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

CITY OF FRESNO  
City Clerk's Office (Original)

By: Mark Scott  
Mark Scott  
It's: City Manager  
Date: 8-30-12

**CITY OF FRESNO  
HOME INVESTMENT PARTNERSHIPS AGREEMENT**

by and between

CITY OF FRESNO,  
a municipal corporation

and

Fulton Court Partners, LLC  
regarding

Fulton Court Apartments Rehabilitation Project  
142 Fulton Street, Fresno, California 93701 (APN: 459-303-18)  
(Fulton/Lowell Area)

APPROVED BY CITY COUNCIL

June 28, 2012  
By: Sherri L. Badetocher  
DEPUTY

## TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS.....	2
ARTICLE 2. TERMS OF THE LOAN.....	6
ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF DEVELOPER.....	7
ARTICLE 4. COVENANTS OF DEVELOPER.....	8
ARTICLE 5. PROPERTY MAINTENANCE.....	13
ARTICLE 6. DISBURSEMENT OF HOME FUNDS.....	16
ARTICLE 7. REHABILITATION.....	18
ARTICLE 8. PROJECT OPERATIONS.....	23
ARTICLE 9. INSURANCE AND INDEMNITY.....	26
ARTICLE 10. DEFAULT AND REMEDIES.....	29
ARTICLE 11. GENERAL PROVISIONS.....	31

## HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT

This HOME Investment Partnerships Program Agreement (hereinafter referred to as the "Agreement") is entered into this 8/27, 2012, by and between the CITY OF FRESNO, a municipal corporation, acting through its Development and Resource Management Department – Housing and Community Development Division (hereinafter referred to as the "CITY"), and Fulton Court Partners, LLC, a California limited liability company (hereinafter referred to as "DEVELOPER").

### RECITALS

A. The CITY anticipates it will receive HOME Investment Partnerships Program (hereinafter referred to as "HOME Program") grant funds from the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD"), under Title II of the Cranston-Gonzalez National Affordable Rental Housing Act of 1990, as amended (hereinafter referred to as the "Act").

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

D. The DEVELOPER desires to act as the owner/developer exercising effective project control, as to the moderate rehabilitation of the ten (10) unit Fulton Court Apartments (hereinafter referred to as the "Project"), as more particularly described in the Project Description and Schedule, attached hereto as EXHIBIT "B" and incorporated herein.

C. The Project will provide for the moderate rehabilitation of the existing ten (10) unit Fulton Court Apartments, of which ten (10) units will be fixed HOME-assisted affordable rental housing units at the Property identified in Property Description, attached hereto as EXHIBIT "A" and incorporated herein.

E. The Project will be rehabilitated on HOME Program eligible Property to be owned by the DEVELOPER and located within the boundaries of the City of Fresno, as more particularly described in the Project Description, attached hereto as EXHIBIT "B" and incorporated herein.

F. To further its goal to increase the supply of Affordable Rental Housing, the CITY desires to assist the DEVELOPER by providing a total of up to Six Hundred Ninety Five Thousand Eight Hundred Thirty Eight dollars and 00/100th (\$695,838.00) in annually allocated and available fiscal year 2012 HOME Program funds for a HOME Program Loan to the Project (hereinafter referred to as "Loan"), for payment of the HOME Program eligible costs, as further identified in the Project Budget, attached as EXHIBIT "C" and incorporated herein, variously secured by the underlying real property and the Affordable Housing covenants, upon the terms and conditions in this Agreement. The simple interest will be at 1% annually. Principal and interest will be payable annually at times prior to the Maturity Date and in full upon the Maturity Date in accordance with the terms and conditions set forth in the Promissory Note attached hereto as EXHIBIT "F".

G. A January 3, 2012, environmental review of the Project pursuant to the National Environmental Policy Act ("NEPA") guidelines resulted in completion of a Statutory Worksheet with complete consultation/mitigated requirements. Additionally, a January 3, 2012, environmental review of the Project pursuant to the California Environmental Quality Act ("CEQA") guidelines resulted in an Exemption from the provisions of the CEQA.

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

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

J. On April 11, 2012 the Housing and Community Development Commission of the City of Fresno reviewed this Agreement and recommended approval.

K. On February 27, 2012 the Fulton Court Partners, LLC's governing body/managing member reviewed and approved the development and authorized entry of a HOME Program Project agreement.

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

## ARTICLE 1. DEFINITIONS

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

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

1.2 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 Project units, as hereinafter defined.

1.3 Affordability Period means fifty-five (55) years commencing from the date the final Project Budget and tenant information is entered into HUD's Integrated Disbursement and Information System (IDIS), provided as an administrative amendment to the Agreement.

1.4 Affordable Unit means the ten (10) units rented as Very Low- and Low-Income housing, each of which will be required to meet the affordability requirements of this Agreement and 24 CFR 92.252 which affordability requirements shall run with the land for the Affordability Period subject to release as provided in this Agreement.

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

1.6 Certificate of Completion means that certificate attached hereto as EXHIBIT "E" and incorporated herein, to be issued to the DEVELOPER by the CITY evidencing completion of the Project, and release of construction related covenants for the purposes of the Agreement.

1.7 CFR means the Code of Federal Regulations.

1.8 Commencement of Rehabilitation means the date that the DEVELOPER or DEVELOPER's construction contractor begins moderate physical rehabilitation work on the Property, including, without limitation, delivery of materials and any work, beyond maintenance of the Property in its status quo condition which shall occur with respect to the Property at the times set forth in the Project Schedule, attached hereto as EXHIBIT "B" and incorporated herein.

1.9 Completion Date means the date that the CITY issues a recorded Certificate of Completion for the Project. The Completion Date for the Project is identified in the Project Schedule, attached hereto as EXHIBIT "B" and incorporated herein.

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

1.11 Declaration of Restrictions means the Declaration of Restrictions, as outlined substantially in the form attached hereto as EXHIBIT "H" and incorporated herein, which shall be recorded against the Property no later than the date of disbursement of Loan funds, setting forth the requirements of this Agreement which shall run with the land. The DEVELOPER shall record both the Declaration of Restrictions and record a deed restriction for the Declaration of Restrictions.

1.12 Deed of Trust means that standard first (1st) position lien including assignment of rents and security agreement given by the DEVELOPER, as Trustor, to the CITY as beneficiary, issued through the First American title company escrow established by the DEVELOPER at its sole cost and expense, with a title company acceptable to the CITY, 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 shall be substantially the form attached hereto as EXHIBIT "G" and incorporated herein.

1.13 Eligible Costs means any and all HOME Program eligible Project costs as may be reimbursed by the Loan, consistent with the Budget, attached hereto as EXHIBIT "C" and incorporated herein, allowable under 24 CFR Part 92, as specified in 24 CFR 92.205 and 92.206 and not disallowed by 24 CFR 92.214, provided, however, that costs incurred in connection with any activity that is determined to be ineligible under the Program by HUD or the CITY shall not constitute Eligible Costs.

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

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

1.16 Federal HOME Investment Partnerships Funds (also referred to in this Agreement as "HOME Funds" or "HOME Program Funds") means the federal HOME Program monies consisting of the Loan, in an amount not to exceed the sum of Six Hundred Ninety Five Thousand Eight Hundred Thirty Eight dollars and 00/100th (\$695, 838.00) to be used for eligible Project costs.

1.17 Funding Sources means: (i) The CITY's HOME Funds, (ii) Seller financing, as defined below, in the form of a loan from the former property owner loan to the DEVELOPER, and (iii) the deferred DEVELOPER fee referenced in the Budget as source(s) of funding for the Project, and any other financing sources described in the Budget.

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

1.19 Household means one or more persons occupying a Unit in the proposed Project.

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

1.21 Loan means the non-assumable, loan of HOME Funds, in an amount not to exceed the lesser of the sum of Six Hundred Ninety Five Thousand Eight Hundred Thirty Eight dollars and 00/100th (\$695,838.00) and the aggregate HOME Program per unit cap (24 C.F.R. 92.250) for the Affordable Units, as determined by the CITY made available by the CITY to the DEVELOPER for the Project pursuant to this Agreement, as more specifically described in the

Budget attached hereto as EXHIBIT "C" and incorporated herein, and in the Note attached hereto as EXHIBIT "F" and incorporated herein.

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

1.23 Low-Income for the purposes of this Agreement Low-Income means those whose annual income does not exceed fifty-five percent (55%) of the median income for the Fresno County area as determined by HUD, except as HUD may establish income ceilings higher or lower than fifty-five percent (55%) of the median for the area on the basis of HUD findings that such variations are necessary.

1.24 Note means the non-assumable, HOME Program Loan Note in a principal amount of the Loan, given by the DEVELOPER as promissor, in favor of the CITY as promisee, evidencing the Loan, secured by the Deed of Trust and provided to the CITY no later than the date of Project funding disbursement hereunder Promissory Note, attached hereto as EXHIBIT "F" and incorporated herein, as well as any amendments to, modifications of and restatements of said Note consented to by CITY.

1.25 Notice to Proceed means that written notice provided to the DEVELOPER by the CITY instructing the DEVELOPER to proceed with physical rehabilitation work at the Property.

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

1.27 Project Units mean the ten (10) housing units rehabilitated on the property of which ten (10) units will be preserved as Affordable Units.

1.28 Project Schedule means the schedule for commencement and completion of the Project included within the Project Description and Schedule, attached hereto as EXHIBIT "B" and incorporated herein.

1.29 Property means the property located at 142 N. Fulton Street, Fresno, California 93701, (APN: 459-303-18), more specifically described in the Project Description, attached as EXHIBIT "A", including four (4) existing structures arranged in an "L" shape formation and are poured in place concrete buildings.

1.30 Rent means the total monthly payment a tenant pays for an Affordable Unit including the following: use and occupancy of the Unit and land and associated facilities, including parking, any separately charged fees or service charges assessed by the DEVELOPER which are required of all tenants (other than security deposits), the cost of an adequate level of service for utilities paid by the 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 the DEVELOPER, and paid by the tenant. Rent does not include payments for any optional services provided by the DEVELOPER.

1.31 Unit means a dwelling unit within the Project.

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

## ARTICLE 2. TERMS OF THE LOAN

2.1 Loan of HOME Funds. The CITY agrees to provide a Loan of HOME Funds to the DEVELOPER in an amount not to exceed Six Hundred Ninety Five Thousand Eight Hundred Thirty Eight dollars and 00/100th (\$695,838.00) under the terms and conditions provided in this Agreement. The HOME Funds shall only be used for payment of HOME Eligible Costs.

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

2.3 Term of Agreement. This Agreement is effective upon the Effective Date and shall remain in force with respect to the Project for the duration of the Affordability Period unless earlier terminated as provided herein. After the fifty-five (55) year Affordability Period, this Agreement will expire, except as to financial obligations then due and owing. It is understood and agreed upon, however, that if for any reason this Agreement should be terminated in whole or in part as provided hereunder by the DEVELOPER prior to disbursement of the Loan, the CITY agrees to record a Notice of Cancellation regarding this Agreement and instruments recorded hereunder, upon the written request of the DEVELOPER.

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

2.5 Incorporation of Documents. The City Council approved Minutes of June 28, 2012 approving this Agreement, the Loan Documents, the Act and HUD regulations at 24 CFR Part 92, and all exhibits, attachments, documents and instruments referenced herein, as now in effect and as may be amended from time to time, constitute part of this Agreement and are incorporated herein by reference. All such documents have been provided to the parties

herewith or have been otherwise provided to/procured by the parties and reviewed by each of them prior to execution hereof.

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

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

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

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

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

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

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

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

4.1 Affirmative Marketing. The DEVELOPER warrants, covenants and agrees that it shall comply with all affirmative marketing requirements, including without limitation, those set out at 24 CFR 92.350, 24 CFR 92.351, in order to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market. The DEVELOPER shall be responsible for complying with the CITY's "Affirmative Marketing Policy" document, as amended from time to time. The DEVELOPER shall maintain records of actions taken to affirmatively market units, and to assess the results of these actions.

4.2 Availability of HOME Funds. The DEVELOPER understands and agrees that the availability of HOME Funds is subject to the control of HUD, or other federal agencies, and should the HOME Funds be encumbered, withdrawn or otherwise made unavailable to the CITY, weather earned by or promised to the DEVELOPER, and/or should the CITY in any fiscal year hereunder fail to allocate said HOME Funds, the CITY shall not provide said HOME Funds unless and until they are made available for payment to the CITY by HUD and the CITY receives and allocates said HOME Funds. No other funds owned or controlled by the CITY shall be obligated under this Agreement.

4.3 Compliance with Agreement. The DEVELOPER warrants, covenants and agrees that, in accordance with the requirements of 24 CFR 92.252 and 24 CFR Part 85, upon any uncured default, after the expiration of all applicable cure periods in accordance with Section 10.1 herein, by the DEVELOPER within the meaning of Article 10 of this Agreement, the CITY may suspend or terminate this Agreement and all other agreements with the DEVELOPER without waiver or limitation of rights/remedies otherwise available to the CITY.

4.4 Conflict of Interest. The DEVELOPER warrants, covenants and agrees that it shall comply with the Conflict of Interest requirements of 24 CFR 92.356 including, without limitation, that no officer, employee, agent or consultant of the DEVELOPER may occupy any of the ten (10) Affordable Units. The DEVELOPER understands and acknowledges that no employee, agent, consultant, officer or elected official or appointed official of the CITY, who exercises or has exercised any functions or responsibilities with respect to the Project, or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for anyone with which that person has family or business ties, during his or her tenure or for one year thereafter. To the extent provided at 24 CFR 92.356(f), no owner, developer or sponsor of the Project, or officer, employee, agent or consultant thereof, may occupy any of the ten (10) Affordable Units.

4.5 Rehabilitation Standards. The DEVELOPER shall rehabilitate the ten (10) Project Units assisted under this Agreement in compliance with all applicable local codes, ordinances and zoning requirements in effect at the time of issuance of CITY building permits.

4.6 Covenants and Restrictions to Run with the Land. The CITY and the DEVELOPER expressly warrant, covenant and agree to ensure that the covenants and restrictions set forth in this Agreement are recorded and will run with the land, provided, however, that, on expiration of this Agreement such covenants and restrictions shall expire.

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

B. The DEVELOPER covenants and agrees that upon notification from the CITY that the ten (10) Affordable Unit tenant information has been entered into HUD's Integrated Disbursement and Information System until the expiration of the Affordability Period, it shall cause the ten (10) Units to be rented as Affordable Housing for Very Low- and Low-Income households.

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

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

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

4.7 Displacement of Persons. The DEVELOPER covenants and agrees with the CITY that pursuant to 24 CFR 92.353, it will take all reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations and farms). The parties acknowledge and agree that the Property is partially occupied with tenants.

4.8 Initial and Annual Income Certification. The DEVELOPER covenants and agrees with the CITY that it shall comply with the procedures for annual income determinations at 24 CFR 92.203 for the ten (10) Affordable Units. The DEVELOPER shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from each tenant Household renting any HOME-assisted Unit. The DEVELOPER shall make a good faith effort to verify that the income provided by an applicant or occupying Household in an income certification is accurate by taking one or more of the following steps as part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income verification form from the applicant's current employer; (3) obtain an income verification form from the Social Security Administration and California Department of Social Services if the applicant receives assistance from either of such agencies; or (4) if the applicant is unemployed, obtain another form of independent verification. Copies of household income certification and verification must be available for review by the CITY. The DEVELOPER further warrants, covenants and agrees that it shall cooperate with the CITY in the CITY's income certification/affordability monitoring activities.

4.9 Lead-Based Paint. The DEVELOPER covenants and agrees with the CITY that it shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 CFR Part 35, including the HUD 1012 Rule, and 24 CFR 982.401(j), and any amendments thereto, and EPA Section 402( c)(3) of the Toxic Substances Control Act (TSCA) to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities. Contractors performing renovations in lead-based paint units must be EPA-certified renovators. These requirements apply to all Units and common areas of the Project. The DEVELOPER shall incorporate or cause incorporation of this provision in all contracts and subcontracts for work performed on the Project, which involve the application of paint. The DEVELOPER shall be responsible for all disclosure, inspection, testing, evaluation, and control and abatement activities.

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

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

A. The DEVELOPER does not intend to use any financing that is secured by a mortgage insured by HUD in connection with the Project as part of its rehabilitation of the Project unless reflected in the Project Budget, attached hereto as EXHIBIT "C" and incorporated herein, and approved by HUD and the CITY.

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

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

D. The property standards at 24 CFR 92.251.

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

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

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

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

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

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

K. The provision of E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR Part 24.

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

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

N. Executive Order 11063 on Equal Opportunity and Housing.

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

P. The Housing and Community Development Act of 1974.

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

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

4.12 Faith Based Activities. DEVELOPER warrants, covenants and agrees that it shall not engage in any prohibited activities described in 24 CFR 92.257.

4.13 Reporting Requirements. The DEVELOPER warrants, covenants and agrees with the CITY that it shall submit performance reports to the CITY as detailed in Section 7.18. Furthermore, the DEVELOPER agrees to provide, at the sole cost of the DEVELOPER, annual audited Financial Statements for the Project expenses and ongoing financial transactions which occur as a result of this Agreement as detailed in Section 5.6 of this Agreement. The DEVELOPER agrees to account for the expenditure of HOME Funds using generally accepted accounting principles, which financial documentation shall be made available to the CITY and HUD, upon their respective written request(s).

4.15 Housing Affordability. The DEVELOPER covenants and agrees with the CITY that ten (10) of the Project Units will be affordable to Very Low- and Low-Income households and other requirements of 24 CFR 92.252 during the Affordability Period. Two (2) of the ten (10) Units shall, at a minimum, be rented to and occupied by, or, if vacant, available for rental and occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than fifty percent (50%), of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable rent consistent with HOME Program regulations, for the Affordability Period. Eight (8) of the ten (10) Units shall, at a minimum, be rented to and occupied by, or, if vacant, available for rental and occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than fifty-five percent (55%), of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable rent consistent with HOME Program regulations, for the Affordability Period. Provided that 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) would avoid the termination of low-income affordability. However, the requirements with respect to the Project 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 family or business ties, obtains an ownership interest in the Project or the Property, the Affordability Period shall be revived according to its original terms. In the event the DEVELOPER fails to comply with this Section or the Affordability Period is not revived following transfer by foreclosure or transfer in lieu of foreclosure, the DEVELOPER shall return to the CITY all HOME Funds disbursed to the DEVELOPER by the CITY.

4.16 Terminated Project. The DEVELOPER understands and agrees that, if the Project is terminated before the completion, either voluntary or otherwise, such constitutes and ineligible activity and the CITY, without waiver or limitation upon other rights and remedies will not be required to provide any further HOME Funding to the Project Units.

## ARTICLE 5. PROPERTY MAINTENANCE

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

5.1 Adequate Repair and Maintenance. After completion of the rehabilitation Project, the DEVELOPER shall maintain the Project and Property in compliance with all applicable codes, laws, and ordinances.

5.2 Affordable Rental Housing. Shall constitute ten (10) Affordable rental housing units preserved as Very Low- and Low-Income Rental Housing (as provided at 24 CFR 92.252) during the entire Affordability Period. This covenant shall remain in effect and run with and restrict the land during the entirety of the Affordability Period. In the event that the DEVELOPER fails to comply with the time period in which the Affordable Units constitute Affordable Housing, the CITY shall without waiver or limitation is entitled to injunctive relief, as the DEVELOPER acknowledges that damages are not an adequate remedy at law for such breach.

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

Additionally, the DEVELOPER agrees:

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

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

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

(i) Any proceeding or inquiry by any governmental authority with respect to the presence of any hazardous or toxic chemicals, materials, substance, or waste in or on

the eligible Property or the surrounding real estate or the migration thereof from or to other property; and

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

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

D. To indemnify, defend, and hold the CITY harmless from any and all claims, actions, causes of action, 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 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 or nature.

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

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

5.6 Financial Statements and Audits. The DEVELOPER (or its successor who shall receive federal financial assistance), 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 federal 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.

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

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

5.7 Inspection and Audit of Books, Records and Documents. The DEVELOPER shall be accountable to the CITY for HOME Funds disbursed for this Project pursuant to this Agreement. Any duly authorized representative of the CITY or HUD shall, at all reasonable times, have access to and the right to inspect, copy, make excerpts or transcripts, audit, and examine all books of accounts, records, files and other papers or property, and other documents of the DEVELOPER pertaining to the Project and for up to six (6) years after the expiration or termination of this Agreement.

A. The DEVELOPER will maintain books and records for the Project using generally accepted accounting principles. The DEVELOPER agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with HOME Funds and to keep all invoices, receipts and other documents related to expenditures financed with HOME Funds for not less than six (6) years after the expiration or termination of the Agreement. Books and records must be kept accurate and current. For purposes of this section, "books, records and documents" include, without limitation; plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, funding applications, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda, and electronically stored versions of the foregoing. This section shall survive the termination of this Agreement.

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

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

5.8 Inspection of Property. Any duly authorized representative of the CITY or HUD shall, at all reasonable times, have access and the right to inspect the Property until completion of the Project and expiration of the applicable Affordability Period within seventy-two (72) hours written notice, subject to the rights of the tenants.

5.9 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 rehabilitation in relation to the Project consistent with the Project Budget, attached hereto as EXHIBIT "C" and incorporated herein.

5.10 Nondiscrimination. The DEVELOPER shall comply with and cause any and all contractors and subcontractors to comply with any and all federal, state, and local laws with regard to illegal discrimination, and the DEVELOPER shall not illegally discriminate against

any persons on account of race, religion, sex, family status, handicap, or place of national origin in its performance of this Agreement and the completion of the Project.

5.11 Ownership. Except as required in pursuit hereof (leases to residents for one year or less as described more fully herein) the DEVELOPER shall not sell, lease, transfer, assign or otherwise dispose of ("Transfer") all or any material part of any interest it might hold in the Property or the Project without prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed.

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

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

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

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

6.1 Loan Commitments and Financing Plan. The DEVELOPER shall submit its most current Finance Plan for the Project to the CITY within the time frame provided in the Project Schedule. So long as the Finance Plan is consistent with the Budget, the CITY shall accept the Finance Plan. If the Finance Plan is not consistent with the Budget, then within thirty (30) days after receiving the Finance Plan, the CITY, through its Development and Resource Management Department, Housing and Community Development Division, will review the Finance Plan and deliver notice to the DEVELOPER either approving or disapproving the Finance Plan in its reasonable discretion. If the CITY disapproves the Finance Plan, it will specify the reason for the disapproval and ask the DEVELOPER to provide any additional information the CITY may need to approve the Finance Plan. The failure of the CITY to send notice within such thirty (30) day time period shall be deemed an approval of the Finance Plan.

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

6.3 Use of HOME Funds. The DEVELOPER warrants, covenants and agrees that it shall request HOME Funds only for reimbursement of eligible costs incurred as identified in the attached Project Budget, limited to the amount needed for the Affordable Units, including costs allowable under 24 CFR 92.206, aggregating not more than the Loan amount. The CITY's obligations shall in no event exceed the HOME Funds amount specified in this Agreement.

A. If any such Funds shall be determined to have been requested and/or used by the DEVELOPER for costs other than for eligible costs, and subject to the notice and cure provisions of Section 10.2 hereunder, an equal amount from nonpublic funds shall become immediately due and payable by the DEVELOPER to the CITY; provided, however, that the DEVELOPER shall, subject to its full cooperation with the CITY, be entitled to participate in any opportunity to remedy, contest, or appeal such determination.

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

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

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

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

B. The DEVELOPER has submitted evidence that the combined monies from the Funding Sources and the HOME Funds are not less than Nine Hundred Thirty Seven Thousand dollars and 00/100 (\$937,000.00) attached hereto in Exhibit "C", the amount necessary to complete the project.

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

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

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

F. The DEVELOPER has provided the CITY with a written request for Funds (in a CITY-approved Form), for reimbursement of eligible Project costs, and detailing such Eligible Costs applicable to the request.

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

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

6.5 Request for and Disbursement of HOME Funds. The DEVELOPER shall request disbursement of HOME Funds using the CITY's Request for Disbursement of Funds form. The DEVELOPER shall only request a maximum of the Loan amount in HOME Program assistance

for the Project. All requests must provide in detail such Eligible Costs applicable to the request. All requests for HOME Funds disbursement shall be accompanied with the Certification required by Section 6.6 of this Agreement.

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

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

B. The DEVELOPER has carried out all of its obligations and is in compliance with all the material 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;

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

D. The Disbursement requested will be used solely for reimbursement of eligible costs and must be supported by the itemized obligations that have been properly incurred and are properly chargeable in connection with the Project.

6.7 Disbursement of Funds. Disbursements of HOME Program Loan proceeds shall occur within thirty (30) days after the CITY receives the Certification and to the extent of annually allocated and available HOME Funds.

## ARTICLE 7. REHABILITATION

Without waiver of limitation, the parties agree as follows:

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

7.2 Commencement and Completion of Project. The DEVELOPER shall commence rehabilitation/construction upon receipt of a Notice to Proceed from the CITY, and record a Notice of Completion upon completion of the rehabilitation of the Project in accordance with the Project Schedule, attached here to as EXHIBIT "B" and incorporated herein.

7.3 Contracts and Subcontracts. Consistent with Section 5.3, 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 provide the CITY with copies of all agreements it has entered into with any and all general contractors for the Project. The DEVELOPER shall require that each such general contractor agreement contain a provision whereby the party(ies) to the agreement other than the DEVELOPER agree to: (i) notify the CITY immediately of any event of default by the

DEVELOPER thereunder; (ii) notify the CITY immediately of the filing of a mechanic's lien; (iii) notify the CITY immediately of termination or cancellation of the 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.

7.4 Damage to Property. To the extent consistent with the requirements of any permitted encumbrance, or as otherwise approved by the CITY, and subject to Article 9 of this Agreement, if any building or improvement constructed on the Property is damaged or destroyed by an insurable cause, the DEVELOPER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the approved Plans and Specifications for the rehabilitation Project. Such work or repair shall commence within ninety (90) days after the insurance proceeds are made available to the DEVELOPER and shall be complete within two (2) years thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, the DEVELOPER shall make up the deficiency.

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

7.6 Financing. The DEVELOPER shall promptly inform the CITY of any new financing or funding not included in the Budget for the Project, and the DEVELOPER shall provide the CITY copies of all agreements with any and all Funding Sources for the Project. The DEVELOPER shall require each agreement with any and all Funding Sources not included in the Budget to contain a provision whereby the party(ies) to the agreement other than the DEVELOPER, if permitted by the parties' applicable rules and regulations, agree to: (i) notify the CITY immediately of any event of default by the DEVELOPER thereunder; (ii) notify the CITY immediately of termination or cancellation of the agreement; and (iii) provide the CITY, upon 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) or receipt of notice of default thereunder. The 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).

7.7 Identification Signage. Before the start of rehabilitation/construction, the DEVELOPER shall place a poster or sign, with a minimum four feet by four feet in size,

identifying the City of Fresno as a Project participant. The sign shall also include the CITY's Housing Logo, as well as HUD's Equal Housing Opportunity logo, as mandated by HUD. Font size shall be a minimum of four (4) inches. The poster/sign shall be appropriately placed, and shall remain in place throughout the Project construction.

7.8 Inspections. The DEVELOPER shall permit, facilitate, and require its contractors and consultants to permit and facilitate observation and inspection at the job site by the CITY and other public authorities during reasonable business hours, for determining compliance with this Agreement, including without limitation periodic on-site inspections.

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

7.10 Insurance and Bonds. Upon the CITY's reasonable request, the DEVELOPER shall submit for CITY approval, bonds, certificates, and/or applicable endorsements for all insurance and bonds required by this Agreement in accordance with Article 9.

7.11 Mechanic's Liens and Stop Notices. If any claim of lien is filed against the Property or a stop notice affecting any financing, HOME 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.

A. If the DEVELOPER fails to discharge, bond or otherwise satisfy the CITY with respect to any lien, encumbrance, charge or claim referred to in this Section 7.11, then, in addition to any other right or remedy, the CITY may, but shall not be obligated to, discharge such lien, encumbrance, charge, or claim at the DEVELOPER's expense. Alternatively, the CITY may require the DEVELOPER to immediately deposit with the CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The CITY may use such deposit to satisfy any claim or lien that is adversely determined against the DEVELOPER. The DEVELOPER hereby agrees to indemnify and hold the CITY harmless from liability for such liens, encumbrances, charges or claims together with all related costs and expenses.

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

negotiate with the utility companies for and to relocate the utilities, if any, as necessary to complete the Project.

#### 7.13 Plans and Specifications.

A. The DEVELOPER and the CITY have agreed upon and approved Plans and Specifications for the rehabilitation of the Project. The DEVELOPER will rehabilitate the Project in full conformance with the approved Plans and Specifications and modifications thereto approved by the CITY. The DEVELOPER shall obtain the CITY's prior written approval for any modifications to the Plans and Specifications.

B. Before commencement of rehabilitation, the DEVELOPER shall submit to the CITY, a signed copy of the approved Plans and Specifications for the Project. This Agreement incorporates by reference the approved Plans and Specifications.

7.14 Project Responsibilities/Public Work-Prevailing Wage Requirements. The DEVELOPER shall be solely responsible for all aspects of the DEVELOPER's conduct in connection with the Project, including but not limited to, compliance with all local, state and federal laws including without limitation, as to prevailing wage and public bidding requirements. This Project is a "public work" project for federal purposes including David Bacon and Related Acts wage requirements absent written direction/determination otherwise by U.S. HUD or a court of competent jurisdiction. The Project is a "public work" project for state purposes including California Labor Code Section 1720 et seq. wage requirements, to which Section 1771 applies, absent written direction/determination otherwise the California Department of Industrial Relations or a court of competent jurisdiction. Based thereon the 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, the DEVELOPER shall be solely responsible for the quality and suitability of the work completed and the supervision of all contracted work, qualifications and financial conditions of and performance of all contracts, subcontractors, consultants and suppliers. Any review or inspection undertaken by the CITY with reference to the Project and/or payroll monitoring/auditing is solely for the purpose of determining whether the DEVELOPER is properly discharging its obligation to the CITY, and shall not be relied upon by the DEVELOPER or by any third parties as a warranty or representation by the CITY as to governmental compliance and/or the quality of work completed for the Project.

7.15 Property Condition. The DEVELOPER shall maintain the Property and all improvements on site in reasonably good condition and repair (and, as to landscaping, in a healthy condition), all according to the basic design and related plans, as amended from time to time. The DEVELOPER and those taking direction under the DEVELOPER shall: (i) maintain all on-site improvements according to all other applicable law, rules, governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the improvements free from graffiti; (iii) keep the Property free

from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to on-site improvements; and (v) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials.

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

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

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

A. From the date of the execution of the Agreement, until issuance of the recorded Certificate of Completion, the DEVELOPER shall submit a Quarterly Report, in a form approved by the CITY, which will include the progress of rehabilitation of the Project and affirmative marketing efforts (as applicable). The Quarterly Reports are due within fifteen (15) days after each March 31st, June 30th, September 30th, and December 31st, during said period.

B. Annually, beginning on the first day of the month following the CITY's issuance of the recorded Certificate of Completion, and continuing until the termination of the Agreement, the DEVELOPER shall submit an Annual Report to the CITY for the Project, containing 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 Affordable rental Unit, certification from an officer of the DEVELOPER that the Affordable Project Units are in compliance with the Affordable Rental Unit Requirements, and such other information the CITY may be required by law to obtain. The DEVELOPER shall provide any additional information reasonably requested by the CITY.

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

7.19 Scheduling and Extension of Time; Unavoidable Delay in Performance. It shall be the responsibility of the DEVELOPER to coordinate and schedule the work to be performed so that the Commencement of the Project and issuance of the Certificate of Completion will take place in accordance with the provisions of the Agreement and Project Schedule. The

time for performance contained in the Project Schedule shall be automatically extended upon the following:

A. The time for performance of provisions of the Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by: war, insurrection, strike or other labor disputes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by third parties concerning or arising out of this Agreement, or unseasonable weather conditions. An extension of time for any of the above specified causes shall be granted only if written notice by the party claiming such extension is sent to the other party within thirty (30) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is accepted by the other party in writing. In any event, the Project must be completed no later than one hundred eighty (180) calendar days after the scheduled completion date specified in this Agreement, notwithstanding any delay caused by that included in this section.

B. Any and all extensions hereunder shall be by mutual written agreement of the CITY's Housing and Community Development Division Manager and the DEVELOPER and shall not cumulatively exceed one hundred eighty (180) days.

**7.20 Certificate(s) of Completion.** Upon completion of the rehabilitation Project, the DEVELOPER shall: 1) certify in writing to the CITY that the Project has been rehabilitated in accordance with the Plans and Specifications; 2) submit to the CITY a cost-certifying final Project budget where the DEVELOPER shall identify the actual costs of rehabilitation of the Project; 3) submit to the CITY a recorded Notice of Completion for the Project; and 4) submit to the CITY an Architect's certification in a form reasonably acceptable by the CITY. Upon a determination by the CITY that the DEVELOPER is in compliance with all of the DEVELOPER's rehabilitation obligations, as specified in this Agreement, the CITY shall furnish, within thirty (30) calendar days of a written request by the DEVELOPER, a recorded Certificate of Completion for the Project in the form attached as EXHIBIT "E". The CITY will not unreasonably withhold or delay furnishing the recorded Certificate of Completion. If the CITY fails to provide the recorded Certificate of Completion within the specified time, it shall provide the DEVELOPER with a written statement indicating in what respects the DEVELOPER has failed to complete the Project in conformance with this Agreement or has otherwise failed to comply with the terms of this Agreement, and what measures the DEVELOPER will need to take or what standards it will need to meet in order to obtain the recorded Certificate of Completion. Upon the DEVELOPER taking the specified measures and meeting the specified standards, the DEVELOPER will certify to the CITY in writing of such compliance and the CITY shall deliver the recorded Certificate of Completion to the DEVELOPER in accordance with the provisions of this section.

## **ARTICLE 8. PROJECT OPERATIONS**

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

8.2 Occupancy Requirements. Two (2) of the ten (10) HOME-Assisted Affordable Units shall be rented and occupied by, or if vacant, available for rental occupancy by those whose annual household income at the time of initial occupancy is not greater than fifty percent (50%) of the most recent annual median income, calculated and published by HUD for the Fresno Metropolitan Statistical Area, applicable to such household's size, and at an affordable rent consistent with HOME Program regulations (as provided at 24 CFR 92.252) for the term of this Agreement and eight (8) of the ten (10) HOME-Assisted Affordable Units shall be rented and occupied by, or if vacant, available for rental occupancy by those whose annual household income at the time of initial occupancy is not greater than fifty-five percent (55%) of the most recent annual median income, calculated and published by HUD for the Fresno Metropolitan Statistical Area, applicable to such household's size, and at an affordable rent consistent with HOME Program regulations (as provided at 24 CFR 92.252) for the term of this Agreement the DEVELOPER shall comply with the income targeting requirements of 24 CFR 92.216.

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

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

A. The DEVELOPER shall include in its lease agreement for the Affordable Units, provisions which authorize the DEVELOPER to immediately terminate the tenancy of any Household of which one or more of members misrepresented any fact material to the Household's qualification as a Very Low- or Low-Income household. Each such lease agreement shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for Low-Income, such Household's rent may be subject to increase to the lesser of: (1) the amount payable by tenant under state or local law; or (2) thirty percent (30%) of the Household's actual adjusted monthly income.

8.5 Final Management Plan. Before leasing and at least sixty (60) calendar days prior to the Completion Date, the DEVELOPER shall submit to the CITY, for review and approval, a plan for marketing and managing the proposed Project ("Final Management Plan"). The Final Management Plan shall address in detail how the DEVELOPER or its designated

management entity plans to market the availability of Affordable Units to prospective tenants and how the DEVELOPER plans to certify the eligibility of potential Low-Income tenants. The Final Management Plan shall also address how the DEVELOPER and/or the management entity plan to manage and maintain the Affordable Project Units in accordance with HOME Program regulations at Section 92.251 Property Standards, and shall include appropriate financial information and documentation. The Final Management Plan shall contain detailed descriptions of policies and procedures with respect to tenant selections and evictions. Topics to be covered in these procedures shall include at a minimum the following:

- Interviewing procedures for prospective tenants;
- Previous rental history of tenants with references;
- Credit reports 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.

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

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

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

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

**8.7 Maintenance and Security.** The DEVELOPER shall at its own expense maintain the Project in good condition, in good repair and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of the Unit occupants. The DEVELOPER shall not commit or permit any waste on or to the Project, and shall prevent and/or rectify any physical

deterioration of the housing. The DEVELOPER shall maintain the Affordable Units in conformance with all applicable federal, state and local laws, ordinances, codes and regulations, the Final Management Plan, and this Agreement. The DEVELOPER agrees that its failure to maintain the property in accordance with this section will result in acceleration of the HOME Loan.

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

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

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

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

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

9.1 Indemnification. DEVELOPER shall indemnify, hold harmless and defend the CITY, HUD and each of their officers, officials, employees, agents and volunteers from any

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

A. If the DEVELOPER should contract all or any portion of the work to be performed under this Agreement, the DEVELOPER shall require each contractor and subcontractor to indemnify, hold harmless and defend the CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

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

9.2 Insurance. Throughout the life of this Agreement, the DEVELOPER shall itself and/or through its consultant(s), assignee(s), nominee(s), contractors and subcontractors 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:

A. Until issuance of Certificate(s) of Completion, BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the Affordable Project with no coinsurance penalty provisions.

B. Following issuance of Certificate(s) of Completion, 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 full one hundred percent (100%) replacement cost (without deduction for depreciation) of the improvements with no coinsurance penalty provisions. Such insurance shall include coverage for business income, including "rental value", in an amount equal to the two (2) years of the annual rent generated by the improvements. Coverage for business income, including "rental value", shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 00 30.

1. 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 an unrestricted thirty (30) day written notice in favor of the CITY, of policy cancellation, change or reduction of coverage. 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, the 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.

2. The Builders Risk (Course of Construction) and Property Insurance policies shall name the CITY as loss payee. The insurance required herein shall contain no special limitations on the scope of protection afforded to the City.

3. 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.

9.3 Bonds. 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 Obligee.

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

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

C. In lieu of the bonds required above, CITY, in its sole discretion, may accept from the 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 the DEVELOPER in full force and effect until CITY is provided with a recorded Notice of Completion for reconstruction of the Project and shall be subject to and governed by the laws of the State of California."

## ARTICLE 10. DEFAULT AND REMEDIES

10.1 Events of Default. Each of the following shall constitute an "Event of Default" for purposes of this Agreement after the cure period in Section 10.2 has expired without a cure:

A. DEVELOPER's failure to obtain a Notice to Proceed from the CITY prior to commencement of physical work on the Project Property.

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

C. DEVELOPER's failure to maintain the property to HOME Program standards as required under this Agreement;

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

E. Except as otherwise provided in this Agreement, the failure of the DEVELOPER to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) the DEVELOPER's substantial deviation in the rehabilitation of the Project from the Plans and Specifications, without the CITY's prior written consent; (2) the DEVELOPER's use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) the DEVELOPER's failure to commence or complete the Project, unless delay is permitted under Section 7.19 of this Agreement; (4) the cessation of work on the Project for a period of more than fifteen (15) consecutive days (other than as provided at Section 7.19 of this Agreement) prior to submitting to the CITY, pursuant to Section 7.20, certification that the Project is complete; (5) any material adverse change in the financial condition of the DEVELOPER or the Project that gives the CITY reasonable cause to believe that the Project cannot be completed by the Completion Date according to the terms of this Agreement; (6) the DEVELOPER's failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY's request; (7) the DEVELOPER's failure to substantially comply with any federal, state or local laws or applicable CITY restrictions governing the Project, including but not limited to provisions of this Agreement pertaining to equal employment opportunity, nondiscrimination and lead-based paint;

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

G. The DEVELOPER shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition,

readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within ninety (90) days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within ninety (90) days;

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

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

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

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

10.2 Notice of Default and Opportunity to Cure. The CITY shall give written notice to the DEVELOPER of any Event of Default by specifying: (1) the nature of the event or deficiency giving rise to the default, (2) the action required to cure the deficiency, if any action to cure is possible, and (3) a date, which shall not be less than the lesser of any time period provided in this Agreement, or thirty (30) calendar days from the date of the notice, by which such deficiency must be cured, provided that if the specified deficiency or default cannot reasonably be cured within the specified time, the DEVELOPER shall have an additional reasonable period to cure so long as it commences cure within the specified time and thereafter diligently pursues the cure in good faith. The CITY acknowledges and agrees that the DEVELOPER shall have the right to cure any defaults hereunder and that notice and cure rights hereunder shall extend to any and all partners of the DEVELOPER that are prior identified in a writing delivered to the CITY in the manner provided in this Agreement.

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

A. Terminate this Agreement immediately upon written notice to the DEVELOPER;

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

C. Pursue any other remedy allowed by law or in equity or under this Agreement.

## ARTICLE 11. GENERAL PROVISIONS

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

11.1 Amendments. No modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by the parties hereto.

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

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

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

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

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

11.7 Effective Date. This Agreement shall be effective upon the date first above written on Page 1, upon the Parties' complete execution following City Council approval.

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

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

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

11.11 Governing Law and Venue. Except to the extent preempted by applicable federal law, the laws of the State of California shall govern all aspects of this Agreement, including execution, interpretation, performance, and enforcement. Venue for filing any action to enforce or interpret this Agreement will be Fresno, California.

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

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

11.14 No Assignment or Succession. The DEVELOPER shall not sell, lease, transfer, assign or otherwise dispose of all or any material part of any interest it might hold in the Property without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed.

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

11.16 No Waiver. Neither failure nor delay on the part of the CITY in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by the DEVELOPER therefrom shall be effective unless the same shall be in writing, signed on behalf

of the CITY by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the DEVELOPER in any case shall entitle the DEVELOPER to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the CITY's right to take other or further action in any circumstances without notice or demand.

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

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

If to the CITY:           City of Fresno  
Development and Resource Management Department  
Housing and Community Development Division  
Attn: Manager  
2600 Fresno Street, Room 3070  
Fresno, CA 93721-3605

If to DEVELOPER:       Fulton Court Partners, LLC  
Jeff Altimus, Member  
49707 Stillmeadow Lane  
Oakhurst, CA 93644

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

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

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

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

///

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

CITY OF FRESNO, a Municipal Corporation

By: Mark Scott  
Mark Scott, City Manager  
(Attach notary certificate of acknowledgment)

Date: 8-30-12

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: Yvonne Spence  
Deputy  
Date: 9/4/12

APPROVED AS TO FORM:  
JAMES SANCHEZ  
City Attorney

By: James Sanchez  
Deputy City Attorney  
Date: 8/30/2012

FULTON COURT PARTNERS, LLC  
a California limited liability company

By: Jeff Altman  
Jeff Altman, Member  
(Attach notary certificate of acknowledgment)

Date: 8/21/12

Amnt Amended by  
Council, not reflected  
in the minutes  
Per Rob Abrams (CAD)  
9/4/12 okay to  
sign.  
SW

Attachments:

- |            |                                       |
|------------|---------------------------------------|
| EXHIBIT A: | PROPERTY DESCRIPTION                  |
| EXHIBIT B: | PROJECT DESCRIPTION                   |
| EXHIBIT C: | BUDGET                                |
| EXHIBIT D: | ESTIMATED 55-YEAR CASH FLOW STATEMENT |
| EXHIBIT E: | FORM OF CERTIFICATE OF COMPLETION     |
| EXHIBIT F: | PROMISSORY NOTE                       |
| EXHIBIT G: | DEED OF TRUST                         |
| EXHIBIT H: | DECLARATION OF RESTRICTIONS           |

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Fresno

On 8/30/12 before me, Emma L. Baker, Notary Public  
(Here insert name and title of the officer)

personally appeared Mark Scott

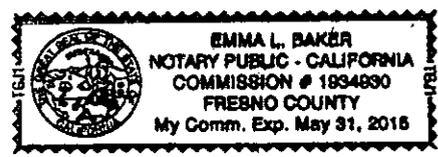
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

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

WITNESS my hand and official seal.

Emma L. Baker  
 Signature of Notary Public

(Notary Seal)



## ADDITIONAL OPTIONAL INFORMATION

**DESCRIPTION OF THE ATTACHED DOCUMENT**

\_\_\_\_\_

(Title or description of attached document)

\_\_\_\_\_

(Title or description of attached document continued)

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

\_\_\_\_\_

(Additional information)

**CAPACITY CLAIMED BY THE SIGNER**

Individual (s)

Corporate Officer

\_\_\_\_\_

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other \_\_\_\_\_

- INSTRUCTIONS FOR COMPLETING THIS FORM**
- Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*
- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
  - Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
  - The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
  - Print the name(s) of document signer(s) who personally appear at the time of notarization.
  - Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
  - The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
  - Signature of the notary public must match the signature on file with the office of the county clerk.
    - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
    - ❖ Indicate title or type of attached document, number of pages and date.
    - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
  - Securely attach this document to the signed document

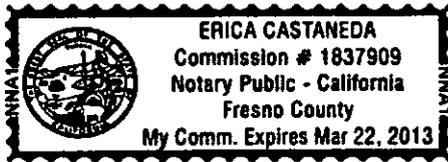
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Fresno

On 8-27-2012 before me, Erica Castaneda, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Jeff Altimus  
Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Signature: [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Home-Agreement City of Fresno - Fulton Court Partners

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

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

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

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

Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_

Individual  Individual

Partner —  Limited  General  Partner —  Limited  General

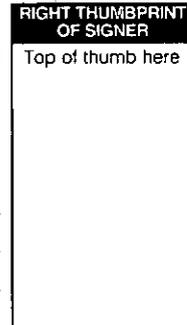
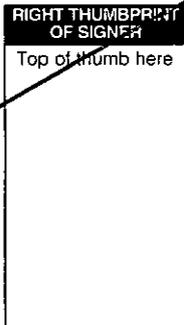
Attorney in Fact  Attorney in Fact

Trustee  Trustee

Guardian or Conservator  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_



**EXHIBIT "A"**

**PROPERTY DESCRIPTION**

**APN: 459-303-18**

Legal Description:

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

LOTS 34, 35, 36 AND 37 IN BLOCK 1 OF FORTHCAMP ADDITION, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK1, PAGE 17 OF PLATS, FRESNO COUNTY RECORDS.

## EXHIBIT "B"

### PROJECT DESCRIPTION AND SCHEDULE

The Project will consist of related on- and off-site improvements, and rehabilitation of ten (10) Very Low and Low-Income HOME Program housing units, in accordance with the following chart:

#### HOME FUNDED FIXED UNITS

Percent of Median Income	Studio	One Bedroom Units
50%	1	1
55%	1	7
Total	2	8

All ten (10) of the units will be reserved as Very Low- and Low-Income Affordable Units for a period of fifty-five (55) years.

HOME Funds will be made available by the CITY for payment of HOME eligible costs not to exceed the lesser of Six Hundred Ninety Five Thousand Eight Hundred Thirty Eight dollars and 00/100th (\$695,838.00), the aggregate HOME Program per unit cap (24 C.F.R. 92.250) for the ten (10) HOME-assisted Units as determined by the CITY, as needed, for HOME eligible project development costs.

#### PROJECT SCHEDULE

Finance Plan	June 30, 2012
Obtain Building Permits	September 15, 2012
Start Construction	September 15, 2012
Complete Construction	August 15, 2013
Complete Lease Up	September 15, 2013

# EXHIBIT "C" PROJECT BUDGET

	Total Development Residential Costs	Other	Funding Sources		
			HOME	Source (Dev. Fee)	Source (Sellers Note)
<b>Acquisition Costs:</b>					
Purchase Price	\$ 299,000		189,000		110,000
Liens					
Closing, Title & Recording Costs	8,500		8,500		
Extension Payment					
Other: _____					
<b>SUBTOTAL</b>	<b>307,500</b>		<b>197,500</b>		<b>110,000</b>
<b>Construction</b>					
Basic Construction Contract	481,837		481,837		
Bond Premium	5,000		5,000		
Infrastructure Improvements					
Hazardous Abate. & Monitoring					
Construction Contingency	8,863		8,863		
Sales Taxes					
Other Construction Costs: Appliances	6,000		2,638		3,362
Other Construction Costs: _____					
<b>SUBTOTAL</b>	<b>501,700</b>		<b>498,338</b>		<b>3,362</b>
<b>Development</b>					
Appraisal	850				850
Architect/Engineer	8,500				8,500
Environmental Assessment	4,650				4,650
Geotechnical Study					
Boundary & Topographic Survey					
Legal	5,000				5,000
Developer Fee	75,000			75,000	
Project Management					
Technical Assistance					
Other Consultants: _____					
Other: _____					
<b>SUBTOTAL</b>	<b>94,000</b>			<b>75,000</b>	<b>19,000</b>
<b>Other Development</b>					
Real Estate Tax	3,800				3,800
Insurance					
Relocation	28,000				28,000
Bidding Costs					
Permits, Fees & Hookups	1,500				1,500
Impact/Mitigation Fees					
Development Period Utilities					
Construction Loan Fees					
Construction Interest					
Other Loan Fees (State HF, etc.)					
LIHTC Fees					
Accounting/Audit					
Marketing/Leasing Expenses	750				500
Carrying Costs at Rent Up					
Operating Reserves					
Replacement Reserves: _____					
<b>SUBTOTAL</b>	<b>33,800</b>				<b>33,800</b>
<b>Total Development Costs</b>	<b>937,000</b>		<b>695,838</b>	<b>75,000</b>	<b>110,000</b>
					<b>56,162</b>

**EXHIBIT "D"**

**55-YEAR CASH FLOW STATEMENT**

**EXHIBIT "D"**

**ESTIMATED 55-YEAR CASH FLOW STATEMENT**

	Inflation Factor	Year 1 2014	Year 2 2015	Year 3 2016	Year 4 2017	Year 5 2018	Year 6 2019	Year 7 2020	Year 8 2021	Year 9 2022	Year 10 2023	Year 11 2024
<b>INCOME:</b>												
Income from Rents	1.50%	63,756	64,712	65,683	66,668	67,668	68,683	69,714	70,759	71,821	72,898	73,991
<b>POTENTIAL GROSS REVENUE:</b>												
Vacancy	10%	6,376	6,471	6,568	6,667	6,767	6,868	6,971	7,076	7,182	7,290	7,399
<b>NET INCOME:</b>		<b>57,380</b>	<b>58,241</b>	<b>59,115</b>	<b>60,001</b>	<b>60,901</b>	<b>61,815</b>	<b>62,742</b>	<b>63,683</b>	<b>64,639</b>	<b>65,608</b>	<b>66,592</b>
<b>OPERATING EXPENSES:</b>												
Annual Operating Expenses	3.50%	17,214	17,816	18,440	19,085	19,753	20,445	21,160	21,901	22,668	23,461	24,282
<b>NET OPERATING INCOME:</b>		<b>40,166</b>	<b>40,425</b>	<b>40,675</b>	<b>40,916</b>	<b>41,148</b>	<b>41,370</b>	<b>41,582</b>	<b>41,782</b>	<b>41,971</b>	<b>42,147</b>	<b>42,310</b>
<b>DEBT SERVICE:</b>												
Seller Loan (\$110,000@6.75% for 10-yr) 2nd PL		15,481	15,481	15,481	15,481	15,481	15,481	15,481	15,481	15,481	15,481	0
Developer Fee \$75,000 (4 payments)		18,750	18,750	18,750	18,750	0	0	0	0	0	0	0
HOME (\$695,838@1%: pmts: Balloon at 55) 1st PL		5,935	6,194	6,444	6,685	6,917	7,150	7,383	7,616	7,849	8,082	8,315
<b>CASH FLOW:</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>9,117</b>	<b>9,339</b>	<b>9,551</b>	<b>9,752</b>	<b>9,940</b>	<b>10,116</b>	<b>25,761</b>
<b>Debt Coverage Ratio</b>		<b>2.59</b>	<b>2.61</b>	<b>2.63</b>	<b>2.64</b>	<b>2.66</b>	<b>2.67</b>	<b>2.69</b>	<b>2.70</b>	<b>2.71</b>	<b>2.72</b>	

<u>Year 12</u> <u>2025</u>	<u>Year 13</u> <u>2026</u>	<u>Year 14</u> <u>2027</u>	<u>Year 15</u> <u>2028</u>	<u>Year 16</u> <u>2029</u>	<u>Year 17</u> <u>2030</u>	<u>Year 18</u> <u>2031</u>	<u>Year 19</u> <u>2032</u>	<u>Year 20</u> <u>2033</u>	<u>Year 21</u> <u>2034</u>	<u>Year 22</u> <u>2035</u>	<u>Year 23</u> <u>2036</u>	<u>Year 24</u> <u>2037</u>	<u>Year 25</u> <u>2038</u>	<u>Year 26</u> <u>2039</u>
75,101	76,228	77,371	78,532	79,710	80,905	82,119	83,351	84,601	85,870	87,158	88,466	89,792	91,139	92,506
75,101	76,228	77,371	78,532	79,710	80,905	82,119	83,351	84,601	85,870	87,158	88,466	89,792	91,139	92,506
7,510	7,623	7,737	7,853	7,971	8,091	8,212	8,335	8,460	8,587	8,716	8,847	8,979	9,114	9,251
67,591	68,605	69,634	70,679	71,739	72,815	73,907	75,016	76,141	77,283	78,442	79,619	80,813	82,025	83,256
25,132	26,012	26,922	27,864	28,839	29,849	30,894	31,975	33,094	34,252	35,451	36,692	37,976	39,305	40,681
42,459	42,594	42,712	42,814	42,899	42,966	43,014	43,041	43,047	43,031	42,991	42,927	42,837	42,720	42,575
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550
25,910	26,044	26,162	26,265	26,350	26,416	26,464	26,491	26,497	26,481	26,442	26,377	26,287	26,170	26,025

Year 27 <u>2040</u>	Year 28 <u>2041</u>	Year 29 <u>2042</u>	Year 30 <u>2043</u>	Year 31 <u>2044</u>	Year 32 <u>2045</u>	Year 33 <u>2046</u>	Year 34 <u>2047</u>	Year 35 <u>2048</u>	Year 36 <u>2049</u>	Year 37 <u>2050</u>	Year 38 <u>2051</u>	Year 39 <u>2052</u>	Year 40 <u>2053</u>	Year 41 <u>2054</u>
93,894	95,302	96,732	98,183	99,656	101,151	102,668	104,208	105,771	107,358	108,968	110,602	112,261	113,945	115,655
93,894	95,302	96,732	98,183	99,656	101,151	102,668	104,208	105,771	107,358	108,968	110,602	112,261	113,945	115,655
9,389	9,530	9,673	9,818	9,966	10,115	10,267	10,421	10,577	10,736	10,897	11,060	11,226	11,395	11,565
84,505	85,772	87,059	88,365	89,690	91,036	92,401	93,787	95,194	96,622	98,071	99,542	101,035	102,551	104,089
42,105	43,578	45,104	46,682	48,316	50,007	51,757	53,569	55,444	57,384	59,393	61,472	63,623	65,850	68,155
42,400	42,194	41,955	41,682	41,374	41,028	40,644	40,218	39,750	39,237	38,678	38,071	37,412	36,701	35,934
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550
25,850	25,644	25,405	25,133	24,824	24,479	24,094	23,668	23,200	22,688	22,128	21,521	20,862	20,151	19,385

<u>Year 42</u> <u>2055</u>	<u>Year 43</u> <u>2056</u>	<u>Year 44</u> <u>2057</u>	<u>Year 45</u> <u>2058</u>	<u>Year 46</u> <u>2059</u>	<u>Year 47</u> <u>2060</u>	<u>Year 48</u> <u>2061</u>	<u>Year 49</u> <u>2062</u>	<u>Year 50</u> <u>2063</u>	<u>Year 51</u> <u>2064</u>	<u>Year 52</u> <u>2065</u>	<u>Year 53</u> <u>2066</u>	<u>Year 54</u> <u>2067</u>	<u>Year 55</u> <u>2068</u>
117,389	119,150	120,937	122,752	124,593	126,462	128,359	130,284	132,238	134,222	136,235	138,279	140,353	142,458
117,389	119,150	120,937	122,752	124,593	126,462	128,359	130,284	132,238	134,222	136,235	138,279	140,353	142,458
11,739	11,915	12,094	12,275	12,459	12,646	12,836	13,028	13,224	13,422	13,624	13,828	14,035	14,246
105,650	107,235	108,844	110,476	112,134	113,816	115,523	117,256	119,014	120,800	122,612	124,451	126,318	128,212
70,540	73,009	75,564	78,209	80,946	83,780	86,712	89,747	92,888	96,139	99,504	102,986	106,591	110,322
35,110	34,226	33,279	32,267	31,187	30,036	28,811	27,509	26,127	24,661	23,108	21,464	19,727	17,891
0	0	0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0	0	0
16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550	16,550
18,561	17,676	16,730	15,718	14,637	13,486	12,261	10,959	9,577	8,111	6,558	4,915	3,177	1,341

**EXHIBIT "E"**

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

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

---

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**CERTIFICATE OF COMPLETION**

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: 459-303-18

City of Fresno

By: \_\_\_\_\_  
Craig Scharon, Assistant Director  
Development and Resource  
Management Department

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

## REHABILITATION HOUSING PROJECT

APN: 459-303-18

### Recitals:

A. By a HOME Investment Partnerships Program ("Program") Agreement dated \_\_\_\_\_, 2012 ("HOME Agreement") between the City of Fresno, a California municipal corporation ("CITY"), and Fulton Court Partners, LLC, a California limited liability company (hereinafter referred to as "DEVELOPER"), as may be amended from time to time, DEVELOPER agreed to rehabilitate the ten (10) unit Fulton Court Apartments, reserving all units for rental by a Very Low and Low-Income household ("Project"), upon the premises legally described in EXHIBIT "A", attached to the HOME Agreement made a part hereof by this reference (the "Property"), with the assistance of HOME Funds while meeting the affordable housing, income targeting and other requirements of 24 CFR 92 according to the terms and conditions of the HOME Agreement and the Loan Documents and other document/instruments referenced therein for the ten (10) Affordable Units.

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

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

D. The DEVELOPER has asked CITY to furnish 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 rehabilitation the Project as set forth in the HOME Agreement.

### NOW THEREFORE:

1. The CITY certifies that the DEVELOPER commenced the Project on \_\_\_\_\_ and completed the Project on \_\_\_\_\_ 20\_\_ and has done so in full compliance with the HOME Agreement.

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

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

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

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

CITY OF FRESNO

By: \_\_\_\_\_  
Craig Scharton, Assistant Director  
Development and Resource Management Department

ATTEST:  
CITY CLERK  
YVONNE SPENCE, CMC

APPROVED AS TO FORM:  
JAMES SANCHEZ, CITY ATTORNEY

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

By: \_\_\_\_\_  
Deputy City Attorney

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

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

FULTON COURT PARTNERS, LLC  
a California limited liability company

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

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

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

## EXHIBIT "F"

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

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### PROMISSORY NOTE

Loan Amount: \$695,838.00  
Fresno, California

Date: \_\_\_\_\_, 2012

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For value received, the undersigned, Fulton Court Partners, LLC, a California limited liability company ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation, ("Lender"), the sum of Six Hundred Ninety Five Thousand Eight Hundred Eighty Three dollars and 00/100th (\$695,838.00), to the extent that such funds are loaned to Borrower, with interest on the unpaid principal balance running from the date of the recorded Certificate of Completion at the rate of 1% annually in accordance with the HOME Investment Partnerships Agreement dated \_\_\_\_\_, 2012, entered into between the Borrower and Lender, ("Agreement"), with all the principal and interest due and payable before the earlier of: (i) Borrower's uncured default under the Agreement with respect to the Project, and (ii) fifty-five (55) years from the date of this Note, ("Maturity Date"), on which date the unpaid balance of principal with unpaid interest thereon shall be due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws.

Principal and interest payments shall be due annually beginning one year from the recordation of the Certificate of Completion, and said payment continues on May 1<sup>st</sup> of each successive year thereafter until the Maturity Date, upon which all principal and interest shall be due and payable (prorated amounts to be paid for the first and last year of the Note). Any failure to make a payment required hereunder within ten (10) days after such payments are due shall constitute a default under the Agreement with respect to the Project and this Note. Additionally any failure to timely submit to Lender audited financial statements within thirty (30) days after such financial statements are due shall constitute a default under the Agreement with respect to the Project and Note. It shall not be a default hereunder if no payment was made because of insufficient operating income for any particular year.

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

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

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

date as this Note, and executed in favor of and delivered to the Lender ("Deed of Trust"), insured as a first (1<sup>st</sup>) position lien on the Property.

Time is of the essence. It will be a default under this Note if Borrower defaults under the Agreement, any other Loan Document with the Lender, or this Note and such default continues beyond the notice and cure period as provided in such documents. In the event of a default by Borrower with respect to any sum payable under this Note and the failure to cure such default within ten (10) days, the Borrower shall pay a late charge equal to the lesser of 2% of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest and then to principal balance. On the occurrence of an uncured default or on the occurrence of any other event that under the terms of the Loan Documents give rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind. Lender acknowledges and agrees that it shall send notice of any default hereunder to the limited partners of Borrower and shall accept any cure offered by such limited partners on the same basis as it would accept a cure from Borrower.

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 Loan Documents and then to the interest and then to the principal balance.

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

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

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

No delay or omission of 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.

The Deed of Trust provides as follows:

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

Lender may transfer this Note and deliver to the transferee all or any part of the Property then held by it as security under this Note, and the transferee will then become vested with all the powers and rights given to 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 Property not transferred.

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

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

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

///  
///  
///

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

FULTON COURT PARTNERS, LLC  
a California limited liability company

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

Name: (Attach notary certificate of acknowledgment)

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

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

**EXHIBIT "G"**

RECORDING REQUESTED BY  
Chicago Title Company

AND WHEN RECORDED MAIL TO:  
City of Fresno  
Housing and Community Dev. Division  
2600 Fresno Street, Room 3070  
Fresno CA 93721-3605

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

File No.: \_\_\_\_\_  
A.P.N.: 459-303-18

**DEED OF TRUST AND ASSIGNMENT OF RENTS**

THIS DEED OF TRUST, made this \_\_\_\_\_, 2012, by

TRUSTOR: **Fulton Court Partners, LLC, a California limited liability company**

whose address is **49707 Stillmeadow Lane, Oakhurst, CA 93644**

TRUSTEE: **First American Title Company, a California corporation**

and BENEFICIARY: **City of Fresno, a California municipal corporation**

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the City of Fresno, Fresno County, State of California, described as:

**See Exhibit "A" attached hereto.**

TOGETHER WITH the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph 10 of the provisions, incorporated by reference, to collect and apply such rents, issues and profits.

FOR THE PURPOSE OF SECURING:

1. Performance of each agreement of Trustor, incorporated by reference or contained herein, including without limitation the HOME Agreement entered between Fulton Court Partners, LLC, a California limited liability company and Beneficiary dated \_\_\_\_\_, 2012.
2. Payment of the indebtedness evidenced by a Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of \$695,838 to City of Fresno executed by Trustor in favor of Beneficiary or order.
3. Payment of such further sums as the then record Owner of said property hereafter may borrow from Beneficiary, when evidenced by another Note (or Notes) reciting it is so secured.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

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

character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

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

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

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

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

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

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

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

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

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

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as

they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act pursuant to such notice.

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

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale.

Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

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

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

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

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

(15) The Loan is a nonrecourse obligation of Trustor. Neither Trustor nor any of its general and limited partners shall have any personal liability for repayment of the Loan. The sole recourse of the Lender under the Loan Documents for repayment of the Loan shall be the exercise of its rights against the Property.

(16) The withdrawal, removal and/or replacement of (where applicable) a member of Trustor pursuant to the terms of articles of organization and/or operating agreement due to a violation by a member of the terms

thereof, or a voluntary withdrawal by a member, and any transfer of interests in the same, shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan.

(17) Beneficiary agrees that the lien of this Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "Extended Use Agreement") recorded against the Property, provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code, subject to the limitations upon evictions, terminations of tenancies and increases in gross rents of tenants of low-income units as provided in that Section.

(18) Prior to declaring or taking any remedy permitted under Loan Documents, (where applicable) Trustor's members shall have an additional period of not less than thirty (30) days to cure such alleged default. Notwithstanding the foregoing, in the case of a default that cannot with reasonable diligence be remedied or cured within thirty (30) days, Trustor's members shall have such additional time as reasonably necessary to remedy or cure such default, but in no event more than ninety (90) days from the expiration of the initial thirty (30) day period above, and if the Trustor's members reasonably believe that in order to cure such default, Trustor's members must remove Trustor's managing member(s) in order to cure such default, Trustor's members shall have an additional thirty (30) days following the effective date of such removal to cure such default.

(19) Beneficiary shall give the Trustor's members notice of any default under the Loan Documents at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale be mailed to Trustor at Trustor's address hereinbefore set forth, or if none shown, to Trustor at property address.

**NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.**

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

Signature of Trustor(s):

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

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

**ALL SIGNATURES MUST BE NOTARIZED**

# EXHIBIT "A" TO DEED OF TRUST

## PROPERTY DESCRIPTION

APN: 459-303-18

Legal Description:

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

LOTS 34, 35, 36 AND 37 IN BLOCK 1 OF FORTHCAMP ADDITION, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK1, PAGE 17 OF PLATS, FRESNO COUNTY RECORDS.

## EXHIBIT H

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  
Downtown and Community Revitalization Dept.  
Housing and Community Development Division  
2600 Fresno Street, Rm. 3070  
Fresno, CA 93721-3605

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

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

### DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this \_\_\_\_\_ of \_\_\_\_\_, 2012 by Fulton Court Partners, LLC, a California limited liability company ("Declarant") in favor of the City of Fresno, acting by and through its Development and Resource Management 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: 459-303-18, which is more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, Pursuant to a certain HOME Investment Partnerships Program Agreement dated \_\_\_\_\_, 2012 incorporated herein ("HOME Agreement") and instruments referenced therein, Declarant agrees to utilize, and CITY agrees to provide, certain HOME Program Funds from the United States Department of Housing and Urban Development (HUD), to Declarant and Declarant agrees to preserve the Project Units for Very Low and Low-Income households (collectively "Affordable Units"), subject to the terms and conditions set forth in the HOME Agreement; and

WHEREAS, the HOME Program regulations promulgated by HUD, including without limitation 24 CFR Section 92.252, and the HOME Agreement impose certain affordability requirements upon Declarant-owned property, which affordability restrictions shall be enforceable on the ten (10) Affordable Units for a fifty-five (55) year period; and

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

NOW THEREFORE, Declarant declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the proposed Project. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any

right, title or interest in the Property or any part thereof, will inure to the benefit of the City, and will be enforceable by it. Any purchaser under a contract of sale covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenants, and limitations set forth in this Declaration commencing on the date the final Project Budget and tenant information is entered into HUD's Integrated Disbursement and Information System (IDIS), recorded as an administrative amendment to this Agreement and continuing for fifty-five (55) years thereafter ("Affordability Period").

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

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

a. Declarant for itself and its successor(s) on title covenants and agrees that from the date of recordation of the CITY's Certificate of Completion, until the expiration of the Affordability Period it shall cause the ten (10) Project Units to be used as Affordable Units. 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 HOME Agreement, the term Affordable Project Units shall include, without limitation, compliance with the following requirements:

(i) **Nondiscrimination.** There shall be no discrimination against nor segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or handicap in the sale, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall 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 and/or Property.

(ii) **Principal Residence.** Each of the Affordable Units within the Project upon the Property shall be leased only to eligible Very Low- and Low-Income households, who shall occupy the Affordable Units as their a principal residence. The foregoing requirement that the Property tenants occupy the Affordable Units as their principal residence does not apply to persons, other than natural persons, who acquire the Property or portion thereof by foreclosure or deed in lieu of foreclosure; or HUD qualified entities that acquire the Property or portion thereof, with the consent of the CITY.

(iii) **Income Requirements.** Two (2) of the ten (10) Affordable Units may be leased only to eligible households whose annual household income at the time of initial occupancy is not greater than fifty percent (50%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable rent consistent with the HOME

Program regulations, and eight (8) of the ten (10) Affordable Units may be leased only to eligible households whose annual household income at the time of initial occupancy is not greater than fifty-five percent (55%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable rent consistent with the HOME Program regulations.

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

4. **Acceptance and Ratification.** All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the Covenant and Restrictions. The acceptance of a deed of conveyance to the 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 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 low-income affordability. However, the requirements with respect to Affordable Rental Units 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, the Affordability Period shall be revived according to its original terms.

5. **Benefit.** This Declaration shall run with and bind the Property for a term commencing on the date this Declaration is recorded in the Office of the Recorder of the County of Fresno, state of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of the 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 Property to comply with the Covenant and Restrictions required by this Declaration, as may be amended from time to time, the CITY shall be entitled to recover its costs and reasonable attorney's fees incurred in connection with the successful enforcement of such default or failure.

7. **Waiver.** Neither Declarant nor any future owner of the Property may exempt itself from liability for failure to comply with the Covenant and Restrictions required in this Declaration; provided however, that upon the transfer of the Property, the transferring owner shall be released from liability hereunder, upon CITY's written consent of such

transfer, which consent shall not be unreasonably withheld, conditioned or delayed.

8. Severability. The invalidity of the Covenant and 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 the CITY and Declarant.

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 the Agreement.

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.

15. Neither Declarant nor any of its members shall have any personal liability for the obligations under this Declaration. The sole recourse of the City shall be the exercise of its rights against the Property pursuant to the Deed of Trust and Lender shall have no right to seek or recover any deficiency amount from Declarant or any member of Declarant.

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

DECLARANT:

FULTON COURT PARTNERS, LLC  
a California limited liability company

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

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

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

**EXHIBIT "A" TO DECLARATION OF RESTRICTIONS**

**PROPERTY DESCRIPTION**

APN: 459-303-18

Legal Description:

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

LOTS 34, 35, 36 AND 37 IN BLOCK 1 OF FORTHCAMP ADDITION, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK1, PAGE 17 OF PLATS, FRESNO COUNTY RECORDS.

memos - DARM

City of **FRESNO** REPORT TO THE CITY COUNCIL

June 14, 2012

AGENDA ITEM NO. <u>1:30 pm #2</u>
COUNCIL MEETING <u>6/28/2012</u>
APPROVED BY _____
DEPARTMENT DIRECTOR _____
<u>Mark Scott</u> CITY MANAGER

FROM: CRAIG SCHARTON, Assistant Director  
Development and Resource Management

CLAUDIA CAZARES, Division Manager  
Housing and Community Development Division

By: CORRINA NUNEZ, Project Manager  
Housing and Community Development Division

SUBJECT: ADOPT FINDING OF CATEGORICAL EXEMPTION PURSUANT TO PUBLIC RESOURCE CODE SECTIONS 21080(b)(9) AND 21084 OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES, AND APPROVE A \$733,025 HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT WITH FULTON COURT PARTNERS, LLC, FOR ACQUISITION AND REHABILITATION OF THE FULTON COURT APARTMENTS, A 10-UNIT AFFORDABLE MULTI-FAMILY HOUSING BUNGALOW COURT LOCATED AT 142 N. FULTON AVENUE IN THE LOWELL NEIGHBORHOOD

RECOMMENDATIONS

Presented to City Council  
Date 6/28/12  
Disposition Approved - agreement amended

Staff recommends the City Council:

- 1) Adopt Finding of Categorical Exemption Pursuant to Public Resource Code Sections 21080(b)(9) and 21084 of the California Environmental Quality Act (CEQA) guidelines (please see Exhibit "G" - CEQA Exemption Statement); and.
- 2) Approve a \$733,025 HOME Investment Partnerships (HOME) Program Agreement (please see Exhibit "B" - HOME Program Agreement), subject to the City Attorney's prior approval as to form, with Fulton Court Partners, LLC (Developer), for acquisition and rehabilitation of the Fulton Court Apartments, a 10-unit affordable multi-family housing bungalow court located at 142 N. Fulton Avenue (APN: 459-303-18), in the Lowell neighborhood (please see Exhibit "C" - Project Location Map).

EXECUTIVE SUMMARY

On April 15, 2011, the City received a HOME funding proposal from the Developer in response to the City's HOME Program Notice of Funding Availability (NOFA), published March, 2011. The Developer is proposing to perform moderate rehabilitation to the interior and exterior of the buildings, and grounds of the Fulton Court Apartments. If the HOME Agreement is approved as recommended, HOME Program funds in the amount of \$733,025 will be provided to the Fulton Court Partners, LLC, in the form of a 1% percent interest loan with principal and interest payable from net operating income. The project cost is estimated at \$999,187, of which \$733,025 is proposed to be funded with HOME Program funds (73% of the acquisition and rehabilitation cost). Of the \$266,162 needed to complete project financing; \$100,000 represents a deferred Developer fee, \$56,162 is from Developer equity, and \$110,000 is a loan from the seller.

Presented to City Council  
Date 6/14/12  
Disposition Continued to 6/28/12 at 1:30 pm

## **BACKGROUND**

Fulton Court was built in 1942 in a Spanish Revival style and includes ten units within four building structures that are arranged in a double "L" Plan around an open courtyard (please see Exhibit "E" – Site Plan). Fulton Court's tree-canopied courtyard fosters a sense of community with the doors and windows opening onto a shared open space. A low rock wall rests at the entrance to the courtyard separating the complex from North Fulton Street. Fulton Court sits on a .39-acre (17,000 sq. ft.) parcel and is comprised of two studio units and eight one-bedroom units, which are in need of rehabilitation (please see Exhibit "D" - Existing Conditions).

On April 15, 2011, the Developer submitted a HOME Program application requesting HOME Program funds for acquisition and rehabilitation of Fulton Court. The Developer is proposing to perform moderate rehabilitation to the interior and exterior of the structures, garages, backyard areas, and courtyard, and install new appliances. The overall goal of the rehabilitation project is to preserve as much of the unique architecture of the bungalow court while improving the condition of the City's affordable housing stock (please see Exhibit "F" – Proposed Rehabilitation).

The project cost is estimated at \$999,187, of which \$733,025 is proposed to be funded by HOME Program funds. A summary of the project's budget is shown in the attached Exhibit "A" – Project Cost Information and Budget. If the HOME Program funding is approved as recommended, the HOME funds will be provided to Fulton Court Partners, LLC, in the form of a 1% interest loan, with the principal and interest payable from net property income.

The estimated completion date of the rehabilitation activities is scheduled for June 1, 2013. Once the rehabilitation is completed, the units will be affordable to households earning 50% to 55% of the area median income, or below, for a period of 55 years. The rent for a one-bedroom unit will range from \$499 to \$643 per month and the rent for a studio unit will range from \$474 to \$607 per month. The studio units have 481 square feet of living space and the one-bedroom units have 646 to 659 square feet of living space. The cost per square foot is estimated at \$162 ( $\$999,187 / 6,160$  sq. ft. of living space).

Since the apartment complex is currently 50% occupied, the budget includes a line item for relocation costs to re-house the existing tenants within the complex. The Developer proposes to rehabilitate the vacant units first. Once the vacant units are rehabilitated and ready for occupancy, the tenants in the occupied units will be relocated to the newly rehabilitated units. The current on-site property manager will continue to serve in this capacity after rehabilitation and will be responsible for maintaining the day-to-day operations of the complex to ensure on-going compliance with the HOME Program requirements.

The Development team consists of Jeff Altimus and Mike Strausser. Both have over twenty-five years of real estate and construction contracting experience. Jeff Altimus is the founder and owner of Altimus Construction, Inc. and Mike Strausser is the founder and owner of Strausser Construction, Inc. Strausser Construction will serve as the general contractor on this rehabilitation project. The Fulton Court rehabilitation project will be the development team's second affordable housing project. The team's first affordable housing project was the rehabilitation of the College Apartments on North College Avenue in the Fulton/Lowell neighborhood. Both team members have completed many private and publicly-funded projects, such as rehabilitation of the Clovis Post Office, shopping centers, and the Catholic Charities office (located across the

**REPORT TO COUNCIL**

**HOME PROGRAM AGREEMENT FOR ACQUISITION AND REHABILITATION OF FULTON COURT**

June 14, 2012

Page 3 of 3

street from Fulton Court). It was while working on the Catholic Charities project that the development team decided to submit a proposal to rehabilitate the Fulton Court apartments.

Once completed, the Fulton Court rehabilitation project will assist the City in meeting its affordable housing goals as identified in the Housing Element of the 2025 General Plan and the 2010-2014 Consolidated Plan to HUD, and is part of a larger effort by the City to revitalize the Lowell neighborhood.

**HOUSING AND COMMUNITY DEVELOPMENT COMMISSION**

The Housing and Community Development Commission recommended approval of the items on April 11, 2012.

**ENVIRONMENTAL COMPLIANCE**

In anticipation of funding approval and the subsequent commencement of the rehabilitation activities, a National Environmental Policy Act assessment was completed on January 3, 2012, and resulted in the completion of a Statutory Worksheet with consultation/mitigated requirements. Also on January 3, 2012, a CEQA assessment was completed and resulted in a Categorical Exemption pursuant to Public Resource Code Sections 21080(b)(9) and 21084 (please see Exhibit "G" – CEQA Exemption Statement).

**FISCAL IMPACT**

HOME Program funds for the proposed rehabilitation project are available in the Development and Resource Management Department's Fiscal Year 2012 Budget.

**Attachments:**

- Exhibit A – Project Cost Information and Budget
- Exhibit B – HOME Program Agreement
- Exhibit C – Project Location Map
- Exhibit D – Existing Conditions
- Exhibit E – Site Plan
- Exhibit F – Proposed Rehabilitation
- Exhibit G – CEQA Exemption Statement



