Borrower hereby acknowledges and consents to the execution of this Agreement, and agrees to be bound by the provisions hereof that are applicable to Borrower. Solely as between Senior Lender and Junior Lender, all of the signatories below hereby agree that to the extent of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Senior Loan Documents and/or the Junior Loan Documents respectively, the terms and provisions of this Agreement shall govern and control. By executing this Agreement in the place provided below, Borrower hereby (i) acknowledges the provisions hereof, (ii) agrees not to take any action inconsistent with Senior Lender's rights or Junior Lender's rights under this Agreement, (iii) waives and relinquishes to the maximum extent permitted by law any and all rights, defenses and claims now existing or hereinafter accruing relating to Junior Lender's forbearance from exercising any rights and remedies pursuant to Section 4 of this Agreement, including, without limitation, any defenses based on the statute of limitations or any equitable defenses, such as laches, and (iv) acknowledges and agrees that (A) this

Agreement is entered into for the sole protection and benefit of Senior Lender and Junior Lender (and their respective successors, assigns and participants), and no other person (including Borrower) shall have any benefits, rights or remedies under or by reason of this Agreement, (B) nothing in this Agreement is intended, or shall be construed to, relieve or discharge the obligations or liabilities of any third party (including Borrower under the Senior Loan Documents and the Junior Loan Documents), (c) neither of them nor any of their affiliates shall be, or be deemed to be, beneficiaries of any of the provisions hereof or have any rights hereunder whatsoever, and (D) no provision of this Agreement is intended to, or shall be construed to, give any such third party (including Borrower) any right subrogating to the rights of, or action against, Senior Lender or Junior Lender.

(k) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against any party unless such amendment, supplement, modification, waiver or termination is contained in a writing signed by such party.

(l) No party other than Senior Lender and Junior Lender shall have any rights under, or be deemed a beneficiary of any of the provisions of, this Agreement.

(m) Nothing herein or in any of the Senior Loan Documents or Junior Loan Documents shall be deemed to constitute Senior Lender as a joint venturer or partner of Junior Lender.

## 12. **Attached Exhibits.**

The following Exhibits are attached to this Agreement and are incorporated by reference herein as if more fully set forth in the text hereof:

### **Exhibit A – Legal Description**

The terms of this Agreement are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Agreement, the terms of said Exhibits shall be controlling in all respects.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Subordination and Intercreditor Agreement or caused this Subordination and Intercreditor Agreement to be duly executed and delivered by their respective authorized representatives as of the date first set forth above. The undersigned intend that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**CITY:**

**CITY OF FRESNO**

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

Name: Mark Scott

Title: City Manager

ATTEST:

Yvonne Spence, CMC

City Clerk

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

Deputy

APPROVED AS TO FORM:

James Sanchez

City Attorney

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

Deputy

(signatures follow on subsequent page)

**AGENCY:**

**CITY OF FRESNO AS SUCCESSOR AGENCY  
OF THE FORMER REDEVELOPMENT  
AGENCY OF THE CITY OF FRESNO**, a public  
body corporate and politic

By: \_\_\_\_\_  
Name: Marlene Murphey  
Title: Director

**CITY OF FRESNO IN ITS CAPACITY AS  
THE ENTITY ASSUMING THE HOUSING  
FUNCTIONS OF THE FORMER  
REDEVELOPMENT AGENCY OF THE CITY  
OF FRESNO**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**SENIOR LENDER:**

**CITIBANK, N.A.,**  
a national banking association

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

Name: Kathy Millhouse

Title: Vice President

(signatures follow on subsequent page)

**ACKNOWLEDGED AND AGREED AS OF THE DATE FIRST SET FORTH ABOVE:**

**BORROWER:**

**CANYON CREST FAMILY  
APARTMENTS, L.P.**, a California limited  
partnership

By: ROEM Canyon Crest Family Apartments,  
LLC, a California limited liability company,  
its Co-General Partner

By: ROEM Development Corporation,  
a California corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Name: Robert Emami  
Title: President

By: PH Canyon Crest Holdings, LLC, a California  
limited liability company, its Managing  
General Partner

By: Pacific Housing, Inc., a California  
nonprofit public benefit corporation, its  
Sole Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION**

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

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lots 1, 2, 3, 4 and 5 of Tract No. 1938, Huntington Holmes Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded April 26, 1963 in Volume 21 Pages 66, 67 and 68 of Plats, Fresno County Records.

Excepting therefrom all oil, gas, other hydrocarbon substances and minerals of any kind or character, in, on, or thereunder, as reserved in deeds of record.

APN: 468-390-44s