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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.

By: Mark Scott
Mark Scott
It's: City Manager
Date: 9-29-11

**CITY OF FRESNO
HOME INVESTMENT PARTNERSHIPS (HOME) AGREEMENT**

by and between

CITY OF FRESNO,
a municipal corporation

and

Hotel Fresno, LLC
regarding

The Hotel Fresno Rehabilitation Project
1241 Broadway Plaza, Fresno, California 93721 (APN: 466-214-01)
(Downtown Fresno Business District)

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HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT

This HOME Investment Partnerships Program Agreement (hereinafter referred to as the "Agreement") is entered into this Sept 29, 2011, 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 Hotel Fresno, 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 affordable rental housing market.

C. The Project will provide for the rehabilitation and ground floor expansion of the former Hotel Fresno, a proposed seventy-two (72) unit lofts/retail/commercial complex with six (6) fixed units designated as HOME-assisted affordable rental housing units at the Property identified in EXHIBIT "A".

D. The DEVELOPER desires to act as the owner/developer exercising effective project control, as to the rehabilitation of Hotel Fresno into a seventy-two (72) unit apartment building of which six (6) fixed units will be HOME-assisted units and shall be preserved as Low- and Very Low-Income rental housing, and ground floor retail, hereinafter referred to as the "Project", as more particularly described in the Project Description attached hereto as EXHIBIT "B", incorporated herein.

E. The Project will be reconstruction on HOME Program eligible Property owned by the DEVELOPER and located within the boundaries of the City of Fresno, as more particularly described in the attached EXHIBIT "A".

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 Eight Hundred Fifty Nine Thousand Eight Hundred Sixty Eight dollars and 00/100 (\$859,868) in annually allocated and available fiscal year 2011-2012 HOME Program funds for a residual receipts 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, EXHIBIT "C", 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 from Residual Receipts at times prior to the Maturity Date and in full upon the Maturity Date.

G. A June 29, 2011 environmental review of the Project pursuant to the National Environmental Policy Act ("NEPA") guidelines resulted in a Finding of No Significant Impact. Additionally, a July 1, 2011, environmental review of the Project pursuant to the California Environmental Quality Act ("CEQA") guidelines resulted in a Mitigated Negative Declaration.

H. The CITY has determined that this Agreement is in the best interests of, and will materially contribute to, the Housing Element of the General Plan. Further, the CITY has found that the Project: (i) will have a positive influence in the neighborhood and surrounding environs; (ii) is in the vital and best interests of the CITY, and the health, safety, and welfare of CITY residents; (iii) complies with applicable federal, state, and local laws and requirements; (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 Aug. 24, 2011 the Housing and Community Development Commission of the City of Fresno reviewed this Agreement and recommended approval.

K. On Sept. 9, 2011 the Hotel Fresno, 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 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 proposed fixed Affordable Housing Units, consisting of one (1) unit rented as Very Low-Income housing and five (5) units rented as 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 Budget attached hereto as EXHIBIT "C", 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 as EXHIBIT "E" to be issued to the DEVELOPER by the CITY evidencing completion of the Project, a 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 substantial 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, EXHIBIT "B".

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 EXHIBIT "B".

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", which shall be recorded against the Property no later than the date of disbursement of Loan funds, setting and requirements of this Agreement which shall run with the land. 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, subordinate no worse than third (3rd) position Deed of Trust including assignment of rents and security agreement given by the DEVELOPER, as Trustor, to the CITY as beneficiary, issued through Chicago Title Company escrow established by the DEVELOPER at its sole cost and expense, 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".

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 as EXHIBIT "C", 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 Eight Hundred Fifty Nine Thousand Eight Hundred Sixty Eight dollars and 00/100 (\$859,868) to be used for eligible Project costs.

1.17 Funding Sources means: (i) The CITY's HOME Funds, (ii) the HUD 220 Program Loan, (iii) Redevelopment Agency Loan, and (iv) Bank loans 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 Eight Hundred Fifty Nine Thousand Eight Hundred Sixty Eight dollars and 00/100 (\$859,868) 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 in the Note attached hereto as EXHIBIT "F".

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 means those whose annual income does not exceed sixty-five (65%) of the median income for the Fresno County area as determined by HUD, except as HUD may establish income ceilings higher or lower than 65% 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 in the form 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 Operating Expenses means Operating Expenses defined in the Exhibit "F" Promissory Note.

1.26 Project Units means the seventy-two (72) mixed income housing units constructed on the property of which six (6) fixed units will be preserved as Affordable Units.

1.27 Project Schedule means the schedule for commencement and completion of the Project included within the Project Description and Schedule, EXHIBIT "B".

1.28 Property means the property located at 1241 Broadway Plaza, Fresno, California 93721, (APN: 466-214-01), more specifically described in the attached EXHIBIT "A", including an existing structure that is a poured in place concrete building.

1.29 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.

1.30 Residual Receipts means Residual Receipts as defined in the Exhibit "F" Promissory Note, consistent with the preliminary 55 year cash flow statement attached hereto as EXHIBIT "D" and incorporated herein.

1.31 Unit means a dwelling unit of the Project.

1.32 Very Low-Income for the purposes of this Agreement 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 Eight Hundred Fifty Nine Thousand Eight Hundred Sixty Eight dollars and 00/100 (\$859,868) 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 to 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 Sept. 21, 2011 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.

2.7 Subordination. The Deed of Trust and/or Declaration of Restrictions may be subordinated to certain approved financing as provided herein (in each case, a "Senior Lender"), to no worse than 3th position, but only on condition that all of the following conditions are satisfied: (a) All of the proceeds of the proposed Senior Loan, less any transaction costs, must be used to provide construction or permanent financing for the Project consistent with an approved financing plan; (b) DEVELOPER must demonstrate to the CITY's reasonable satisfaction that subordination of Deed of Trust and/or Declaration of Restrictions is necessary to secure adequate construction or permanent financing to ensure the viability of the Project; (c) the subordination agreement must be reasonably acceptable to the CITY and must provide the CITY with adequate rights to cure any defaults by the DEVELOPER including providing the CITY or its successor with copies of any notices of default; (d) upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval, subject to prior approval to form by the Fresno City Attorney.

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 Accessibility. The DEVELOPER covenants and agrees with the CITY that it shall comply with all federal regulations concerning accessibility requirements in federally funded housing, including, but not limited to the following:

A. At least five percent (5%) of the dwelling units, or at least four (4), whichever is greater, must be constructed to be accessible for persons with mobility disabilities. An additional two percent (2%) of the dwelling units, or at least one (1) unit, whichever is greater, must be accessible for persons with hearing or visual disabilities. These units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) or a standard that is equivalent or stricter. These mandates can be found at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These units shall be rented on a priority basis to person(s) who are eligible as disabled and/or families of which a member is eligible as disabled, provided that these units may be rented to non-disabled person(s)/families if an eligible disabled person/family does not apply for rent following thirty (30) days of aggressive and documented marketing of the unit(s).

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

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

C. Title III of the ADA as it relates to the required accessibility of public and common use area of the Project.

4.2 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.

4.3 Availability of HOME Funds. The DEVELOPER understands and agrees that the availability of HOME Funds is subject to the control of HUD, or other federal agencies, and should 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 Funds, the CITY shall not provide said Funds unless and until they are made available for payment to the CITY by HUD and the CITY receives and allocates said Funds. No other funds owned or controlled by the CITY shall be obligated under this Agreement.

4.4 Compliance with Agreement. The DEVELOPER warrants, covenants and agrees that, in accordance with the requirements of 24 CFR 92.252 and 24 CFR Part 85, upon any uncured default 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.

4.5 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 six (6) fixed 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 six (6) Affordable Units.

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

4.7 Covenants and Restrictions to Run with the Land. The CITY and the DEVELOPER expressly warrant, covenant and agrees 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. The CITY agrees that this Agreement, the Note, the Deed of Trust and the Declaration of Restrictions shall be made junior and subordinate to liens given in connection with the Project financing, including any refinancing thereof established and obtained pursuant to and in compliance with the provisions of this Agreement, and to any other regulatory agreement. The City Manager of the CITY is hereby authorized and directed to execute such subordination agreements, inter-creditor agreements, standstill agreements, and/or other documents as may be reasonably requested by the Lender to evidence subordination to the Project financing, without further authorization from the CITY, provided that such agreements contain written provisions that are no more onerous and which are consistent with the customary standard requirements imposed by the financing source(s), on subordinate cash flow obligations under their then existing senior financing policies, and further provided that City Attorney reasonably approves of such document as to form.

A. The CITY and the DEVELOPER hereby declare their understanding and intent that the covenants and restrictions set forth herein directly

benefit the land; (a) by enhancing and increasing the enjoyment of the proposed Project by certain Low- and Very Low-Income households, and (b) by making possible the obtaining of advantageous financing for rehabilitation.

B. The DEVELOPER covenants and agrees that upon notification from the CITY that the fixed 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 one (1) of the Units to be rented as Affordable Housing for Very Low-Income households and five (5) of the Units to be rented as Affordable Housing for Low-Income households.

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

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

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

4.8 Displacement of Persons. The DEVELOPER covenants and agrees with the CITY that pursuant to 24 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 not occupied with tenants.

4.9 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 six (6) fixed 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.

4.10 Lead-Based Paint. The DEVELOPER covenants and agrees with the CITY that it shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 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.

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

4.12 Other Laws and Regulations. The DEVELOPER covenants and agrees with the CITY that, in addition to complying with the federal laws and regulations already cited in this Agreement, the DEVELOPER has reviewed, and shall comply with, 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 EXHIBIT "C" Budget 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.

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

4.14 Reporting Requirements. The DEVELOPER warrants, covenants and agrees with the CITY that it shall submit performance reports to the CITY as detailed in Section 7.18. 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. 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 six (6) 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. One (1) Unit 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%), and five (5) 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 sixty-five (65%) 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 to take actions that 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 Program assistance 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 of the 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 six (6) fixed affordable rental housing units preserved as Very Low- to 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

(iv) 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 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 or pre-development loans in relation to the Project consistent with the attached Budget, EXHIBIT "C".

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, 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 loan 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 Budget.

6.3 Use of HOME Funds. The DEVELOPER warrants, covenants and agrees that it shall request HOME Funds only for reimbursement of eligible costs incurred as identified in the attached Budget, 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 costs of the Affordable Units 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 the Finance Plan to the CITY, and all supporting financial documents including appraisals to be approved at the discretion of the Council Finance and Audit Subcommittee.

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. DEVELOPMENT AND 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 construction and, record a Notice of Completion upon completion of reconstruction of the Project in accordance with the Project Schedule.

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 original Plans and Specifications of the 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, 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 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 biennial 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 7.12, 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 has submitted to the CITY preliminary plans and specifications for the Project under Conditional Use Permit file number C-11-120 ("Affordable Preliminary Plans"). The DEVELOPER will rehabilitate the Project in full conformance with the CITY-approved Conditional Use Permit and 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. The HOME Agreement shall contain by reference the design and site plan of the Project; such design must be approved by the City Council with the HOME Agreement.

C. Before commencement of rehabilitation, the DEVELOPER shall submit to the CITY, for its review and approval, the final Plans and Specifications for the Project. The DEVELOPER will rehabilitate the Project in full conformance with the Plans and Specification and modifications thereto approved by the CITY. The DEVELOPER shall obtain the CITY's prior written approval for any modifications to the Plans and Specifications.

7.14 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 a 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 of the Project, the DEVELOPER shall: 1) certify in writing to the CITY that the Project has been reconstructed in accordance with the Final Plans; 2) submit to the CITY a cost-certifying final budget for the Project where the DEVELOPER shall identify the actual costs of reconstruction of the Project; 3) submit to the CITY a Certificate of Occupancy for the Project; 4) submit to the CITY a recorded Notice of Completion for the Project; and 5) 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 reconstruction 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 hereto 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. One (1) of the 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. Five (5) of the 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 sixty-five percent (65%) 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.

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

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 unrestricted 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 Co-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 use of HOME Funds, for costs other than Eligible Costs or for uses not permitted by the terms of this Agreement;

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

C. Except as otherwise provided in this Agreement, the failure of the DEVELOPER to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) the DEVELOPER's substantial deviation in the reconstruction of the Project from the Final Plans, 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;

D. Any representation, warranty, or certificate given or furnished by or on behalf of the DEVELOPER shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that the DEVELOPER

concealed or failed to disclose a material fact to the CITY, provided, however, that if any representation, warranty, or certification that proves to be materially false is due merely to the DEVELOPER's inadvertence, the DEVELOPER shall have a thirty (30) day opportunity after written notice thereof to cause such representation, warranty, or certification to be true and complete in every respect;

E. The DEVELOPER shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within ninety (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;

F. 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;

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

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

I. Any substantial or continuous breach by the DEVELOPER of any material obligation 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 (1) seeking specific performance by the DEVELOPER of the terms and conditions of this Agreement, and/or (2) enjoining, abating or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief; 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 Dept.
Housing and Community Development Division
2600 Fresno Street, Room 3070
Fresno, CA 93721-3605

If to DEVELOPER: Hotel Fresno, LLC
Attention: Mehran Romi Baghgegian
Executive Director
188 N. Holliston Ave., Suite 201
Pasadena, CA 91106

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.

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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: 9/29/11

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Sandra Zalayan
Deputy

Date: 9/29/11

APPROVED AS TO FORM:
JAMES SANCHEZ
City Attorney

By: Robert R. Coyle
Senior Deputy City Attorney

Date: 9-20-11

HOTEL FREZNO, LLC
a California limited liability company

By: Mehran Romi Baghgejian
Mehran Romi Baghgejian, Executive Director
(Attach notary certificate of acknowledgment)

Date: 9/9/11

Attachments:

- EXHIBIT A: PROPERTY DESCRIPTION
- EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE
- EXHIBIT C: BUDGET
- EXHIBIT D: 55-YEAR CASH FLOW STATEMENT (tentative) ⊕
- 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 Los Angeles

On 9/9/2011 before me, MARIO KHOURY, Notary
(Here insert name and title of the officer)

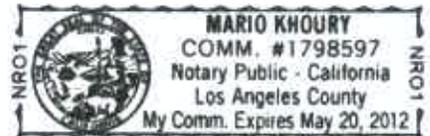
personally appeared MEHRAN Romi Baghgejian

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

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

WITNESS my hand and official seal.

[Signature]
 Signature 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 09/29/2011 before me, Katheryn Cornell, Notary
Date Here Insert Name and Title of the Officer

personally appeared *****Mark Scott*****
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.



Place Notary Seal Above

Signature: Katheryn Cornell
Signature of Notary Public

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 Home Investment Partnerships (HOME)

Title or Type of Document: City of Fresno and Hotel Fresno, LLC

Document Date: 09/29/2011 Number of Pages: **37**

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ <input type="checkbox"/> Corporate Officer — Title(s): _____ <input type="checkbox"/> Individual <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ Signer Is Representing: _____	RIGHT THUMBPRINT OF SIGNER Top of thumb here	Signer's Name: _____ <input type="checkbox"/> Corporate Officer — Title(s): _____ <input type="checkbox"/> Individual <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General <input checked="" type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ Signer Is Representing: _____	RIGHT THUMBPRINT OF SIGNER Top of thumb here
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------

EXHIBIT "A"

PROPERTY DESCRIPTION

APN: 466-214-01

Legal Description:

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

LOT 1,2,3,4,5 AND 6 IN BLOCK 63 OF THE TOWN (NOW CITY) OF FRESNO, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED JUNE 8, 1876, IN BOOK 1, PAGE 2 OF MAPS, RECORDS OF SAID COUNTY.

EXHIBIT "B"

PROJECT DESCRIPTION AND SCHEDULE

The Project will consist of related on- and off-site improvements, approximately 19,508 square feet of ground floor retail, and construction of seventy-two (72) mixed income housing units, of which six (6) will be HOME Program Assisted fixed units preserved as Very Low and Low-Income Housing Units in accordance with the following chart:

HOME FUNDED FIXED UNITS			
Percent of Median Income	Studio	One Bedroom Units	Two Bedroom Units
30% to 50%	-0-	1	0
51% to 65%	1	2	2
Total	1	3	2

Six (6) 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 Eight Hundred Fifty Nine Thousand Eight Hundred Sixty Eight dollars and 00/100 (\$859,868), the aggregate HOME Program per unit cap (24 C.F.R. 92.250) for the six (6) HOME-assisted Units as determined by the CITY, as needed, for HOME eligible project development costs.

PROJECT SCHEDULE	
Finance Plan	January 1, 2012
Obtain Building Permits	February 1, 2012
Start Construction	March 1, 2012
Complete Construction	December 31, 2012
Complete Lease Up	February 15, 2013

EXHIBIT "C"

PROJECT SOURCES AND USES

Tentative Sources

City HOME Program Loan	\$ 859,868
RDA Loan	\$ 1,900,000
HUD Section 220 Loan	\$11,109,459
Limited Members	\$ 1,845,000
Managing Members	\$ 825,290
Total	\$16,539,617

Uses

Land	\$ 1,065,000
Pre-Construction	\$ 1,691,500
Construction	\$10,433,710
Construction Management	\$ 600,000
Contingency	\$ 1,043,371
Permits/Insurance & Bond	\$ 380,000
HUD Financing & other charges	\$ 793,706
Lease Up Loan Fees	\$ 532,330
Total	\$16,539,617

EXHIBIT "D"

55-YEAR CASH FLOW STATEMENT (Tentative)

Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26
2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039
1,490,870	1,528,142	1,566,346	1,605,504	1,645,642	1,686,783	1,728,952	1,772,176	1,816,481	1,861,893	1,908,440	1,956,151	2,005,055	2,055,181	2,106,561
537,520	550,958	564,732	578,850	593,321	608,154	623,358	638,942	654,916	671,289	688,071	705,273	722,905	740,977	759,502
2,028,390	2,079,100	2,131,077	2,184,354	2,238,963	2,294,937	2,352,311	2,411,119	2,471,396	2,533,181	2,596,511	2,661,424	2,727,959	2,796,158	2,866,062
211,967	217,266	222,698	228,265	233,972	239,821	245,816	251,962	258,261	264,717	271,335	278,119	285,072	292,199	299,504
1,816,423	1,861,834	1,908,380	1,956,089	2,004,992	2,055,116	2,106,494	2,159,157	2,213,136	2,268,464	2,325,176	2,383,305	2,442,888	2,503,960	2,566,559
186,876	193,417	200,186	207,193	214,445	221,950	229,718	237,759	246,080	254,693	263,607	272,833	282,383	292,266	302,495
62,169	63,412	64,680	65,974	67,293	68,639	70,012	71,412	72,841	74,297	75,783	77,299	78,845	80,422	82,030
232,551	239,528	246,714	254,115	261,739	269,591	277,678	286,009	294,589	303,427	312,529	321,905	331,563	341,509	351,755
481,596	496,357	511,580	527,282	543,477	560,180	577,409	595,180	613,510	632,417	651,920	672,038	692,790	714,197	736,280
1,334,827	1,365,477	1,396,799	1,428,807	1,461,515	1,494,936	1,529,085	1,563,977	1,599,626	1,636,047	1,673,256	1,711,267	1,750,097	1,789,762	1,830,278
809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236
525,591	556,241	587,563	619,571	652,279	685,700	719,849	754,741	790,390	826,811	864,019	902,031	940,861	980,526	1,021,042
1.65	1.69	1.73	1.77	1.81	1.85	1.89	1.93	1.98	2.02	2.07	2.11	2.16	2.21	2.26
200,000	70,290	-	-	-	-	-	-	-	-	-	-	-	-	-
73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621
26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136
225,834	386,194	487,806	519,814	552,521	585,943	620,092	654,983	690,632	727,053	764,262	802,273	841,104	880,769	921,285

Year 27	Year 28	Year 29	Year 30	Year 31	Year 32	Year 33	Year 34	Year 35	Year 36	Year 37	Year 38	Year 39	Year 40	Year 41
2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054
2,159,225	2,213,205	2,268,535	2,325,249	2,383,380	2,442,985	2,504,039	2,566,640	2,630,806	2,696,576	2,763,990	2,833,090	2,903,917	2,976,515	3,050,928
778,489	797,951	817,900	838,348	859,306	880,789	902,809	925,379	948,513	972,226	996,532	1,021,445	1,046,981	1,073,156	1,099,985
2,937,714	3,011,157	3,086,436	3,163,596	3,242,686	3,323,754	3,406,847	3,492,019	3,579,319	3,668,802	3,760,522	3,854,535	3,950,898	4,049,671	4,150,913
306,991	314,666	322,533	330,596	338,861	347,332	356,016	364,916	374,039	383,390	392,975	402,799	412,869	423,191	433,770
2,630,723	2,696,491	2,763,903	2,833,001	2,903,526	2,975,421	3,050,832	3,127,103	3,205,280	3,285,412	3,367,547	3,451,736	3,538,030	3,626,480	3,717,142
313,083	324,041	335,382	347,120	359,270	371,844	384,859	398,329	412,270	426,700	441,634	457,091	473,089	489,648	506,785
83,671	85,344	87,051	88,792	90,568	92,379	94,227	96,112	98,034	99,994	101,994	104,034	106,115	108,237	110,402
362,307	373,177	384,372	395,903	407,780	420,013	432,614	445,592	458,960	472,729	486,911	501,518	516,564	532,061	548,022
759,061	782,561	806,805	831,816	857,618	884,237	911,700	940,033	969,264	999,423	1,030,539	1,062,644	1,095,768	1,129,945	1,165,210
1,871,662	1,913,929	1,957,098	2,001,185	2,046,208	2,092,184	2,139,132	2,187,070	2,236,016	2,285,989	2,337,008	2,389,093	2,442,262	2,496,535	2,551,933
809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	809,236	-
1,062,426	1,104,693	1,147,862	1,191,949	1,236,972	1,282,948	1,329,896	1,377,834	1,426,780	1,476,753	1,527,772	1,579,856	1,633,025	1,687,299	2,551,933
2.31	2.37	2.42	2.47	2.53	2.59	2.64	2.70	2.76	2.82	2.89	2.95	3.02	3.09	#DIV/0!
73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	73,621	-
26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136	26,136
962,668	1,004,936	1,048,104	1,092,191	1,137,214	1,183,191	1,230,139	1,278,076	1,327,022	1,376,996	1,428,015	1,480,099	1,533,268	1,587,541	2,525,797

Year 42	Year 43	Year 44	Year 45	Year 46	Year 47	Year 48	Year 49	Year 50	Year 51	Year 52	Year 53	Year 54	Year 55
2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068
3,127,201	3,205,381	3,285,516	3,367,654	3,451,845	3,538,141	3,626,595	3,717,259	3,810,191	3,905,446	4,003,082	4,103,159	4,205,738	4,310,881
1,127,484	1,155,671	1,184,563	1,214,177	1,244,532	1,275,645	1,307,536	1,340,225	1,373,730	1,408,073	1,443,275	1,479,357	1,516,341	1,554,250
4,254,686	4,361,053	4,470,079	4,581,831	4,696,377	4,813,786	4,934,131	5,057,484	5,183,921	5,313,519	5,446,357	5,582,516	5,722,079	5,865,131
444,615	455,730	467,123	478,801	490,771	503,041	515,617	528,507	541,720	555,263	569,144	583,373	597,957	612,906
3,810,071	3,905,323	4,002,956	4,103,030	4,205,605	4,310,745	4,418,514	4,528,977	4,642,201	4,758,256	4,877,213	4,999,143	5,124,122	5,252,225
524,523	542,881	561,882	581,548	601,902	622,968	644,772	667,339	690,696	714,871	739,891	765,787	792,590	820,330
112,610	114,862	117,159	119,503	121,893	124,331	126,817	129,354	131,941	134,579	137,271	140,016	142,817	145,673
564,463	581,397	598,839	616,804	635,308	654,367	673,998	694,218	715,045	736,496	758,591	781,349	804,789	828,933
1,201,596	1,239,140	1,277,880	1,317,854	1,359,103	1,401,686	1,445,588	1,490,911	1,537,682	1,585,946	1,635,753	1,687,153	1,740,196	1,794,937
2,608,475	2,666,182	2,725,076	2,785,175	2,846,503	2,909,079	2,972,926	3,038,066	3,104,520	3,172,310	3,241,460	3,311,991	3,383,926	3,457,288

| #DIV/0! |
|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| 2,608,475 | 2,666,182 | 2,725,076 | 2,785,175 | 2,846,503 | 2,909,079 | 2,972,926 | 3,038,066 | 3,104,520 | 3,172,310 | 3,241,460 | 3,311,991 | 3,383,926 | 3,457,288 |
| 26,136 | 26,136 | 26,136 | 26,136 | 26,136 | 26,136 | 26,136 | 26,136 | 26,136 | 26,136 | 26,136 | 26,136 | 26,136 | 26,136 |
| 2,582,339 | 2,640,046 | 2,698,940 | 2,759,039 | 2,820,367 | 2,882,943 | 2,946,790 | 3,011,930 | 3,078,384 | 3,146,174 | 3,215,324 | 3,285,855 | 3,357,790 | 3,431,152 |

EXHIBIT "E"

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno
City Clerk
2600 Fresno Street, Room 2133
Fresno, CA 93721-3605

(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: 466-214-01

City of Fresno

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

Date: _____

MIXED-USE HOUSING PROJECT

APN: 466-214-01

Recitals:

A. By a HOME Investment Partnerships (HOME) Program Agreement dated _____, 2011 ("HOME Agreement") between the City of Fresno, a municipal corporation ("CITY"), and Hotel Fresno, LLC a California limited liability company (hereinafter referred to as "DEVELOPER"), agreed to rehabilitation Hotel Fresno into a seventy-two (72) unit complex consisting of sixty-six (66) market rate units and six (6) affordable rental units, of which one (1) of the six (6) units would be reserved for rental by a Very Low-Income household and five (5) of the six (6) will be reserved for rent by Low-Income households ("Project"), upon the premises legally described in EXHIBIT "A" attached to the HOME Agreement as amended from time to time, made a part hereof by this reference, (the "Property") for the purposes of the Project, 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 six (6) Affordable Units.

B. The HOME Agreement or a memorandum of it was recorded on _____, 2011 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 construction 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

APPROVED AS TO FORM:
JAMES SANCHEZ, CITY ATTORNEY

By: _____
Deputy

By: _____
Assistant/Deputy

Date: _____

Date: _____

HOTEL FREZNO, LLC
a California limited liability company

By: _____
(Attach notary certificate of acknowledgment)

Date: _____

Name: _____

Title: _____

EXHIBIT "F"

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

PROMISSORY NOTE

Loan Amount: \$859,868.00
Fresno, California

Date: Sept. 29, 2011

For value received, the undersigned, Hotel Fresno, 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 Eight Hundred Fifty Nine Thousand Eight Hundred Sixty Eight dollars and 00/100 (\$859,868), to the extent that such funds are loaned to Borrower, with interest on the unpaid principal balance running from ten (10) years from the date of the recorded Certificate of Completion at the rate of 1% annually in accordance with the HOME Investment Partnerships Agreement dated Sept. 29, 2011, entered into between the BORROWER and Lender, ("Agreement"), with all principal and interest due and payable on or before the earlier of: (i) Borrower's uncured default under the Agreement with respect to the Project, and (ii) fifty-five (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.

This is a Residual Receipts Note. Principal and interest payments in the amount of 20% of Residual Receipts, to the extent that Residual Receipts exist and are itemized in audited financial statements supplied to Lender with each payment hereunder, shall be due ten (10) years following the recordation of the Certificate of Completion, and said payment continues each successive year thereafter until the Maturity Date, upon which all principal and interest shall be due and payable (prorated amounts to be paid for the first and last year of the Note). Any failure to make a payment required hereunder within ten (10) days after such payments are due shall constitute a default under the Agreement with respect to the Project and this Note. It shall not be a default hereunder if no payment was made because Project Residual Receipts did not exist for any particular year. Additionally any failure to timely submit to Lender audited financial statements within thirty (30) days after such financial statements are due shall constitute a default under the Agreement with respect to the Project and Note.

Residual Receipts means in each operating year after the conversion of the Project financing to its permanent phase, twenty percent (20%) of the sum of: (i) all cash received by the Project from (A) rents, lease payments, and all sources generally considered in the apartment industry to be "other income" (which does not include payments for optional services provided by Borrower), (B) payments from HUD under a Housing Assistance Program Section 8 Contract to the Project, if any, and excluding (a) tenant security or other deposits required by law to be segregated, and (b) interest on reserves not available for distribution, and (ii) the net proceeds of any insurance (including rental interruption insurance), other than fire and extended coverage and title insurance, to the extent not reinvested, less the sum of: (i) all cash expenditures, and all expenses unpaid but properly accrued, which are Operating

Expenses incurred in the operation of the Project's business, excluding expenditures paid from any reserve account (whether or not such expenditure is deducted, amortized or capitalized for tax purposes), (ii) contributions to any prudent and reasonable cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as may be reasonably required by the lenders to the Project for the operation of the Project not to exceed the amount required by the Project's permanent lender, annually adjusted in proportion to the average increase of the following indices (a) the United States Bureau of Labor Statistics for Hourly Wage Rates of all workers in manufacturing, and (b) of all Commodity Wholesale Prices, said indices shall be re-defined to the mutual satisfaction of the parties in the event of change in form and basis of indices, all increases shall use the indices for calendar year 2011 as their base, (iii) the payment of principal and interest, and any associated fees, expenses, and costs, with respect to the Senior Financing.

Operating Expenses means actual, reasonable and customary (for comparable quality, newly reconstructed rental housing developments 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.

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 3rd 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 managing members 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.

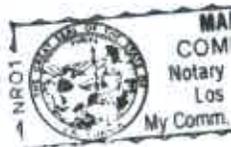
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IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be executed as of the date and year first above written.

HOTEL FREZNO, LLC,
a California limited liability company

By: M. Romi Baghgejian
Mehran Romi Baghgejian, Executive Director
(Attach notary certificate of acknowledgment)

Date: 9/9/11



CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

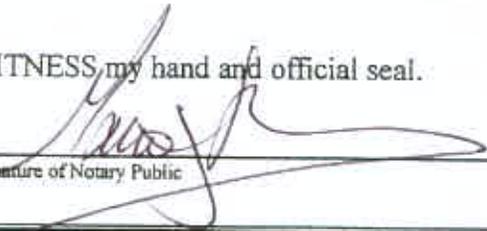
County of Los Angeles

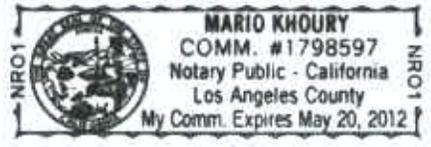
On 9/9/2011 before me, MARIO KHOURY, Notary
(Here insert name and title of the officer)

personally appeared MEHRAN RUMI Baghdegian

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 of Notary Public _____ (Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

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

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 _____

EXHIBIT "G"

RECORDING REQUESTED BY
Chicago Title Company

AND WHEN RECORDED MAIL TO:
City of Fresno
City Clerk
2600 Fresno Street, Room 2133
Fresno, CA 93721-3603

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

File No.: _____
A.P.N.: 466-214-01

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made this _____, 2011, by

TRUSTOR: Hotel Fresno, LLC, a California limited liability company

whose address is 1241 Broadway Plaza, Fresno, CA 93721

TRUSTEE: Chicago 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 Hotel Fresno, LLC, a California limited liability company and Beneficiary dated 9/29, 2011.
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 \$859,868 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 in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said Note and this Deed 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, insures 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) 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

**HUD RIDER
TO
DEED OF TRUST**

THIS RIDER is attached to and made a part of the foregoing note(s) (herein, the "Junior Note") and mortgage(s) or deed(s) of trust (herein, the "Junior Mortgage") between Hotel Fresno, LLC, referred to herein as the "Mortgagor," and the City of Fresno, referred to herein as the "Junior Lender" (collectively, the "Junior Loan Documents"). The terms and conditions of the Rider supersede the terms of the Junior Loan Documents, and, should there be any conflict or inconsistency between this Rider and the Junior Loan Documents, the terms and conditions of this Rider shall prevail. By acceptance of delivery and recordation of the Junior Loan Documents, the Junior Lender agrees to the following provisions. By execution of the Junior Loan Documents, the Mortgagor agrees to the Following Provisions:

1. The Junior Loan Documents are specifically subordinate to the certain note and mortgage/deed of trust between the Mortgagor and U.S. Department of Housing and Urban Development Section 220 Program (herein, the "Senior Mortgagee") dated _____2011 and recorded _____2011 in the real property records of Fresno County.
2. The Junior Note may not mature, and may not bear a maturity date, prior to the date on which the Senior Mortgage matures. The term of the Junior Mortgage may be extended if the Junior Note matures, there are no surplus cash funds available for repayment and the Senior Mortgage has not been retired in full or HUD grants a deferment of amortizations or forbearance that results in an extended maturity of the Senior mortgage.
3. The Junior Mortgage may be assumed when a sale or transfer of the physical assets occurs under the following conditions:
 - a. Not more than 70 percent of the net proceeds of the sale or transfer is applied to the reduction of the loan.
 - b. For these instructions, net proceeds are the funds available to the original mortgagor after:
 - i. Correcting any monetary or covenant default on the first mortgage, and
 - ii. Making required contributions to any reserve funds and needed improvements to the property as evidenced by HUD's annual inspection reports.

4. If HUD approves a sale of the project pursuant to HUD guidelines for transfers to assets, then Junior Mortgagee will agree to such transfer of the ownership of the project.
5. The Junior Note and Junior Mortgage automatically terminate if HUD acquires title to the project by a deed in lieu of foreclosure.
6. All work performed with the proceeds of the Junior Mortgage must be cost certified and must confirm will Davis-Bacon requirements.
7. The Junior Mortgage is subject to and subordinate to the Senior Mortgage, the HUD Regulatory Agreement between HUD and the Mortgagor and the Building Loan Agreement between the Mortgagor and the Senior Mortgagee.
8. Proceeds of the Junior Loan may only be used to cover allowable project costs or an anticipated operating shortfall.
9. Payment Only From Surplus Cash. As long as the Secretary of Housing and Urban Development, or his/her successors or assigns, is the insurer or holder of the Senior Mortgage, any payments due from project income under the Junior Loan Documents, or any prepayments made, shall be payable only from surplus cash of the project, as the term is defined in the Regulatory Agreement dated _____ 2011, between the Secretary and the Mortgagor, and subject to the availability of such surplus cash in accordance with the provision of said Regulatory Agreement. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by the Junior Note.
10. Mortgagor has obtained the prior written consent of the Senior Mortgagee to the existence of the Junior Loan.
11. To the extent that the Junior Note provides for the payment of principal and interest, such principal and interest shall be due and payable on the maturity date of the Senior Mortgage, provided that if the Senior Mortgage is prepaid in full, the holder of the Junior Note, at its option and without notice, may declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable. Interest due pursuant to the terms of the Junior Note that is not paid in accordance therewith shall not create any default in the terms of the Junior Note, but shall accrue and be payable in full at the date of maturity of the Senior Mortgage.

12. The Junior Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Junior Mortgagee except with the prior written approval of HUD.

13. The Junior Mortgagee certifies that the Junior Loan Documents represent a bona fide transaction and that it fully understands all of the HUD's requirements for such secondary financing, and that no prepayment of principal or interest shall be accepted without evidence that the Federal Housing Commissioner has authorized such prepayment. If an unauthorized prepayment is accepted, the funds shall be held by the Junior Mortgagee in trust for the project.

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IN WITNESS WHEREOF, the Borrower and the CITY have each caused this Rider to be executed by its duly authorized officer and to be made effective on and as of the effective date of the Agreement Documents.

City of Fresno, a California municipal corporation

Mark Scott

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

Date: 9-29-11

Borrower:

Hotel Fresno, a California limited liability company

By: M. Baghgegian
Mehran Romi Baghgegian, Executive Director
(Attach notary certificate of acknowledgment)

Title: MANAGING MEMBER

Date: 9/9/11



CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Los Angeles

On 9/9/2011 before me, MARIO KHOURY, Notary
(Here insert name and title of the officer)

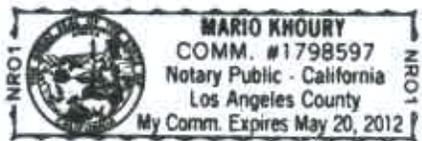
personally appeared Mehran Romi Baghgegian

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

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

WITNESS my hand and official seal.

[Signature]
 Signature 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

**EXHIBIT "A" TO DEED OF TRUST
PROPERTY DESCRIPTION**

APN: 466-214-01

Legal Description:

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

LOT 1,2,3,4,5 AND 6 IN BLOCK 63 OF THE TOWN (NOW CITY) OF FRESNO, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED JUNE 8, 1876, IN BOOK 1, PAGE 2 OF MAPS, RECORDS OF SAID COUNTY.

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

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 29 of Sept., 2011 by Hotel Fresno, 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: 466-214-01, 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 Sept. 29, 2011 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 no less than six (6) of the proposed seventy-two (72) Project Units as Very Low-Income (i.e., one Unit for households earning fifty percent (50%) or below of the area median income for the Fresno MSA) and Low-Income (i.e., five Units for households earning sixty-five percent (65%) or below of the area median income for the Fresno MSA) (collectively "Affordable Units"). The six (6) Affordable Units shall be fixed studios, and one- and two-bedroom 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 six (6) 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 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 six (6) of the Project Units to be used as fixed 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.** A total of one (1) fixed 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%) (for Very Low Income Unit) and a

total of five (5) fixed Affordable Units may be leased only to eligible households whose annual household income at the time of initial occupancy is not greater than sixty-five percent (65%) (for Low-Income Units) 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 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:

HOTEL FREZNO, LLC
a California limited liability company

By: M. Baghgegian
Mehran Romi Baghgegian, Executive Director
(Attach notary certificate of acknowledgment)

DATE: 9 / 9 / 11



CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

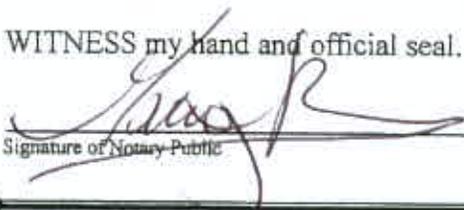
County of Los Angeles

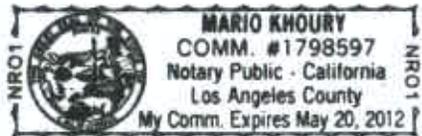
On 9/9/2011 before me, MARIO KHOURY, Notary
(Here insert name and title of the officer)

personally appeared Metron Romi Baghgegian

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 of Notary Public _____ (Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

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

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 _____

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

APN: 466-214-01

Legal Description:

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

LOT 1,2,3,4,5 AND 6 IN BLOCK 63 OF THE TOWN (NOW CITY) OF FRESNO, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED JUNE 8, 1876, IN BOOK 1, PAGE 2 OF MAPS, RECORDS OF SAID COUNTY.



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. 1:30pm #2

COUNCIL MEETING September 29, 2011

APPROVED BY

September 29, 2011

FROM: CRAIG SCHARTON, Assistant Director
Development and Resource Management

DEPARTMENT DIRECTOR

CITY MANAGER

CLAUDIA CAZARES, Division Manager
Housing and Community Development Division

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

SUBJECT: CONSIDER AND ADOPT THE ENVIRONMENTAL FINDING OF A MITIGATED NEGATIVE DECLARATION PREPARED FOR ENVIRONMENTAL ASSESSMENT NO. EA-11-012, AND APPROVE A \$859,868 HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT WITH HOTEL FREZNO, LLC, FOR REHABILITATION OF THE FORMER HOTEL FRESNO, LOCATED AT 1241 - 1263 BROADWAY PLAZA, INTO A 72-UNIT MIXED-USE MIXED-INCOME DEVELOPMENT

RECOMMENDATIONS

Staff recommends that the City Council:

- 1) Consider and adopt the environmental finding of a California Environmental Quality Act (CEQA) Mitigated Negative Declaration prepared for Environmental Assessment No. EA-11-012; and
- 2) Approve a \$859,868 HOME Investment Partnerships (HOME) Program Agreement, substantially in the form attached as Exhibit "B" - HOME Agreement) with Hotel Fresno, LLC, (Developer) for rehabilitation of the former Hotel Fresno, located 1241-1263 Broadway Plaza, APN: 466-214-01 (please see Exhibit "C" - Project Location Map), into a 72-unit mixed-use mixed-income development, subject to prior approval as to form by the City Attorney's Office.

EXECUTIVE SUMMARY

The Hotel Fresno rehabilitation project cost is estimated at \$16.5 million, of which \$859,868 in HOME Program funds is requested to help finance six affordable rental units. If approved as recommended, HOME Program funds will be provided to the Developer in the form of a 55-year loan at 1% interest, deferred for ten years, with the principal and interest repaid from 20% of the project's annual residual receipts. An estimated \$11 million in U.S. Department of Housing and Urban Development (HUD) Section 220 Program funds and \$1.9 million in Redevelopment Agency funds are also expected to finance the rehabilitation cost, with the balance of financing to come from other sources. The estimated completion date of the rehabilitation will be known once HUD approves the 220 Program loan. Once completed, Hotel Fresno will consist of six affordable rental units, 19 moderate-income units, 47 market rate units, and approximately 19,508 square feet of commercial/retail space on the ground floor. Disbursement of HOME funds to the Developer will be contingent upon secured financing for the balance of the project cost.

Presented to City Council
Date: 9/29/11
Disposition: Approved as amended, see minutes

REPORT TO COUNCIL

APPROVAL OF A HOME AGREEMENT WITH HOTEL FREZNO, LLC FOR REHABILITATION OF HOTEL
FRESNO

September 29, 2011

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BACKGROUND

The development team is led by, Mehran Romi Baghgegian, the majority shareholder of Hotel Fresno, LLC. Mr. Baghgegian is a former restaurateur that began rehabilitating historic buildings in 1984 when he designed and renovated his own restaurant located in Old Town Pasadena. Since 1996, Mr. Baghgegian has purchased and rehabilitated three historic buildings including the former Hotel Virginia located on Kern Street in downtown Fresno. The Developer is currently rehabilitating the former Mayflower Apartments located at 1417 Broadway, into an 18-unit loft complex. During a visit to Fresno, Mr. Baghgegian and his partners thought the Hotel would make an ideal project and on July 23, 2007, the partnership purchased the historic Hotel Fresno building for \$1,065,000, cash.

The Hotel was designed by architect Edward T. Foulkes and constructed in 1912, making it the oldest hotel structure in Fresno. The Hotel, which is listed on the City's Register of Historic Resources and is eligible for the National Register of Historic Places, is a seven-story brick structure designed in a classical revival style with cornice stone work lining the eaves. Over the past 20 years, there have been various owners, all which have attempted to restore the long-time vacant and dilapidated building. However, the cost to bring the structure back to its original style proved financially infeasible and the proposed restoration efforts never began. In March 2005, McCandless & Associates Architects, Inc. completed a feasibility study for a proposed restoration project and estimated that restoring the structure to its original historical grandeur, would cost an estimated \$40 million.

The Developer's proposed \$16.5 million rehabilitation budget is significantly less than that of the McCandless' estimate because the developer is proposing to maintain only the historic aspects of the exterior and use contemporary materials throughout the interior. This rehabilitation method is far less expensive than a complete interior/exterior historic renovation. The same rehabilitation method was used on the former Hotel Virginia, which is now fully occupied with office tenants and serves as one of the most successful historic preservation and revitalization projects in recent years. This is also the same method the Developer is using on the rehabilitation of the former Mayflower Apartments which is near completion. In addition, the Developer intends to rehabilitate the Hotel using the Rehabilitation Protocol of the Secretary of the Interior's Standards for the Treatment of Historic Properties, to the fullest extent possible. On May 19, 2008, the Historic Preservation Commission reviewed the developer's proposed rehabilitation plans and unanimously determined them to be consistent with the Rehabilitation Treatment of Protocol of the Secretary of Interior's Standards.

On April 19, 2010, the City received from the Developer, a HOME Program funding request in the amount of \$859,868 to help finance six affordable rental units within the project. Also, in addition to the Developer's cash investment, the Developer has invested owner equity to help finance the project. Plans for rehabilitation of the Hotel consists of a mixed-use mixed-income development with six affordable units, 19 moderate-income units, 47 market rate units, and 19,508 square feet of commercial/retail space on the ground floor. The affordable units will range in size from 661 square feet to 992 square feet with the rents ranging from \$536 to \$816 per unit, depending on the location within the building. The project's residential cost per square foot is estimated at \$216.12 and the commercial cost is estimated at \$27.66 per square foot. The total development cost per gross square foot is \$176.82.

Pre-development of the proposed rehabilitation activities are approximately 95% complete. To date, the Developer has completed the preliminary design of the project, environmental assessments, hard construction cost study, asbestos abatement, interior gutting of the entire structure, and has secured \$1.9 million in Redevelopment Agency funds. Mr. Baghgegian, of the development team, is also working with Johnson

REPORT TO COUNCIL

APPROVAL OF A HOME AGREEMENT WITH HOTEL FREZNO, LLC FOR REHABILITATION OF HOTEL FRESNO

September 29, 2011

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Capital, Inc. to prepare the HUD 220 Program (also known as the Multifamily Accelerated Processing Program) applications for HUD funding.

HUD's 220 Program is expected to finance an estimated \$11 million of the proposed \$16.5 million rehabilitation cost (please see Exhibit "A" – Project Cost Information/Project Sources and Uses of Funds). In anticipation of funding the project, HUD's appraiser, Duff & Phelps, LLC, completed a May 4, 2010 report that determined the Sales Comparisons Approach - As Completed and As Stabilized, market valuation to be \$14.5 million, which was sufficient to request the \$11 million in Section 220 Program loan funds. HUD's Section 220 Program is a federally-insured loan program used for the rehabilitation of housing in urban renewal areas, such as Fresno, in which major revitalization efforts have been undertaken by the local jurisdiction. The 220 loan is a three stage application process. Each application takes approximately 30 days to prepare. After submittal, HUD has 60 days to complete its review, provided there are no additional questions or outstanding requests for information. The first application was reviewed by HUD on August 31, 2011, and was well received as a viable 220 Program project. The 220 Program does not impose rent and/or affordability restrictions on the units; however, it does require the payment of a Davis-Bacon prevail wage. Once HUD informs Johnson Capital of the loan approval, Johnson Capital, Inc. will use its funds to close the loan, subsequently issue Ginnie Mae securities against the loan with a HUD guarantee, and then service the loan thereafter.

This major rehabilitation project will be the City's first 220 Program funded project and the first mixed-use mixed-income project in the core downtown business area. Since downtown housing is still in its infancy and there is not enough comparable information by which to measure the project's rents and commercial space, Johnson Capital will be requesting two additional market studies from two different consultants. All three studies will be combined to provide more accurate information with regard to occupancy, construction line item costs, and demand for commercial space. Based on the outcome of the additional market studies, it may become necessary to adjust the proposed rents and budget line items.

Once completed, the project will serve as a successful adaptive re-use of a long-time dilapidated building and will assist the City in meeting its affordable housing goals as identified in the Housing Element of the 2025 General Plan, the 2010-2014 Consolidated Plan, and the HOME Program funding priorities for housing development. Rehabilitation of the Hotel will also make a positive impact toward the City's Fulton Mall revitalization efforts for the Central Downtown area by offering quality, sustainable, mixed-income housing. The City will also benefit from the six affordable units within the project that will carry 55-year affordability covenants.

ENVIRONMENTAL FINDING

In anticipation of the funding and the subsequent rehabilitation of the historic Hotel Fresno, a National Environmental Policy Act assessment was completed on June 29, 2011 and resulted in a Finding of No Significant Impact. The City received authorization to use grant funds from HUD on August 10, 2011. Staff also prepared an environmental assessment for this project in accordance with the requirements of the CEQA Guidelines (please see Exhibit D - EA-11-012: Mitigated Negative Declaration). The Initial Study resulted in staff concluding that a finding of a Mitigated Negative Declaration ("MND") was appropriate since the proposed project has been determined to not be fully within the scope of Master Environmental Impact Report No. 10130/ SCH No. 2001071097 prepared for the 2025 Fresno General Plan ("MEIR") and Mitigated Negative Declaration No. A-09-02/SCH No. 2009051016 ("Air Quality MND"). With all applicable mitigation measures of the MEIR applied to the project, together with project specific mitigation measures, impacts have been reduced to less than significant, and the project will not cause significant adverse cumulative impacts, growth inducing impacts and irreversible significant effects beyond those identified by MEIR and the Air Quality MND. No substantial changes have occurred with respect to the

REPORT TO COUNCIL

APPROVAL OF A HOME AGREEMENT WITH HOTEL FREZNO, LLC FOR REHABILITATION OF HOTEL FRESNO

September 29, 2011

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circumstances under which the MEIR was certified and that no new information, which was not known and could not have been known at the time that the MEIR was certified as complete and the Air Quality MND was adopted, has become available. Therefore, based on the attached environmental assessment and the list of identified mitigation measures, staff recommends the City Council to find that the project will not have a significant impact on the environment and that the filing of a MND is appropriate in accordance with the provisions of CEQA Section 21157.5(a)(2) and CEQA Guidelines Section 15178(b)(1) and (2). A Notice of Intent to Adopt the Mitigated Negative Declaration was noticed and published on August 19, 2011, with one comment received within the 20-day comment period.

HOUSING AND COMMUNITY DEVELOPMENT COMMISSION

The Housing and Community Development Commission considered and recommended this item for approval on August 24, 2011.

FISCAL IMPACT

HOME Program funds for the Hotel Fresno project are available in the Development and Resource Management Department's Fiscal Year 2012 Budget. The project's total cost is estimated at \$16.5 million, of which \$859,868 in HOME Program funds is proposed to be provided as gap financing. The Developer has invested \$2.7 million, and has secured a \$1.9 million Redevelopment Agency loan. An estimated \$11 million is proposed to be provided by a HUD 220 Program loan.

If the HOME Program Agreement is approved as recommended, HOME funds will not be disbursed until all the funding necessary to complete the project is secured under a contract or letter of commitment. If the Developer is unable to secure the balance of funds to complete the project by the end of HUD's 220 Program review, the City may terminate the Agreement. If the Agreement is terminated, the \$859,868 in HOME Program funds will be unencumbered and used for future affordable housing projects.

APPENDICES

- Exhibit A - Project Cost Information/Sources and Uses of Funds
- Exhibit B - HOME Program Agreement
- Exhibit C - Project Location Map
- Exhibit D - EA-11-012: Mitigated Negative Declaration