

1:30pm -- #5
9/29/11

Recorded at the Request of
and When Recorded Return to:

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

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

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

CITY OF FRESNO

By: Mark Scott
Mark Scott, City Manager

Date: 9-29-11

CITY OF FRESNO
HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT

HOME Investment Partnerships Program Agreement

by and between

CITY OF FRESNO,
a municipal corporation

and

Redding Retirement Housing Corp.
a California Nonprofit Public Benefit Corporation

regarding

Sierra Gateway Senior Residence II
Affordable Multi-Family Senior Housing
Adjacent to property at the southwest corner of
West San Jose Avenue and North Marty Avenue
Fresno, CA 93711 (APN: 415-044-59)

TABLE OF CONTENTS

Page

RECITALS.....	3
ARTICLE 1. DEFINITIONS	4
ARTICLE 2. TERMS	9
ARTICLE 3. GENERAL REPRESENTATIONS AND WARRANTIES OF DEVELOPER	10
ARTICLE 4. HOME PROGRAM REPRESENTATION AND WARRANTIES OF DEVELOPER.....	11
ARTICLE 5. COVENANTS AND AGREEMENTS OF DEVELOPER.....	17
ARTICLE 6. DISBURSEMENT OF HOME FUNDS.....	21
ARTICLE 7. DEVELOPMENT AND CONSTRUCTION OF PROJECT	23
ARTICLE 8. OPERATION OF SENIOR RENTAL HOUSING.....	28
ARTICLE 9. INSURANCE, INDEMNITY AND BONDS.....	32
ARTICLE 10. DEFAULT AND REMEDIES.....	34
ARTICLE 11. GENERAL PROVISIONS.....	36

EXHIBITS

- EXHIBIT A: PROJECT DESCRIPTION AND SCHEDULE
- EXHIBIT B: PROPERTY DESCRIPTION
- EXHIBIT C: PROJECT BUDGET
- EXHIBIT D: SPECIMEN DECLARATION OF RESTRICTIONS
- EXHIBIT E: SPECIMEN CERTIFICATE OF COMPLETION
- EXHIBIT F: SPECIMEN PROMISSORY NOTE
- EXHIBIT G: SPECIMEN DEED OF TRUST

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 Redding Retirement Housing Corp., a California nonprofit public benefit corporation (hereinafter referred to as "DEVELOPER").

RECITALS

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

WHEREAS, the DEVELOPER will act as owner/developer and exercise effective project control as to the construction of a sixty-eight (68) Unit apartment complex, of which sixty-seven (67) units shall be constructed and preserved as Low -Income and Very Low-Income Senior Rental Housing for seniors age sixty-two (62) and over, and related on-site and off-site improvements, pursuant to and with primary funding under HUD's Supportive Housing for the Elderly Program under Section 202 of the Housing Act of 1959, as amended, including related provisions at Section 811 of the Cranston-Gonzalez National Affordable Housing Act and its implementing regulations are 24 CFR 891 et seq. and related HUD Capital Advance Documents (collectively "Section 202 Program") incorporated herein by this reference (the "Project", as further defined herein), as more particularly described in the attached EXHIBIT "A", upon HOME eligible property to be owned by the DEVELOPER, located adjacent to the property located at the southwest corner of West San Jose Avenue and North Marty Avenues, within the boundaries of the City of Fresno, as more particularly described in the attached EXHIBIT "B" (the "Property"); and

WHEREAS, the Project will provide for the construction of sixty-eight (68) affordable senior rental housing units, of which one (1) will be an on-site manager unit, at the Property identified in EXHIBIT "B"; and

WHEREAS, to further its goal to increase the supply of Affordable Housing within the City of Fresno, the CITY desires to assist the DEVELOPER by providing a Seven Hundred Fifty Thousand dollar and 00/100 (\$750,000.00) zero percent interest, deferred payment forgivable HOME Program Loan as provided hereunder, for the Project, as further identified in EXHIBIT "C" (Project Budget), for eligible costs, to be secured by the underlying real property and the Affordable Housing covenants (hereinafter referred to as "Loan"), upon the terms and conditions in this Agreement; and

WHEREAS, the CITY has determined that this Agreement is in the best interest of, and will materially contribute to, the Housing Element of the General Plan. Further, the CITY has found that the Project: (i) will have a positive influence in the neighborhood and surrounding environs; (ii) is in the vital and best 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 Senior Housing available at affordable housing cost to Seniors of Low-Income, as defined hereunder; (v) planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of Low-Income Senior Housing, and (vi) will comply with any and all owner participation rules and criteria applicable thereto; and

WHEREAS, the environmental effects of the Project have been assessed resulting in a Finding of No Significant Impact pursuant to the National Environmental Policy Act (NEPA) completed on September 24, 2004 as EA No. H-2004-15, and Finding of Conformity to the 2025 General Plan Master Environmental Impact Report pursuant to the California Environmental Quality Act (CEQA) completed on October 28, 2004 as EA No. H-2004-15, and the HOME Funds have been approved by HUD for release pursuant to 24 CFR Part 58; and

WHEREAS, the CITY and the DEVELOPER have determined that the HOME Funded Project constitutes routine programmatic/grantee lender activities utilizing available and allocated program/grantee funding, outside the reach of California Constitution Article XXXIV and enabling legislation.

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

ARTICLE 1. DEFINITIONS

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

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

1.2 Acquisition means vesting of the Property in fee title.

1.3 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 Housing Unit(s) that are proposed for construction on the eligible Property, as hereinafter defined.

1.4 Affordability Period means the minimum period of fifty-five (55) years commencing from the date the CITY enters project completion information into HUD's Integrated Disbursement and Information System (IDIS), which date will be provided to the DEVELOPER by the CITY and added as an administrative amendment hereto; City agrees to enter project completion information into IDIS within 30 days of City's receipt thereof.

1.5 Affordable Housing means the rental housing units of which all will be required to meet the affordability requirements of 24 CFR 92.252.

1.6 Budget means the Budget for the development of the Project, as may be

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

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

1.8 CFR means the Code of Federal Regulations.

1.9 Commencement of Construction means the time the DEVELOPER or the DEVELOPER's construction contractor begins substantial physical work on the Property, including, without limitation, delivery of materials and any work, beyond maintenance of the Property in its status quo condition, which shall take place no later than thirty (30) calendar days following the HUD 202 Closing as hereinafter defined.

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

1.11 Deed of Trust means the Short Form Deed of Trust and Assignment of Rents in use by Lawyers Title Company ("Title Company") given by the DEVELOPER, as Trustor, to the CITY, as Beneficiary, with Title Company as Trustee, substantially in the form attached hereto as EXHIBIT "G", recorded against the Property not later than date of the making of the Loan, insured in the full amount of the Loan by a CLTA lender's policy, as well as any amendments to, modifications of, and restatements of said Deed of Trust, which shall be second and junior in lien to a deed of trust made by Trustor in favor of the Secretary of Housing and Urban Development ("Secretary") to be recorded concurrently securing a Capital Advance made by the Secretary pursuant to Section 202 of the Housing Act of 1959, as amended, or Section 811 of the Cranston-Gonzales National Affordable Housing Act and to a Regulatory Agreement and Use Agreement between Trustor and the Secretary with respect to the Property referred to herein. The terms of any such Deed of Trust are hereby incorporated into this Agreement by this reference.

1.12 Eligible Costs means those Project costs in the Budget, incurred by the DEVELOPER before the CITY issues the Certificate of Completion, and related to Property acquisition and Project pre-development/development costs for which HOME Funds may be used 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.

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

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

1.15 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.

1.16 HOME Investment Partnerships Program Funds (also referred to in this Agreement as HOME Funds) means the HOME Program monies in an amount not to exceed the sum of Seven Hundred Fifty Thousand dollars and 00/100 (\$750,000.00), provided to the DEVELOPER as a zero-interest deferred forgivable loan, to be used for eligible Project development costs, pursuant to this Agreement.

1.17 Household means a Senior Household consisting of one or more persons whose primary occupant is 62 years of age and over, or a single person 62 years of age and over, meeting the requirements of the HUD Section 202 Program during the term of the HUD Capital Advance Documents (as hereinafter defined), and for the fifteen (15) years following the HUD Capital Advance Documents term, it shall mean one or more persons whose primary occupant is 62 years of age or over who has an annual income of eighty percent (80%) or less of Fresno median income as set forth in section 1.32 below.

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

1.19 HUD Capital Advance shall mean the financial assistance to be provided by HUD to the DEVELOPER for development of the Project thereon.

1.20 HUD Capital Advance Agreement shall mean the agreement between HUD and the DEVELOPER pursuant to which HUD provides a HUD Capital Advance to the DEVELOPER for the Project.

1.21 HUD Capital Advance Documents shall collectively refer to the HUD Note, Deed of Trust, Regulatory Agreement, Use Agreement, Capital Advance Agreement and Project Rental Assistance Contract as required by Section 202 of the Housing Act of 1959, as amended, or by Section 811 of the Cranston-Gonzalez National Affordable Housing Act ("the Act").

1.22 HUD Capital Advance Program means the program established under the Act.

1.23 HUD Closing shall mean the point in time when all conditions of the HUD Firm Commitment is satisfied permitting the Project to commence construction.

1.24 HUD Deed of Trust means that Deed of Trust securing the HUD Capital Advance in favor of HUD.

1.25 HUD Firm Commitment shall mean the written commitment by HUD to the DEVELOPER to provide the HUD Capital Advance on terms set forth in such commitment.

1.26 HUD Note means the Promissory Note evidencing the HUD Capital Advance in favor of HUD and secured by the HUD Deed of Trust.

1.27 HUD Regulatory Agreement means the Regulatory Agreement encumbering the Property by and between the DEVELOPER and the Secretary of HUD.

1.28 HUD 202 Program means the program established under the Act.

1.29 Loan means the zero-interest deferred forgivable loan of Seven Hundred Fifty Thousand dollars and 00/100 (\$750,000.00) in HOME Funds, made by the CITY to the DEVELOPER, for eligible Project development costs, pursuant to this Agreement, as more specifically described in this Agreement and the Note.

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

1.31 Low-Income Household means those Senior households whose annual income does not exceed eighty percent (80%) of the median income for the Fresno, California area as determined by HUD, except as HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD findings that such variations are necessary. Notwithstanding the foregoing, during the term of the HUD Capital Advance Documents occupancy of the Project should be in accordance with HUD Section 202 requirements, which is limited to Very Low-Income Households of fifty percent (50%) of median income for the area.

1.32 Note means that certain zero-interest, deferred forgivable Note in a principal amount not to exceed Seven Hundred Fifty Thousand dollars and 00/100 (\$750,000.00), as provided herein, as promissor, in favor of the CITY as promisee, evidencing the Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement, secured by a Deed of Trust as 2nd position or better lien upon the Property, naming the CITY as beneficiary and provided to the CITY no later than the date of the HUD Closing, in the form attached hereto as EXHIBIT "F", as well as any amendments to, modifications of and restatements of said Note. The terms of the Note are hereby incorporated into this Agreement by this reference.

1.33 Project means the construction of the sixty-seven (67) Unit apartment complex for Senior Households and one (1) of which is a manager's unit, to be known as Sierra Gateway Senior Residence II, at the Property and preservation of the Project as rental housing for Low-Income and Very Low-Income Senior Households, to be assisted with HOME Funds, while meeting the Affordable Housing, income targeting and other requirements of 24 CFR 92.252 for the fifty-five (55) year Affordability Period, all as described in the Project Description attached hereto and incorporated herein as EXHIBIT "A", upon the Property as more particularly described in EXHIBIT "B", provided that during

the term of the HUD Capital Advance Documents the occupancy and tenant income limitations of the HUD 202 Program shall be applicable and, in the event of a conflict, the HUD Section 202 Program requirements shall control. In the event of a conflict between the HUD 202 Program requirements and the HOME requirements the matter shall be submitted to HUD for determination.

1.34 Project Completion Date means the date that the CITY shall have determined that the Project: 1) has reached completion in accordance with the plans and specifications as approved by the CITY; 2) is in compliance with all Housing Standards, and 3) has been issued a Certificate of Occupancy. The project Completion Date for this Project is identified in EXHIBIT "A", or as extended by HUD and noticed to the CITY.

1.35 Project Schedule means the schedule for completion of the Project included in EXHIBIT "B".

1.36 Property means the real property described in EXHIBIT "B".

1.37 Rent means the total monthly payments a tenant pays for a Unit including the following: use and occupancy of the Unit and land and associated facilities, including parking (other than parking services acquired by tenants on an optional basis), any separately charged fees or service charges assessed by 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, electricity, gas and other heating, cooking and refrigeration fuel, 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.

1.38 Rental Housing is the sixty-eight (68) units of senior apartments to be constructed and having a project name of Sierra Gateway Senior Residence II, to be located at the Property, and which sixty-seven (67) Units in the Project shall be preserved as rental housing for households as set forth in EXHIBIT "A" hereto.

1.39 Section 202 means that Section 202 of the Housing Act of 1959, The Supportive Housing for the Elderly Program, implemented by 24 CFR 891 et seq., and all HUD Capital Advance Documents thereunder.

1.40 Senior means an individual age sixty-two (62) years and over as provided in the Section 202 Program.

1.41 Unit means a dwelling unit of the Rental Housing.

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

ARTICLE 2. TERMS

2.1 Loan of HOME Funds. The CITY agrees to provide a Loan of HOME Funds to the DEVELOPER, as provided herein, in an amount not to exceed Seven Hundred Fifty Thousand dollars and 00/100 (\$750,000.00), as needed, under the terms and conditions provided in this Agreement. The HOME Funds shall only be used for the Project for Eligible Project Costs under the HOME Program. The CITY acknowledges that the Loan of HOME Funds is to pay for costs not included within the HUD Capital Advance and that all CITY Loan Funds are to be disbursed before any HUD Capital Advance funds.

2.2 Loan Documents. The DEVELOPER shall execute and deliver, or cause to be executed and delivered, to the CITY the Loan Documents including the Note, as provided for in this Agreement, and the Declaration of Restrictions and Deed of Trust which shall be recorded against the Property.

2.3 Term of Agreement. This Agreement is effective upon the date of execution and shall remain in force until the end of the Project's Affordability Period. It is understood and agreed upon, however, that if for any reason this Agreement should be terminated as provided hereunder, without default, by the DEVELOPER prior to disbursement of HOME Program Funding hereunder, the CITY agrees to record a Notice of Cancellation regarding this Agreement upon the written request of the DEVELOPER. After the fifty-five (55) year Affordability Period, this Agreement will expire and the Loan will be forgiven unless at said time the DEVELOPER is in material default under this Agreement and a Default has been declared by City and not remedied at such time.

2.4 Loan Repayment and Maturity. The Loan shall be due and payable in full upon any early termination of this Agreement including a termination due to Default, provided that if the DEVELOPER fully complies with the terms of the Loan Documents and HUD regulations at 24 CFR 92, upon expiration of the Affordability Period, the Loan shall be forgiven and the Deed of Trust reconveyed, provided, further, that the Loan shall not be accelerated during the term of the HUD Capital Advance Documents without the prior written approval of HUD.

2.5 Incorporation of Documents. The Project proposal to the City dated April 15, 2011, the DEVELOPER's Resolution dated July 28, 2011, authorizing pursuit of the Project according to the terms and conditions herein, CITY Council approved Minutes of September 29, 2011, approving this Agreement, the Loan Documents, the Act and HUD regulations at 24 CFR Part 92, the Section 202 Program, 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 covenants and agrees to comply with all the terms and conditions of this Agreement and the DEVELOPER covenants and agrees that the Project will comply with all the requirements of 24 CFR Part 92 and this Agreement. In the event of any conflict between the HOME requirements and

the requirements of the HUD Capital Advance Documents, the matter shall be submitted to HUD for determination.

ARTICLE 3. GENERAL REPRESENTATIONS AND WARRANTIES OF DEVELOPER

3.1 Existence and Qualification. The DEVELOPER, a duly organized California nonprofit corporation, agrees that upon receiving a Fund Reservation from HUD for the development of the Project, the DEVELOPER, shall for purposes of this Project do business as Sierra Gateway Senior Residence II, a single asset entity with corporate office in Glendale, California. The DEVELOPER shall neither be controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. The DEVELOPER shall have among its corporate purposes the provision of decent housing that is affordable to Low-Income and Very-Low Income Seniors. The DEVELOPER shall have the requisite power, right, and legal authority to execute, deliver, and perform its obligations under the HOME Agreement as provided herein and shall take all actions necessary to authorize the execution, delivery, performance, and observance of its obligations under this Agreement. This Agreement, when executed and delivered, shall constitute the legal, valid, and binding obligations of the DEVELOPER as provided herein, 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 as of the date hereof that, except as disclosed to and approved by CITY in writing, no litigation or administrative proceeding before any court or governmental body or agency is now pending, nor, to the best of the DEVELOPER's knowledge, is any such litigation or proceeding now threatened, or anticipated against the DEVELOPER that, if adversely determined, would have a material adverse effect on the financial condition, business, or assets of the DEVELOPER or on the operation of the Project.

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

3.4 No Legal Bar. The DEVELOPER represents and warrants 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; (b) governing documents and instruments of the DEVELOPER; or (c) any mortgage, indenture, security agreement, contract, undertaking, or other agreement or instrument to which the DEVELOPER is a party or that is binding on any of its properties or assets, the result of which would materially or substantially impair the DEVELOPER's ability to perform and discharge its obligations or its ability to complete the Project under this Agreement.

✓

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

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

3.7 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, and local governmental reviews, consents, authorizations, approvals, and licenses presently required by law to be obtained by the DEVELOPER for the Project as of the date hereof, excluding the Project building and land use permits and approvals which shall be obtained before commencement of construction.

ARTICLE 4. HOME PROGRAM REPRESENTATION AND WARRANTIES BY DEVELOPER

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

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

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.

2

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

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

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

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

4.2 Affirmative 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 in the rental of Project Units. 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 constructed in the future, and to assess the results of these actions. The CITY shall accept the Section 202 Program marketing documents and records in lieu of those required by this section. The DEVELOPER shall furnish the CITY with a copy of the Section 202 Program marketing documents given by HUD. During the term of the HUD Capital Advance Documents, compliance with the HUD affirmative marketing requirements shall be deemed compliance with the requirements of this provision.

4.3 Availability of HOME Funds. The DEVELOPER understands and agrees that the availability of HOME Funds is subject to the control of HUD, or other federal agencies, and should said Funds be encumbered, withdrawn or otherwise made unavailable to the CITY, whether earned by or promised to the DEVELOPER, 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 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 10.1 of this Agreement, the CITY may suspend or terminate this Agreement and all other agreements with the DEVELOPER without waiver or limitation of rights/remedies otherwise available to the CITY, subject to HUD's prior approval during the term of the Capital Advance Documents.

4.5 Conflict of Interest. The DEVELOPER represents and warrants as of the date hereof that no official, officer, agent, or employee of the CITY directly or indirectly owns or controls any interest in 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. 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 (other than an employee or agent of the DEVELOPER who occupies a unit as the project manager or maintenance worker) may occupy a Project Unit. The DEVELOPER understands and acknowledges that no employee, agent, consultant, officer or elected official or appointed official of the CITY, who exercises 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 there under, 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 a Project Unit.

4.6 Construction Standards. The DEVELOPER shall construct the proposed housing units assisted under this Agreement in compliance with all applicable local codes, ordinances and zoning requirements in effect at the time of issuance of Certification of Completion. In the absence of a local code for construction, the DEVELOPER agrees to comply with the applicable standards identified in 24 CFR 92.251.

4.7 Covenants and Restrictions to Run with the Land. The CITY and the DEVELOPER expressly warrant, covenant and agree to ensure that the covenants and restrictions set forth in this Agreement shall run with the land by Declaration of Restrictions and shall bind all successors in title to the Senior Rental Housing, provided, however that on expiration of this Agreement and the Affordable Housing requirements therein said covenants and restrictions shall expire. CITY and the DEVELOPER further warrant, covenant and agree that the covenants and restrictions set forth herein shall run in favor of the CITY.

A. The CITY and the DEVELOPER hereby declare their understanding and intent that the covenants and restrictions set forth herein directly benefit the land (a) by enhancing and increasing the enjoyment and ownership of the Rental Housing by certain Very Low and Low-Income Senior Households, and (b) by making possible the obtaining of

advantageous financing for construction.

B. The DEVELOPER covenants and agrees that from the date the Project information is entered into HUD's Integrated Disbursement and Information System which date shall be provided to the DEVELOPER by the City by an administrative amendment hereto, until the expiration of the Affordability Period, it shall cause the Rental Housing to be used for Affordable Housing.

C. In the event that the DEVELOPER fails to comply with the time period in which the Project must constitute Affordable Housing, the CITY shall, without waiver of limitation, be entitled to injunctive relief, as the DEVELOPER acknowledges that damages are not an adequate remedy at law for such breach.

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

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

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

G. This Agreement, the Deed of Trust and the Declaration of Restrictions shall be subject and subordinate to the HUD Capital Advance Documents including, but not limited to, the HUD Deed of Trust, the HUD Regulatory Agreement and the HUD Use Agreement.

H. In the event the HUD Project Rental Assistance Contract ("HUD operating subsidy") is discontinued during the term of the anticipated HUD Capital Advance Period, the then owner of the Project shall be entitled to rent to Low-Income Senior Households as defined herein and the income and rental restrictions shall be automatically modified to be consistent with this provision.

4.8 Displacement of Persons. The DEVELOPER warrants, covenants and agrees 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).

4.9 Initial and Annual Income Certification and Reporting. The DEVELOPER warrants, covenants and agrees that it shall comply with the procedures for initial and annual income determinations at 24 CFR 92.203. The DEVELOPER, shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from each tenant Senior Household renting any 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; (4) if the applicant is unemployed and has no such tax return, obtain another form of independent verification, or (5) conduct a credit agency or similar search. Copies of tenant income certification and verification must be available for review by the CITY upon request. CITY shall accept Section 202 Program certifications and reporting in lieu of that required by this section to the extent consistent therewith and in the event of a conflict the HUD requirements shall control. The DEVELOPER shall furnish CITY with a copy of the Section 202 Program certifications and reporting given to HUD.

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

4.11 Minority Outreach Activities. The DEVELOPER warrants, covenants and agrees 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. During the term of the HUD Capital Advance Documents, compliance with HUD's Minority Outreach requirements for the Section 202 program shall satisfy the requirements of this provision.

4.12 Other Laws and Regulations. The DEVELOPER warrants, covenants and agrees 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, the following requirements follows:

A. The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), and all other regulations as identified in 24 CFR 58.6.

1. The Project is not located in a tract identified by the Federal

Emergency Management Agency as having special flood requirements.

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

C. The property standards at 24 CFR 92.251.

D. 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).

E. 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.

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

G. 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").

H. 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.

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

J. The provision of Executive Orders 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24.

K. 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.

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

M. Executive Order 11063 on Equal Opportunity and Housing.

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

O. The Housing and Community Development Act of 1974.

4.13 Faith Based Activities. With regard to matters pertaining to the Project, the 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 that it shall submit performance reports to the CITY as detailed in Section 7.16. Furthermore, the DEVELOPER agrees to provide, at the sole cost of the DEVELOPER, an annual audited Financial Statements for the 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). CITY shall accept the annual audited financial statement submitted to HUD under the HUD Section 202 Program as compliance with this section. The DEVELOPER shall furnish CITY with a copy of the Section 202 Program annual audited financial statement given to HUD.

4.15 Affordability Period. During the term of the HUD Capital Advance Documents and thereafter, the DEVELOPER warrants, covenants and agrees that the Senior Rental Housing will meet the Affordable Housing income targeting and other requirements of 24 CFR 92.252 during the Affordability Period. The Units shall, at a minimum, be rented to and occupied by, or if vacant, available for rental and occupancy by Low- and Very Low-Income Senior Households provided for in EXHIBIT "A" hereto for the Affordability Period except upon foreclosure by a lender or transfer in lieu of foreclosure following default under a Deed of Trust. However, if at any time following transfer by foreclosure or transfer in lieu of foreclosure, but still during the Affordability Period, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes such owner of record or those whom such owner of record has or had family or business ties, obtains an ownership interest in the Project or Property, the Affordability Period shall be revived according to its original terms except as provided in Section 11.23 hereof. The CITY shall accept the HUD Capital Advance Documents as compliance with the provisions of this Section 4.15 and in the event of a conflict the HUD Capital Advance Documents shall control. In the event of any conflict between the HOME requirements and the HUD Capital Advance Documents the matter shall be submitted to HUD for determination.

4.16 Terminated Projects. The DEVELOPER understands and agrees that, if the Project is terminated before the commencement of the term of the HUD Capital Advance Documents, either voluntarily or otherwise, such constitutes an ineligible activity and any HOME Funds disbursed hereunder must be repaid to the CITY's HOME Investment Trust Fund in accordance with 24 CFR 92.503(b) subject to HUD approval.

ARTICLE 5. COVENANTS AND AGREEMENTS OF DEVELOPER

The DEVELOPER, for itself and its development team, covenants and agrees to the following, for the entire term of the Agreement.

5.1 Adequate Repair and Maintenance. The DEVELOPER shall, during the entire Affordability Period, maintain the Project and Property in compliance with all applicable codes, laws, and ordinances.

5.2 Compliance With Environmental Laws. The DEVELOPER shall cause the Project to be in compliance with, and not to cause or permit the Senior Rental Housing project to be in violation of, any environmental 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 eligible Property for such violation. If a violation is discovered, the DEVELOPER shall pay for the reasonable cost of the independent consultant.

Additionally, the DEVELOPER agrees:

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

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

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

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

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

3. 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.

5.3 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 prevailing wage and public bidding requirements. The DEVELOPER acknowledges that the use of HOME Funds subjects the Project to extensive federal

regulation and covenants and agrees that it shall comply with, conform to and obey (and take steps as are required of the DEVELOPER to enable the CITY to comply with, conform to and obey) all federal statutes, regulations, rules and policies applicable to the Project. The CITY and the DEVELOPER acknowledge that: (i) pursuant to 24 CFR 92.354, a contract for the construction rehabilitation or new construction) of housing that includes fewer than 12 units assisted with HOME funds need not contain a provision requiring the payment of wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing, or the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), and (ii) pursuant to Cal. Labor Code 1720, the public participation in the Project that would otherwise meet the criteria of a public work for which State prevailing wage is required under Cal. Lab. Code 1720 et seq. is exempt where the public funding is in the form of a below-market interest rate loans for a project in which occupancy of at least forty percent (40%) of the units is restricted for at least twenty (20) years, by deed or regulatory agreement, to seniors earning no more than eighty percent (80%) of the area median income. Nonetheless, the DEVELOPER shall be solely responsible for determining and effectuating compliance. Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall be construed as imposing any independent prevailing wage requirements that are different from those imposed by applicable federal or state law. In the event of a conflict between the requirements of the HOME Program and the HUD 202 Program, the matter shall be submitted to HUD for determination. Nothing in this section shall limit or constitute a waiver by the DEVELOPER of rights available to it under law.

5.4 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.

5.5 Financial Statements and Audits. The DEVELOPER, as a subrecipient 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 HOME 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, the 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 Project during the prior fiscal year.

C. CITY shall accept the annual audited financial statement submitted to HUD under the HUD Section 202 Program as compliance with this section. The DEVELOPER shall furnish CITY with a copy of the Section 202 Program annual audited financial statement given to HUD.

5.6 Inspection and Audit of Books, Records and Documents. The DEVELOPER shall be accountable to the CITY for all HOME Funds disbursed for this project pursuant to this Agreement. Any duly authorized representative of the CITY, the State, or HUD shall, at all reasonable times, have access to and the right to inspect, copy, make excerpts or transcripts, audit, and examine all books of accounts, records, files and other papers or property, and other documents of the DEVELOPER pertaining to the Project or all matters covered in this Agreement and for up to 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, except as provided in section 11.23.

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, except as provided in section 11.23.

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

5.7 Inspection of Property. Any duly authorized representative of the CITY, the State, or HUD shall, at all reasonable times and in any manner allowed by law, have access and the right to inspect the Property until completion of the Project and expiration of the applicable Affordability Period, provided reasonable effort shall be made to provide the property manager with a seventy-two (72) hours written notice, subject to the rights of the tenants.

5.8 No Other Liens. The DEVELOPER shall not create or incur, or suffer to be created or incurred, or to exist, any additional mortgage, pledge, encumbrance, lien, charge, or other security interest of any kind on the eligible Property, other than those related to the Project's equity investment, deferred developer fee loan or grants and construction or pre-development loans in relation to the Project without the prior written consent of the CITY.

5.9 Nondiscrimination. The DEVELOPER shall comply with and cause any and all contractors and subcontractors to comply with any and all federal, state, and local laws

with regard to illegal discrimination, and the DEVELOPER shall not illegally discriminate against any persons on account of race, religion, sex, family status, age, handicap, or place of national origin in its performance of this Agreement and the completion of the Project.

5.10 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 the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed and excluding: (i) a Transfer to HUD or HUD's transferee and (ii) any Transfer approved by HUD. "Transfer" shall exclude the leasing of any single Unit in the Project.

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

5.12 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 Use of HOME Program Funds. The DEVELOPER warrants, covenants and agrees that it shall request HOME Program Funds limited to the amount needed for eligible costs, including costs allowable under 24 CFR 92.206, aggregating not more than Seven Hundred Fifty Thousand dollars and 00/100 (\$750,000.00) and not otherwise paid by Section 202 Program Funds. The CITY's obligations shall in no event exceed the HOME Funds amount specified in this Agreement. Any Project costs exceeding Seven Hundred Fifty Thousand dollars and 00/100 (\$750,000.00), whether or not the costs qualify as Eligible Costs, shall be the sole responsibility of the DEVELOPER.

A. If any such Funds shall be determined to have been requested and/or used by the DEVELOPER for something other than eligible land acquisition reimbursement or development costs, and subject to the notice and cure provisions of Section 10.2 hereunder, an equal amount from non-public 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 acknowledges that the Loan of HOME Funds is to pay for costs not included within the HUD Capital Advance and that all CITY Loan Funds are to be disbursed before any HUD Capital Advance funds.

6.2 Conditions Precedent to Disbursement. The CITY shall not be obligated to make or authorize any disbursements of HOME Funds or take any other action under this Agreement unless the following conditions are satisfied:

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

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

C. The DEVELOPER, as to any eligible construction costs hereunder, has entered into, and provided the CITY copies of proposed Project surety bonds, and proposed agreements with all Funding Sources and contractors for the Project, provided fully executed bonds and agreements shall be provided when available. The DEVELOPER shall immediately notify the CITY of any event such bonds and agreements are terminated, cancelled or in default.

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

E. For any construction reimbursements, the CITY has approved the Project for commencement of construction.

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

G. The DEVELOPER has provided the CITY with a written request for HOME Funds, as detailed in Section 6.3 below.

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

6.3 Request for Disbursement of 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 Seven Hundred Fifty Thousand dollars and 00/100 (\$750,000.00) in HOME Program assistance. All requests should provide in detail such Eligible Costs applicable to the request. The form of the HUD Section 202 Program disbursement shall be accepted by the CITY on and after the HUD Closing.

A. Along with the request for such disbursements, the DEVELOPER shall submit to the CITY such other documentation, including, but not limited to, invoices for work completed and in place and for materials purchased and suitably stored. Notwithstanding the foregoing, the parties acknowledge and agree that all of the CITY HOME funds will be disbursed before the Capital Advance funds.

B. Any request for HOME funds disbursement by the DEVELOPER shall be accompanied with the Certification required by Section 6.4 of this Agreement.

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

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

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

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

D. The Disbursement requested will be used solely for Eligible Costs identified in this Agreement. The DEVELOPER shall certify that the itemized obligations have been properly incurred and are properly chargeable in connection with the Project.

6.5 Disbursement of Funds. Disbursement of HOME Program Loan funds 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 CONSTRUCTION OF PROJECT

Without waiver of limitation, the parties agree as follows:

7.1 Pre-construction Meeting Regarding HOME Program Processes and Procedures. The CITY will schedule, and the DEVELOPER shall attend a meeting prior to construction with the CITY's Housing and Community Development Division for the purpose of outlining HOME Program processes and procedures.

7.2 Commencement and Completion of Project. The DEVELOPER shall begin construction of the Project no later than thirty (30) days following the HUD Closing. The Project shall be completed no later than the date identified in the Project Schedule in EXHIBIT "A", unless extended by HUD.

7.3 Contracts and Subcontracts. 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 or subcontractors for this Project, as the CITY may reasonably request. The DEVELOPER shall notify the City immediately of any termination or cancellation of the construction contract on the Project, the filing of mechanic's/materialman lien on the Project, or an event of default under such construction contracts and subcontracts. 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 or provided in 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. The DEVELOPER shall use its best efforts to commence such work or repair within ninety (90) days after the insurance proceeds are made available to the DEVELOPER and the DEVELOPER shall use its best efforts to complete such work or repair within one (1) year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, the DEVELOPER shall use its best efforts to make up the deficiency from the residual receipts of the Project with HUD's prior written approval.

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 Property or the Project, and shall pay such charges prior to delinquency. However, the DEVELOPER shall not be required to pay and discharge any such charge so long as: (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the CITY, the DEVELOPER shall deposit with the CITY any funds or other forms of assurances that the CITY, in good faith, may determine from time to time are appropriate to protect the CITY from the consequences of the contest being unsuccessful. Nothing herein prohibits the DEVELOPER from applying for or obtaining any tax exemptions or abatements or relief allowed by law and consistent with HOME program requirements.

7.6 Financing. The DEVELOPER shall promptly inform the CITY of any new financing or funding, and the DEVELOPER shall provide the CITY copies of all agreements with any and all Funding Sources for this Project. 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). In the event the DEVELOPER fails to comply with its obligations of this Section, the Loan shall become immediately due and payable as provided for in this Agreement. This section shall survive expiration or termination of this Agreement except as provided in Section 11.23 hereof. There shall be no acceleration by the CITY of its Loan during the term of the HUD Capital Advance Documents without the prior written approval of HUD.

7.7 Identification Signage. Before the start of construction, the DEVELOPER shall place a poster or sign, with a minimum four feet by four feet in size, identifying the City of Fresno Development and Resource Management Department, Housing and Community Development Division as a Project participant. The sign shall also include the CITY's Housing logo, as well as the Equal Housing Opportunity logo, as mandated by HUD. The sign shall be 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, during reasonable business hours, for the purpose of determining compliance with this Agreement, including without limitation those annual on-site inspections required of the CITY by 24 CFR 92.504(d).

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

7.11 Mechanic's Liens and Stop Notices. If any claim of lien is filed against the Property or a stop notice affecting any financing, HOME Program Funds or Funding Sources for the Project is served on the CITY or any other third party in connection with the Project, the DEVELOPER shall, within twenty (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 the Section above, then, in addition to any other right or remedy, the CITY may, but shall not be obligated to, discharge such lien, encumbrance, charge, or claim at the DEVELOPER's expense. Alternatively, the CITY may require the DEVELOPER to immediately deposit with the CITY, the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The CITY may use such deposit to satisfy any claim or lien that is adversely determined against the DEVELOPER. The DEVELOPER hereby agrees to indemnify and hold the CITY harmless from liability for such liens, encumbrances, charges or claims together with all related costs and expenses. During the term of the HUD Capital Advance Documents, any monies owed under this provision shall be made only from residual receipts as defined by the HUD Regulatory Agreement and as approved in writing by HUD. In the event HUD acquires title to the Property, HUD shall have no liability under this provision.

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

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

7.13 Plans and Specifications.

A. The DEVELOPER has submitted to the CITY preliminary plans and Specifications for the Project under Conditional Use Permit (CUP) file number C-04-062 ("Affordable Preliminary Plans"). The DEVELOPER will construct the Project in full conformance with the CITY-approved CUP 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. Additionally, during the term of the HUD Capital Advance Documents Project change orders approved by HUD shall be deemed approved by City.

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.

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 Davis-Bacon and Related Acts wage requirements absent written direction/determination otherwise by HUD or a court of competent jurisdiction. This project is a "public work" project for California Labor Code Section 1720 et seq. wage requirements, to which Section 1771 applies, absent written direction/determination by 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 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 the performance of all contractors, subcontractors, consultants and suppliers. Any review or inspection undertaken by the CITY with reference to the Project and/or payroll monitoring/auditing is solely for the purpose of determining whether 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 representative 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 Project and all improvements on site in a reasonably good condition and repair (and, as to landscaping, in a healthy condition), all according to the basic design and related plans, as amended from time to time. The DEVELOPER and those taking direction under the DEVELOPER shall: (i) maintain all on-site improvements according to all other applicable law, rules, governmental agencies and bodies having or claiming jurisdiction and all their respective

departments, bureaus, and officials; (ii) keep the improvements free from graffiti; (iii) keep the Project 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 construct the Project and shall employ building materials of a quality suitable for the requirements of the Project. The DEVELOPER shall cause completion of construction of the Project on the Property in full conformance with applicable local, state and federal laws, statutes, regulations, and building and housing codes.

7.17 Relocation. If and to the extent that construction 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 regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. The DEVELOPER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

7.18 Reporting Requirements. The DEVELOPER shall submit to the CITY the following Project reports provided the CITY shall accept HUD Section 202 Program reports in lieu thereof:

A. From the date of execution of this Agreement, until issuance of the final Certificate of Completion, the DEVELOPER shall submit a Quarterly Report, in a form approved by the CITY, which will include, at a minimum, the following information: progress of the Project and affirmative marketing efforts. The Quarterly Reports are due fifteen (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 Certificate of Completion, and continuing until the termination of the Agreement, the DEVELOPER shall submit an Annual Report to the CITY, in a form approved by the CITY. The Annual Report shall include, at a minimum, the following information: information as to the occupancy/tenancy of each Affordable Senior Housing Unit including (as applicable): the annual income and the family size of the Household, the date the occupancy/tenancy commenced, certification from an officer of the DEVELOPER that the Project is in compliance with the Affordable Senior Housing 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 final Certificate of Completion, evidencing the construction of the Project, and continuing until the expiration of the Agreement, the DEVELOPER shall submit proof of insurance as required in Article 9.

7.19 Scheduling and Extension of Time; Unavoidable Delay in Performance. It shall be the responsibility of the DEVELOPER to coordinate and schedule the work to be performed so that the Commencement of Construction and issuance of the Certificate of



Completion will take place in accordance with the provisions of the Agreement and Project Schedule, provided any extension approved by HUD shall be deemed approved by the City. 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 will be granted only if written notice by the party claiming such extension is sent to the other party within ten (10) 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, shall not cumulatively exceed one hundred eighty (180) days.

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

ARTICLE 8. OPERATION OF SENIOR RENTAL HOUSING

8.1 Operation of the Project. The DEVELOPER, its development team, and authorized agents thereof shall, Lease, operate and manage the Project in full conformity

with the terms of this Agreement. Compliance by the DEVELOPER with the requirements of the HUD Capital Advance Documents shall constitute compliance with the provisions of this Article 8 and in the event of a conflict between this Article 8 and the HUD Section 202 Program requirements, the HUD requirements shall control.

8.2 Occupancy Requirements. The DEVELOPER covenants and agrees that sixty-seven (67) Units of the Project shall constitute Affordable Housing for Senior Households consistent with the Section 202 Program, and shall be rented and occupied by, or if vacant, available for rental occupancy by: (a) Senior person(s) whose annual household income at the time of initial occupancy is not greater than fifty percent (50%) of the most recent annual median income, calculated and published by HUD for the Fresno Metropolitan Statistical Area, applicable to such household size, and at an affordable rent consistent with the HOME Program regulations (as variously provided at 24 CFR 92.252) for the term of the HUD Capital Advance Documents and not greater than eighty percent (80%) of annual median income during the last fifteen (15) years of the Affordability Period. The DEVELOPER shall comply with the income targeting requirements of 24 CFR 92.216. Compliance by the DEVELOPER with the requirements of the HUD Capital Advance Documents shall constitute compliance with the foregoing provisions of this section and in the event of a conflict, the HUD requirements shall control. In the event of a conflict between 24 CFR 92.216 and the HUD 202 requirements, the matter shall be submitted to HUD for determination. One (1) Project unit shall be reserved as an on-site manager unit.

8.3 Leasing the Project. Before leasing any Units, the DEVELOPER shall submit its proposed form of Lease for CITY's review and approval. The DEVELOPER covenants and agrees to utilize only Leases that have been approved in advance by CITY. The CITY shall respond to the DEVELOPER submission of a sample Lease within thirty (30) days. Should CITY not respond within thirty (30) days of Lease submittal, the DEVELOPER shall be authorized to use the submitted sample Lease. Additionally, the DEVELOPER agrees not to terminate the tenancy or to refuse to renew a Lease with a tenant of Rental Housing assisted with HOME Funds except for a serious or repeated violation of the terms and conditions of the Lease, for violation of applicable federal, state, or local law, or for other good cause. Any such termination or refusal to renew must be preceded by not less than 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 CITY the number of Leases that were not renewed or terminated and the reason for such non-renewal or termination. The CITY shall accept the form of lease required by HUD as compliance with the requirements of this Section 8.4 and 8.5.

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

A. The DEVELOPER shall include in Leases for all Units, provisions which authorize the DEVELOPER to immediately terminate the tenancy of any Household of whose one or more members misrepresented any fact material to the qualification as a Very Low-Income or Low-Income Senior Household. Each such Lease shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for a Very Low- to Low-Income Senior Household 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 the Rental Housing and at least sixty (60) calendar days prior to the Project Completion Date, the DEVELOPER shall submit to CITY for review and approval a plan for marketing and managing the Rental Housing (hereinafter referred to as the "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 Units to prospective tenants and how the DEVELOPER plans to certify the eligibility of potential tenants. The Final Management Plan shall also address how the DEVELOPER and/or the management entity plan to manage and maintain the Rental Housing, and shall include appropriate financial information and documentation. The Final Management Plan shall contain detailed descriptions of policies and procedures with respect to tenant selections and evictions. Topics to be covered in these procedures shall include at a minimum the following:

- Interviewing procedures for prospective tenants;
- Previous rental history of tenants with references;
- Credit reports and checks;
- Criminal background checks;
- Deposit amounts, purpose, use and refund policy;
- Employment/Income verification;
- Occupancy restrictions;
- Income Limit;
- 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 Project tenants. The DEVELOPER shall abide by the terms of this Final Management Plan, approved by the CITY, in marketing, managing and maintaining the Rental Housing. The CITY shall accept Section 202 marketing and management plans/requirements in satisfaction of the requirements of this section.

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.

The CITY shall have the right to require a change in the management agent at any time during the term of this Agreement, should the management agent in place fail to perform satisfactorily. Any contracting of management services by the DEVELOPER shall not relieve the DEVELOPER of its primary responsibilities for proper performance of management duties. The CITY shall accept the management contract and any

amendments approved by HUD in satisfaction of the requirements of this section.

8.6 Property Management. With respect to the Project and during the entire Affordability Period, 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 and the Affordable Senior Rental Housing including, without limitation, the selection of tenants, certification and re-certification of Household age, size and income, evictions, collection of Rents and deposits, construction management, affirmative marketing, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. The CITY shall have no responsibility for such management of the Project.

8.7 Maintenance and Security. The DEVELOPER shall during the entire Affordability Period: (i) at its own expense maintain the Senior Rental Housing in good condition, in good repair and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of Unit occupants; (ii) not commit or permit any waste on or to the Rental Housing, and shall prevent and/or rectify any physical deterioration of the Rental Housing; and (iii) maintain the Project 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 six-seven (67) Affordable Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible seniors and are 62 years of age or over. Consistent with the Section 202 Program, the DEVELOPER shall not illegally discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease or rental of any part of the Project or Property on the basis of race, color, ancestry, national origin, religion, sex, age, marital status, family status, source of income/rental assistance subsidy, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), sexual orientation, or any other arbitrary basis. 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, lessees, sub-lessees, subtenants or vendees of any Unit or in connection with employment of persons for the operation and management of any Unit. All deeds, leases or contracts made or entered into by the DEVELOPER as to the Units or the Affordable Senior Rental Housing, 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 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. During the term of the HUD Capital



Advance Documents and the CITY's affordability period, the DEVELOPER covenants and agrees not to charge rent for Units in excess of the rent established by HUD, and further covenants not to impose a monthly allowance for utility services to tenants of such Units in excess of an amount approved by HUD in accordance with 24 CFR 92.252. The DEVELOPER agrees to furnish to the CITY a certificate setting forth the maximum monthly rentals for Units and the monthly allowances for utilities and services to be charged during any annual period until the expiration of the Affordability Period. The DEVELOPER shall reexamine the income of each tenant Household living in the Units at least annually, and as may be required by HUD

ARTICLE 9. INSURANCE AND INDEMNITY AND BONDS

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

9.1 Insurance Coverage. Throughout the life of this Agreement, DEVELOPER, itself or through its contractors shall pay for and maintain or cause to be paid and maintained in full force and effect all policies of insurance (or self-insurance upon approval by CITY'S Risk Manager) 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:

1. BUILDERS RISK INSURANCE in an amount to provide coverage to 100 percent (100%) of the replacement value of the Project, including terms of labor and materials in place or to be used as part of the permanent construction, including surplus miscellaneous materials and supplies incidental to the work and such scaffolding, staging, towers, forms and equipment as are not owned or rented by the DEVELOPER, the cost of which is not included in the cost of work.

A. The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of the CITY, of policy cancellation, change or reduction of coverage. In the event any policy is due to expire during the term of this Agreement, 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(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, DEVELOPER or its contractors, as the case may be, shall file with the CITY a certified copy of the new or renewal policy and certificates for such policy.

B. DEVELOPER shall furnish the CITY with the certificate(s) and applicable endorsements for ALL required insurance prior to the CITY's execution of this Agreement. DEVELOPER shall furnish the CITY with copies of the actual policies upon the request of the CITY at any time during the life of the Agreement or any extension.

At all times hereunder DEVELOPER shall maintain the required insurance in full force and effect.

C. During the term of the HUD Capital Advance Documents, compliance with the insurance requirements of HUD including all terms and conditions thereof shall be deemed to satisfy the insurance requirements of this Agreement, provided the CITY and its employees and representatives shall be named as additional insureds on any policies of insurance.

9.2 Indemnity. 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, DEVELOPER or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. DEVELOPER's obligations under the preceding sentence shall apply regardless of whether the CITY or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active negligence or by the willful misconduct of the CITY or any of its officers, officials, employees, agents or volunteers. During the term of the HUD Capital Advance Documents any monies owed City or any other indemnitee hereunder by DEVELOPER shall be payable only from residual receipts as defined in the HUD Regulatory Agreement subject to the prior written approval of HUD.

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

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

9.4 Bond Obligations. DEVELOPER shall cause its contractor(s) to obtain, pay for and deliver good and sufficient payment and performance bonds in a form acceptable to HUD from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California. The CITY upon its request shall be provided with a copy of said bond(s).

A. The "Performance Bond" shall be at least equal to 100% of estimated construction costs as approved by HUD to guarantee faithful performance of the construction contract.

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

ARTICLE 10. DEFAULT AND REMEDIES

10.1 Events of Default. The parties agree that each of the following shall constitute an "Event of Default" by the DEVELOPER for purposes of this Agreement:

A. Use of HOME Funds for costs other than Eligible Costs or for uses not permitted by the terms of this Agreement;

B. Failure to obtain and maintain the insurance coverage required under this Agreement;

C. Failure to make any payment according to the tenor and effect of this Agreement and the Loan Documents, including, but not limited to, any payment of principal, premiums, penalties, taxes, etc., when and as the same shall become due and payable, whether at maturity, by acceleration, or otherwise;

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

E. Any representation, warranty, or certificate given or furnished by or on behalf of the DEVELOPER or its development team 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;

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

federal law, and such judgment or decree is not vacated or set aside within fourteen (14) days;

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

H. 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;

I. The failure of the DEVELOPER to cause completion of the construction and Development of the Project on or prior to August 1, 2014 unless extended by HUD;

J. The DEVELOPER's breach of any other material condition, covenant, warranty, promise or representation contained in this Agreement not otherwise identified within this Section J. 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, development, construction or operation of the Project, whether or not the CITY is a party to such agreement.

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

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

A. Terminate this Agreement immediately upon written notice;

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

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

D. Notwithstanding the foregoing, during the term of the HUD Capital Advance Documents, City shall not terminate this Agreement, refuse to disburse HOME funds, declare a default or breach, or exercise any remedy herein without the prior written approval of HUD.

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. Under no circumstances shall HUD, its successors or assignees have any liability under this provision.

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

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

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

11.6 Discretionary Governmental Actions. Certain planning, land use, zoning and other permits and public actions required in connection with the Project including, without limitation, the approval of this Agreement, the environmental review and analysis under NEPA or any other statute, and other transactions contemplated by this Agreement are discretionary government actions. Nothing in this Agreement obligates the CITY or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. The CITY cannot take action with respect to such matters before completing the environmental assessment

of the Project under NEPA and any other applicable statutes. The CITY cannot and does not commit in advance that it will give final approval to any matter. The CITY shall not be liable, in contract, law or equity, to the DEVELOPER or any of its executors, administrators, transferees, successors-in-interest or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

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

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

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

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

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

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

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

11.14 No Assignment or Succession. Except as may be otherwise expressly provided by this Agreement, neither this Agreement, nor any interest of the DEVELOPER in, under, or to this Agreement, or the Project, may be assigned or transferred by the DEVELOPER without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed. Any assignment without consent is null and void. Notwithstanding the foregoing, no CITY approval shall be required to transfer the Project to HUD or its transferee or any transfer of the Project approved by HUD.

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

2

bring any such action against the CITY under any circumstances. Except as provided by law, or as otherwise agreed to in writing between the CITY and such person, each such person shall be deemed to have waived in writing all right to seek redress from the CITY under any circumstances whatsoever.

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

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

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

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

If to DEVELOPER: Redding Retirement Housing Corp
c/o be.group
516 Burchett St.
Glendale, CA 91203
Attn: Benjamin F. Beckler, III, Vice President of Facilities
and Project Development

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

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

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

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

11.23 HUD Pre-emption. Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement tends to contradict, modify or in any way change the terms of the HUD Regulatory Agreement, HUD Use Agreement, HUD Deed of Trust, HUD Note and other HUD Section 202 Program documents ("HUD Documents") encumbering the Property to be entered into between the Secretary of HUD and the DEVELOPER (or DEVELOPER's successor in interest), the terms of the HUD Documents shall prevail and govern; or if any provision of this Agreement in any way limits the Secretary of HUD in his administration of the Housing Act of 1959, as amended, or the Cranston-Gonzalez National Affordable Housing Act, or the regulations pursuant thereto, this Agreement shall be deemed amended so as to comply with the Acts, Regulations and HUD Documents. No other amendment to this Agreement shall be effective without the prior written approval of the Secretary. Notwithstanding anything herein to the contrary, if the Secretary of HUD should take title to the Property through foreclosure, deed in lieu of foreclosure, or otherwise, all covenants, conditions and restrictions set forth in this Agreement shall cease and terminate and be of no further force and effect. During the term of the HUD Capital Advance Documents any monies owed City pursuant to the terms of this Agreement shall be payable only from residual receipts as defined in the HUD Regulatory Agreement subject to the prior written approval of HUD. In the event HUD acquires title to the Property, HUD shall have no liability under the terms of this Agreement. This Agreement shall be subject and subordinate to the HUD Capital Advance Documents to be recorded. The DEVELOPER shall maintain the existence, qualifications, and authority necessary to continue its business and shall comply with all laws and regulations applicable to it, its property, and its operations, the noncompliance with which could materially affect its business, its financial condition, or the Project.

11.24 Project Actions/Approvals. Whenever this Agreement references an action or approval required or permitted by the CITY, the City Manager/designee(s) thereof and each of them is authorized to act for the CITY in making modifications not constituting a material change to the Agreement, Exhibits and documents referenced herein, unless the CITY Charter, this Agreement, law, regulations, orders, or procedures provide otherwise, or the context otherwise requires.

///
///
///



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

APPROVED AS TO FORM:
JAMES SANCHEZ
City Attorney

By: Rebecca E. Klisch
Deputy

By: R. Kyle
Senior Deputy City Attorney

Date: 9-29-11

Date: 9-29-11

REDDING RETIREMENT HOUSING CORP, a California nonprofit public benefit corporation

By: Benjamin F. Beckler, III
Name: Benjamin F. Beckler, III
Title: Authorized Agent
(Attach notary certificate of acknowledgment)

Date: 9/29/2011

Attachments:

- EXHIBIT A: PROJECT DESCRIPTION AND SCHEDULE
- EXHIBIT B: PROPERTY DESCRIPTION
- EXHIBIT C: PROJECT BUDGET
- EXHIBIT D: SPECIMEN DECLARATION OF RESTRICTIONS
- EXHIBIT E: SPECIMEN CERTIFICATE OF COMPLETION
- EXHIBIT F: SPECIMEN PROMISSORY NOTE
- EXHIBIT G: SPECIMEN DEED OF TRUST

2

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On September 29, 2011 before me, Katheryn Cornell
Date Here Insert Name and Title of the Officer

personally appeared Benjamin F. Beckler, III
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 Program Agreement

Title or Type of Document: City of Fresno and Redding Retirement Housing Corp regarding Sierra Gateway Senior Residence II

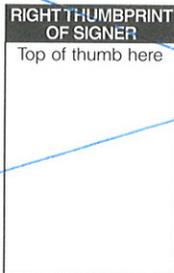
Document Date: September 29, 2011 Number of Pages: 39

Signer(s) Other Than Named Above: - None -

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

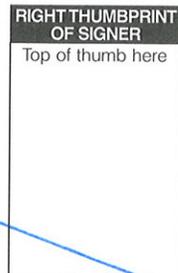
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT A: PROJECT DESCRIPTION AND SCHEDULE

I. PROJECT DESCRIPTION

The project consists of the construction of a sixty-seven (67) unit senior rental housing project under Section 202 of the Housing Act of 1959, related on-site and off-site improvements and amenities, and one (1) manager's unit. Amenities include a community room with a kitchen, library/computer room, hobby/craft room, laundry rooms, a game room, and an exercise room. Security will be provided by fencing and/or walls, in combination with vehicular and pedestrian controlled access gates/doors at all entrances. Sixty-seven (67) one-bedroom units will be available for rental to Senior Households (the primary occupant being at least 62 years of age or over), and one (1) two-bedroom manager's unit. Sixty-seven (67) will be HOME-Assisted and preserved as Very Low- and Low-Income Senior Housing in accordance with the chart below:

HOME FUNDED UNITS (During HUD Capital Advance Documents Period)

% of Median	Units
50% or less	67
Totals	67

HOME FUNDED UNITS (After HUD Capital Advance Documents Period)

During the last fifteen (15) years of the Project's Affordability Period, after the end of the term of the HUD Capital Advance Documents Period, all sixty-seven (67) senior rental housing units shall be rented to Low-Income Senior Households with eighty percent (80%) or less median income.

The project will be designed to assist seniors' mobility and to encourage visitability by all people. Construction will provide for accessibility in selected parking spaces, ease of drop-off locations, types of doors and widths of doorways and ease of floor surfaces for walking and moving throughout the project site and building. Elevators will be conveniently located adjacent to the lobby/lounge areas. Both the guest and resident parking areas will have van-accessible parking for persons with disabilities. All site circulation paths and building entrances shall be fully ADA-compliant.

Each one-bedroom unit will be approximately 540 total square feet in area, and contain a kitchen with a full-size range and refrigerator, sink and sufficient cabinet and counter space. Adjustable countertops and removable base cabinets will allow for lowering of countertops to wheelchair accessible height. An easily accessible living/dining area will also be constructed in each unit. Additionally, each unit bathroom and bedroom will be provided with an emergency call system for the safety of residents.

II. PROJECT SCHEDULE

TASK	COMPLETION DATE
Plan Check, Contractor Bidding, Firm Documents, and all Tax Exemptions	December 1, 2012
HUD Closing	May 1, 2013
Commence Construction	May 30, 2013
Complete Construction	August 1, 2014
Lease Up	October 30, 2014

EXHIBIT B: PROPERTY DESCRIPTION

The Property is located adjacent to the property located at the southwest corner of West San Jose Avenue and North Marty Avenues in northwest Fresno, CA 93711, as described below:

LEGAL DESCRIPTION

PARCEL B OF PARCEL MAP NO. 2004-30, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED DECEMBER 1, 2005 IN BOOK 65 AT PAGES 36 AND 37 OF PARCEL MAPS, FRESNO COUNTY RECORDS.

EXCEPT THEREFROM AN UNDIVIDED ONE-HALF OF ALL THE MINERALS, GAS, OILS, PETROLEUM, NAPHTHA, AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID PARCEL, AS RESERVED IN THE DEED FROM SECURITY FIRST NATIONAL BANK OF LOS ANGELES, A NATIONAL BANKING ASSOCIATION, TO W. E. ROBERTS AND CLARICE ROBERTS, HIS WIFE, AS JOINT TENANTS, DATED NOVEMBER 15, 1940, RECORDED DECEMBER 19, 1940, AS DOCUMENT NO. 37544, OFFICIAL RECORDS.

APN: 415-044-59

EXHIBIT C: PROJECT BUDGET

ITEM:	HUD FUNDING:	HUD Predev.	HOME	TOTAL
Construction:	\$ 7,038,892	\$300,000	\$680,000	\$ 8,018,892
Bond Premium:	\$ 70,597			\$ 70,597
Architect's fee:	\$ 400,000			\$ 400,000
Other fees:	\$ 934,379	\$100,000		\$ 1,034,379
Taxes:	\$ 8,000			\$ 8,000
Insurance:	\$ 40,000			\$ 40,000
Title & Recording	\$ 30,000			\$ 30,000
Legal:	\$ 35,000			\$ 35,000
Cost Certification:	\$ 8,000			\$ 8,000
Land:	\$ 392,000		\$ 70,000	\$ 462,000
Developer fee:	\$ 510,344			\$ 510,344
Offsite construction:	\$ 50,000			\$ 50,000
Offsite eng/permits:	\$ 20,000			\$ 20,000
TOTAL COSTS:	\$9,537,212	\$400,000	\$750,000	\$10,687,212

EXHIBIT D: SPECIMEN DECLARATION OF RESTRICTIONS

Recorded at the Request of
and When Recorded Return to:

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

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

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

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this _____ day of _____, 2011, by _____, a California nonprofit public benefit corporation, ("DECLARANT"), in favor of the CITY OF FRESNO, a California municipal corporation ("CITY").

WHEREAS, DECLARANT, is the owner of the real estate in the county of Fresno, state of California consisting of APN: 415-044-59, which is more particularly described in EXHIBIT "A", attached hereto and made a part hereof, including the improvements thereon (the "Property"), and by its subscription below consents to the recordation of this Declaration; and

WHEREAS, pursuant to and with primary funding under HUD's Supportive Housing for the Elderly Program under Section 202 of the Housing Act of 1959 as amended including related provisions at Section 811 of the Cranston-Gonzalez National Affordable Housing Act and its implementing regulations are 24 CFR 891 et seq. and related HUD Capital Advance Documents (collectively "Section 202 Program"), DECLARANT is developing upon the Property a sixty-eight (68) unit affordable rental housing project for senior households ("Project") of which sixty-seven (67) units shall be rented as affordable housing; and

WHEREAS, DECLARANT and CITY have entered into a certain HOME Investment Partnerships Program Agreement dated _____, 2011 ("HOME Agreement"), whereby CITY provides HOME Program Project funding variously in consideration of certain U.S. HUD HOME Program (24 CFR 92.252; 24 CFR 92.504(c)(3)(vii)) affordability requirements, covenants and restrictions upon the Project and Property, which affordability restrictions shall be enforceable for a fifty-five (55) year affordability period; and

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

NOW THEREFORE, DECLARANT declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the

covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the Project, the CITY's general, Consolidated Plan, Annual Action Plan, and Housing Element(s) therein and HOME Program requirements. 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 or other transferee of an interest covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration for the period of fifty-five (55) years running from the date the CITY enters project completion information into HUD's Integrated Disbursement and Information System (IDIS) as provided in the HOME Agreement. During the term of the HUD Capital Advance Documents, compliance by DECLARANT or its successor in interest to the Property with the affordability requirements of the HUD Capital Advance Documents shall constitute compliance with the provisions of Section 2 hereof and in the event of a conflict, the HUD requirements shall control. Any conflict between the HOME Agreement and the HUD Capital Advance Documents will be referred to HUD for determination.

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

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

a. DECLARANT for itself and its successor(s) on title covenants and agrees that from the date the Project is entered as complete (upon issuance of the City's Certificate of Completion) ("Project Completion Date"), until the expiration of the Affordability Period, it shall, for the first forty (40) years, be used as housing affordable to Very Low-Income Senior Households with fifty percent (50%) or less median income. During the last fifteen (15) years of the Project's Affordability Period, but not before the end of the HUD Capital Advance Documents period, the Project (except for the manager's unit) shall be rented to Low-Income Senior Households with eighty percent (80%) or less median income. DECLARANT further agrees to file a recordable document setting forth the Project Completion Date when determined by the CITY. Unless otherwise provided in the Agreement, the term Affordable Senior Rental Housing shall include, without limitation, compliance with the following requirements:

i. Nondiscrimination. Consistent with Section 202 of the Housing Act of 1959, 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, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall 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 Property.

ii. Principal Residence. Each of the Units constituting the Project upon the Property shall be leased only to natural persons, who shall occupy such as a principal residence. The forgoing requirements that the Property tenant occupy the Units as their principal residence does not apply to: 1) persons, other than natural persons, who acquire the Project Property or portion thereof by foreclosure or deed in lieu of foreclosure; or (ii) HUD qualified entities that acquire the Property or portion thereof pursuant to the terms of the HOME Agreement.

iii. Income Requirements. During the term of the HUD Capital Advance Documents (the first forty (40) years following issuance of the Certificate of Completion), each of sixty-seven (67) Units constituting Affordable Rental Housing upon the Property may be leased only to (a) person(s) whose annual household income at the time of initial occupancy is not greater than fifty-percent (50%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent with the HOME Program regulations. Notwithstanding the foregoing, during the last fifteen (15) years of the term of this Agreement, but not before the end of the term of the HUD Capital Advance Documents, not less than sixty-seven (67) units shall be rented to Low-Income Senior Households with eighty percent (80%) or less median income.

iv. Injunctive Relief. Should any of the sixty-seven (67) Units constituting Affordable Rental Senior Housing upon the Property, not continue to be the principal residence of a Household as set forth in subsection iii above, the CITY shall be entitled to seek any available injunctive relief.

v. Event of End to HUD Guaranty Subsidy. In the event the HUD Project Rental Assistance Contract (PRAC) (the "HUD operating subsidy") is discontinued during the anticipated term of the HUD Capital Advance Documents, the then owner of the Project shall be entitled to rent to Low-Income Senior Households at eighty percent (80%) or less median income and the terms of this instrument shall be automatically modified to be consistent with this provision.

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

c. Compliance with the terms of the HUD Capital Advance Documents (defined as the HUD Note, Deed of Trust, Use Agreement, Regulatory Agreement, Capital Advance Agreement and Project Rental Assistance Contract) during the term hereof shall constitute compliance with the Covenants and Restrictions of this Declaration, and in the event of a conflict the HUD Capital Advance Documents shall control. Any conflict between the HUD Capital Advance Documents and the HOME requirements shall be submitted to HUD for determination. During the term of the HUD Capital Advance Documents, no breach or default may be declared hereunder without the prior written approval of HUD.

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

4. Acceptance and Ratification. All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the Covenant and Restriction. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Covenant and Restriction, as may be amended or supplemented from time to time, are accepted and ratified by future owners, tenant or occupant, and such Covenant and Restriction shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Covenant and Restriction was recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. Provided, however, if this Declaration has been subordinated to a Deed of Trust and the Property is transferred by foreclosure to the holder of the Deed of Trust or an assignee of such holder, who is not DECLARANT or an affiliate of DECLARANT, and to the extent consistent with this Section 4 and the HOME Agreement, and provided the Deed of Trust recognizes any contractual or legal rights of CITY to take actions that would avoid the termination of the Project's Affordability, then this Declaration shall be of no further force and effect except that if the Property is subsequently transferred to any party prior chargeable with this Declaration, then the Declaration shall revive. This Declaration is subject and subordinate to the HUD Capital Advance Documents including the Deed of Trust in favor of HUD and to the Regulatory Agreement and to the Use Agreement each between the DECLARANT and HUD.

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 Fresno, state of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of CITY and/or any other person entitled to enforce 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. The obligations and liabilities of DECLARANT and its transferee(s) and assignee(s) hereunder, shall be joint and several.

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

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

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

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

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

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

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

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

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

15. HUD Pre-emption. Notwithstanding anything to the contrary in this Declaration, if any provision of this Declaration tends to contradict, modify or in any way change the terms of the Regulatory Agreement encumbering the Property to be entered into between the Secretary of HUD and DECLARANT, the terms of the Regulatory Agreement shall prevail and govern; or if any provision of this Declaration in any way limits the Secretary of the United States Department of Housing and Urban Development ("HUD") in his administration of the Housing Act of 1959, as amended, or the Cranston-Gonzalez National Affordable Housing Act, or the regulations pursuant thereto, this Declaration shall be deemed amended so as to comply with the Acts, Regulations and Regulatory Agreement. No other amendment to this Declaration shall be effective without the prior written approval of the Secretary. Notwithstanding anything herein to the contrary, if the Secretary of HUD should take title to the Property through foreclosure, deed in lieu of foreclosure, or otherwise, all covenants, conditions and restrictions set forth in this Declaration shall cease and terminate and be of no further force and effect. During the term of the HUD Capital Advance Documents any monies owed the CITY by DECLARANT shall be payable only from residual receipts as defined in the HUD Regulatory Agreement subject to the prior written approval of HUD.

///

///

///

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

DECLARANT:

_____, a California nonprofit public benefit corporation, the owner of record of the Property, consents to recording this Declaration of Restrictions against the Property described herein.

By: _____

Name:

Title:

(Attach notary certificate of acknowledgment)

Date: _____

EXHIBIT "A"
To Declaration of Restrictions

The Property is located adjacent to the property at the southwest corner of West San Jose Avenue and North Marty Avenues in northwest Fresno, CA 93711, as described below:

LEGAL DESCRIPTION

PARCEL B OF PARCEL MAP NO. 2004-30, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED DECEMBER 1, 2005 IN BOOK 65 AT PAGES 36 AND 37 OF PARCEL MAPS, FRESNO COUNTY RECORDS.

EXCEPT THEREFROM AN UNDIVIDED ONE-HALF OF ALL THE MINERALS, GAS, OILS, PETROLEUM, NAPHTHA, AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID PARCEL, AS RESERVED IN THE DEED FROM SECURITY FIRST NATIONAL BANK OF LOS ANGELES, A NATIONAL BANKING ASSOCIATION, TO W. E. ROBERTS AND CLARICE ROBERTS, HIS WIFE, AS JOINT TENANTS, DATED NOVEMBER 15, 1940, RECORDED DECEMBER 19, 1940, AS DOCUMENT NO. 37544, OFFICIAL RECORDS.

APN: 415-044-59

EXHIBIT E: CERTIFICATE OF COMPLETION

Recorded at the Request of
and When Recorded Return to:

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

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

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

APN: 415-044-59

City of Fresno

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

Date: _____

27

Certificate of Completion

APN: 415-044-59

Recitals:

- A. By a City of Fresno ("CITY") HOME Investment Partnerships Program Agreement dated _____, 2011, ("HOME Agreement) between the City of Fresno, a municipal corporation ("CITY"), and _____, a California non-profit public benefit corporation, ("DEVELOPER"), incorporated herein, the DEVELOPER agreed to develop a sixty-seven (67) unit affordable senior rental housing project, including one (1) manager's unit, upon the premises legally described in EXHIBIT "A" attached to the HOME Agreement with primary funding under HUD's Supportive Housing for the Elderly Program under Section 202 of the Housing Act of 1959 as amended including related provisions at Section 811 of the Cranston-Gonzalez National Affordable Housing Act and its implementing regulations are 24 CFR 891 et seq. and related HUD Capital Advance Documents ("Project").
- 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 the DEVELOPER with a recordable Certificate of Completion.
- E. The CITY's issuance of this Certificate of Completion is conclusive evidence that the DEVELOPER has completed the Project as set forth in the HOME Agreement.

NOW THEREFORE:

1. CITY certifies that the DEVELOPER commenced completion of the project 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
(Attach notary certificate of acknowledgment)

Date: _____

ATTEST:
CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Deputy

By: _____
Assistant/Deputy

Date: _____

Date: _____

_____, a California nonprofit public benefit corporation, the owner of record of the Property, consents to recording this Declaration of Restrictions against the Property described herein.

By: _____
Name: _____
Title: _____
(Attach notary certificate of acknowledgment)

Date: _____

EXHIBIT F: PROMISSORY NOTE

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

PROMISSORY NOTE

Loan Amount: \$750,000.00

Date: _____

Fresno, California

For value received, the undersigned, DEVELOPER, a California nonprofit public benefit Corporation ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation ("Lender"), the sum of Seven Hundred Fifty Thousand dollars and 00/100 (\$750,000.00) at zero percent interest*, deferred, forgivable as provided hereunder, subject to the following conditions and limitations:

- (1) Principal on this note shall be due and payable, from available residual receipts (as defined below) on the expiration of the Affordability Period ("Maturity Date"), but in no event before the maturity date of the note and deed of trust held by the Secretary of the U.S. Department of Housing and Urban Development ("Secretary") financing project No. _____, provided that if the aforementioned note held by the Secretary is paid in full, the holder of this note at its option and without notice may declare the whole principal sum or any balance thereof immediately due and payable. Consistent with the foregoing, if the Borrower fully complies with the terms of the HOME Agreement between the Borrower and Lender, then any and all principal then due shall be forgiven, this note cancelled and the Deed of Trust securing the same be reconveyed.
- (2) Prepayments and payments to principal on this note may be made only from available residual receipts, as that term is defined in the Regulatory Agreement between the Borrower and the Secretary, executed in connection with the above Project, and only after obtaining the prior written approval of the Secretary. Such prepayments may be made only after final closing on the note by the Secretary and after the end of a semiannual or an annual fiscal period.
- (3) This note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Lender except with the prior written approval of the Secretary.
- (4) This note is made and delivered in payment of costs not included in the HUD Capital Advance.
- (5) This note, and any extensions or renewals hereof, is secured by a Deed of Trust and Assignment of Rents on real estate in Fresno County, California, that provides for acceleration upon stated events subject to HUD's written approval, dated as of the same date as this note, and executed in favor of and delivered to the Lender and insured by a title company as a not worse than second (2nd) position lien on the Property.
- (6) Presentation, demand and notice of demand, non-payment and protest of this note are waived by Borrower.

(7) See attached RIDER for additional provisions.

///

///

///

IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be executed by its authorized agent(s) as of the date and year first above written this.

Attest:

_____, a California nonprofit public benefit corporation

By: _____

Name:

Title:

(Attach notary certificate of acknowledgment)

Date: _____

The Lender hereby certifies that this is a bona fide transaction and that it fully understands all the requirements of this note, and that no prepayment of principal or interest shall be accepted without evidence that the Secretary has authorized such prepayment. If an unauthorized prepayment is accepted, the funds shall be held by the payee in trust for the project.

CITY OF FRESNO, a California municipal corporation

By: _____

Name: Mark Scott, City Manager

(Attach notary certificate of acknowledgment)

*Not to exceed the highest permissible rate established by the Secretary.

2

RIDER TO RESIDUAL RECEIPTS PROMISSORY NOTE

Project No. _____

1. Time is of the essence. It will be a default under this note if maker defaults under the HOME Agreement, defaults under any other Loan Documents, or if Borrower fails to pay when due any sum payable under this note. In the event of a default by Borrower, the Borrower shall pay a late charge equal to the lesser of 2% of any outstanding payment or the maximum amount allowed by law. On the occurrence of a default or on the occurrence of any other event that under the terms of the Loan Documents give rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind, provided payment on the note shall not be accelerated without the prior written approval of HUD and any late charges and costs referred to in paragraphs 2 and 4 hereof shall be payable only from annual and available residual receipts as defined in the Regulatory Agreement between HUD and the Borrower and subject to the prior written approval of HUD.
2. The indebtedness evidenced by this note may, at the option of the maker, 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 principal balance.
3. All Loan payments are payable in lawful money of the United States of America at any place that payee or the legal holders of this note may, from time to time, in writing designate, and in the absence of that designation, to the Payee's address of record.
4. Borrower agrees to pay all costs including, without limitation, attorney fees, incurred by the holder of this note in enforcing payment, whether or not suit is filed, and including, without limitation, all costs, attorney fees, and expenses incurred by the holder of this note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by the holder of this note of its rights and remedies under this note. All costs incurred by the holder of this note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by maker. Borrower will pay to Lender all attorney fees and other costs referred to in this paragraph on demand.
5. Any notice, demand, or request relating to any matter set forth herein shall be in writing and shall be given as provided in the HOME Agreement.
6. 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 payee'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.
7. 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 payee will retain all rights and powers given by this note with respect to Property not transferred.

8. 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 maker, Lender, and their respective successors and assigns.

9. This note is made and delivered in payment of costs not included in the HUD Capital Advance for the Project described in the HOME Agreement. In the event of any conflict between this RIDER and HUD Section 202 Program Capital Advance Documents, the HUD Capital Advance Documents shall control. In the event of a conflict between this Rider and the HOME Agreement, any such dispute shall be resolved by the Secretary of HUD.

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

///

///

///



IN WITNESS WHEREOF, Borrower has caused this Promissory Note Rider to be executed by its authorized agent(s) on _____, 20__.

Attest:

_____, a California nonprofit public benefit corporation

By: _____

Name:

Title:

(Attach notary certificate of acknowledgment)

Date: _____

LENDER

CITY OF FRESNO, a California municipal corporation

By: _____

Name: Mark Scott, City Manager

(Attach notary certificate of acknowledgment)

2

EXHIBIT "G": SPECIMEN DEED OF TRUST

Recorded at the Request of
and When Recorded Return to:

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

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

TITLE ORDER NO. _____
APN NO. : 415-044-59

ESCROW NO. _____

SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

This Deed of Trust, made this ____ day of _____, between _____, a California nonprofit public benefit corporation, herein called Trustor, whose address is 516 Burchett Street, Glendale, California 91203, and THE CITY OF FRESNO, a municipal corporation, herein called Beneficiary, and Lawyers Title Company, herein called Trustee.,

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

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

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 herein 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. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of \$750,000.00 executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record owner of said property 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: By the execution and delivery of this Deed of Trust and the rate secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz.:

COUNTY	DATE	BOOK	PAGE	COUNTY	DATE	BOOK	PAGE	COUNTY	DATE	BOOK	PAGE
IMPERIAL	9/10/68	1267	574	ORANGE	9/6/68	8714	147	SAN BERNARDINO	9/6/98	7090	14SANTA
BARBARA	9/6/68	2244	922	KERN	9/6/68	4195	363	VENTURA	9/6/68	3363	84
SAN LUIS OBISPO	9/10/68	1489	429	LOS ANGELES	8/28/68	T5910	842	RIVERSIDE	9/10/68	ACCOUNT =	87097
YEAR 1968				SAN DIEGO	9/10/68	SERIES 9 BOOK	1968 PAGE				155820

(which provisions, identical in all counties, are printed on the reverse hereof) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth. Exhibit B attached hereto is hereby incorporated by reference as if stated in full hereof.

///

///

///

DO NOT RECORD

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

To Protect the Security of This Deed of Trust, Trustor Agrees:

(1) To keep said property in good condition and repair, not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof, not to commit, suffer or permit any act upon said property in 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 attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(4) To pay at least ten 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 amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

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

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

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

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

(10) That as additional security, Trustor hereby give 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 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 attorney's fees. Upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on 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 any 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 costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof, all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

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

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

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

DO NOT RECORD
REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid:

To Lawyers Title Company, Trustee: Dated _____

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

MAIL RECONVEYANCE TO:

By _____

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

~

EXHIBIT "A"
To Deed of Trust

The Property is located adjacent to the southwest corner of West San Jose Avenue and North Marty Avenues in northwest Fresno, CA 93711, as described below:

LEGAL DESCRIPTION

PARCEL B OF PARCEL MAP NO. 2004-30, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED DECEMBER 1, 2005 IN BOOK 65 AT PAGES 36 AND 37 OF PARCEL MAPS, FRESNO COUNTY RECORDS.

EXCEPT THEREFROM AN UNDIVIDED ONE-HALF OF ALL THE MINERALS, GAS, OILS, PETROLEUM, NAPHTHA, AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID PARCEL, AS RESERVED IN THE DEED FROM SECURITY FIRST NATIONAL BANK OF LOS ANGELES, A NATIONAL BANKING ASSOCIATION, TO W. E. ROBERTS AND CLARICE ROBERTS, HIS WIFE, AS JOINT TENANTS, DATED NOVEMBER 15, 1940, RECORDED DECEMBER 19, 1940, AS DOCUMENT NO. 37544, OFFICIAL RECORDS.

APN: 415-044-59

EXHIBIT "B"
To Deed of Trust

- (a) This Deed of Trust is second and junior in lien to a deed of trust made by Trustor in favor of the Secretary of Housing and Urban Development ("Secretary") to be recorded concurrently securing a Capital Advance made by the Secretary pursuant to Section 202 of the Housing Act of 1959, as amended, or Section 811 of the Cranston-Gonzales National Affordable Housing Act and to a Regulatory Agreement and Use Agreement between Trustor and the Secretary with respect to the Property referred to herein.
- (b) During the period the HUD Regulatory Agreement or Use Agreement is in effect, no default under this deed of trust may be declared without the prior written approval of the Secretary.
- (c) In the event that during the period the HUD Regulatory Agreement or Use Agreement is in effect, the Secretary acquires title to the property by foreclosure or by deed in lieu of foreclosure, or otherwise, the lien of this deed of trust shall automatically terminate.
- (d) This deed of trust shall not be modified during the period the HUD Regulatory Agreement or Use Agreement is in effect without the prior written approval of the Secretary.
- (e) During the period the HUD Regulatory Agreement or Use Agreement is in effect, in the event of any conflict between any provisions of this deed of trust and the Cranston-Gonzalez National Affordable Housing Act or the Housing Act of 1959, as amended, HUD regulations, or the HUD Regulatory Agreement, this deed of trust shall be deemed amended to comply with said Act, regulations and HUD Regulatory Agreement.
- (f) Approval by the Secretary of a Transfer of Physical Assets ("TPA") of the Project referred to in the Note secured by this Deed of Trust shall constitute approval of the TPA by the Beneficiary.
- (g) During the term of the HUD Capital Advance Documents the Beneficiary shall not exercise the remedies under the Deed of Trust without the prior written approval of HUD.



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. _____
COUNCIL MEETING _____

1:30pm #5
9/29/11

September 15, 2011

APPROVED BY _____

FROM: CRAIG SCHARTON, Assistant Director
Development and Resource Management

DEPARTMENT DIRECTOR _____

CITY MANAGER _____

Mark Scott

CLAUDIA CAZARES, Division Manager
Housing and Community Development Division

Claudia Caz

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

[Signature]

SUBJECT: **AFFIRM A FINDING OF CONFORMITY THAT DETERMINED SIERRA GATEWAY SENIOR RESIDENCE PHASE II PROJECT IS IN CONFORMITY WITH THE MASTER ENVIRONMENTAL IMPACT REPORT NO. 10130 (SCH NO. 2001071097), AND APPROVE A \$750,000 HOME INVESTMENT PARTNERSHIPS AGREEMENT WITH SOUTHERN CALIFORNIA PRESBYTERIAN HOMES/ITS NONPROFIT ASSIGNEE FOR CONSTRUCTION OF A 68-UNIT AFFORDABLE SENIOR HOUSING PROJECT TO BE LOCATED AT THE SOUTHWEST CORNER OF WEST SAN JOSE AVENUE AND NORTH MARTY AVENUE IN NORTHWEST FRESNO**

RECOMMENDATIONS

Presented to City Council

Date 9/22/11

Disposition Cont. to 9-29-11

@ 1:30pm

Presented to City Council

Date 9/15/11

Disposition Cont. to 9/29/11

@ 10:00am #2

Staff recommends that the City Council:

- 1) Affirm a Finding of Conformity that determined Sierra Gateway Senior Residence Phase II housing project is in conformity with the Master Environmental Impact Report No. 10130 (SCH No. 200171097) of the General Plan; and
- 2) Approve a \$750,000 HOME Investment Partnerships (HOME) Program Agreement (Please see Exhibit "A" – HOME Agreement) with Southern California Presbyterian Homes (SCPH) with subsequent assignment to its special purpose nonprofit, for construction of a 68-unit affordable senior housing project, subject to City Attorney approval to form, to be located at the southwest corner of W. San Jose Ave. and N. Marty Ave. (APN: 415-044-59) in northwest Fresno (Please see Exhibit "B" – Project Location Maps).

Presented to City Council

Date 9/29/11

Disposition Rec. approved

EXECUTIVE SUMMARY

On April 15, 2011, the City received a \$500,000 HOME Program funding proposal from SCPH in response to the City's HOME Notice of Funding Availability (NOFA), published March, 2011. The HOME Program Agreement includes \$500,000 provided through the NOFA and \$250,000 previously approved by Council as provided through the adoption of Resolution 2011-77, to SCPH with subsequent assignment to its special purpose nonprofit, for development of the Sierra Gateway Senior Residence II project. If approved as recommended, HOME Program funds will be provided to SCPH, in the form of a zero percent interest, deferred and forgivable loan. Disbursement of funds will be contingent upon full project financing including an award of Section 202 Supportive Housing Program funds from the U.S. Department of Housing and Urban Development

REPORT TO COUNCIL

Agreement with Southern California Presbyterian Homes for Development of Sierra Gateway Senior Residence II

September 15, 2011

Page 2 of 3

(HUD). SCPH owns the property and the project is ready to proceed pending complete financing. Sixty-seven units will be HOME-Assisted and carry 55-year affordability covenants.

BACKGROUND

The City Council previously approved a Resolution (Please see Exhibit "E" – Resolution 2011-77) authorizing \$250,000 in HOME Program funds to the project. The April 28, 2011 Resolution served as the City's financial commitment to the project for SCPH's Section 202 Program application to HUD. The additional \$500,000 in HOME Program funds were requested by SCPH through the City's March, 2011 NOFA. In June, 2011, shortly after SCPH was notified that it was considered for HOME funding, it submitted its Section 202 application to HUD, requesting \$9.5 million in Section 202 funding to finance construction of the apartment complex. The project cost is estimated at \$10.7 million, of which a majority of funding is expected to come from an allocation of HUD 202 funds. If approved as recommended, the HOME Agreement for the development of the project will provide for a commitment of \$750,000 in HOME Program funds (Please see Exhibit "C" – Project Sources and Uses of Funds). Disbursement of the HOME Program funds for eligible project costs will be contingent upon full project funding including an award of Section 202 funds from HUD.

Sierra Gateway Senior Residence II will be situated on a 1.38-acre parcel adjacent to Sierra Gateway Senior Residence I, at the southwest corner of W. San Jose Ave. and N. Marty Ave. in northwest Fresno (Please see Exhibit "B" – Project Location Maps). SCPH owns the project site that is adjacent to Sierra Gateway Senior Residence I and is ready to proceed with construction of Phase II pending complete financing. Predevelopment activities for Phase II were completed in conjunction with Sierra Gateway Senior Residence Phase I. A Conditional Use Permit (No. C-04-062) was issued for the development on July 7, 2004.

The project will consist of a single three-story building, 67 one-bedroom units of affordable senior rental housing (for seniors 62-years and older), a community room, on-site parking, and one manager's unit (Please see Exhibit "D" – Plans and Elevations). Each unit size will be approximately 540 square feet, as required by HUD. There will be approximately 58,400 square feet of living space at a cost of \$137.00 per square foot. Construction of the building structure will incorporate energy-efficient low-maintenance materials, the City of Fresno's Green building standards, and Universal Design features. The ground floor will also be occupied by a community center, management office, multi-purpose room, kitchen, laundry rooms, restroom facilities, and a patio area. Qualifying seniors' income will be at, or below, 50% of area median income and rents will be at 30% of a tenant's income.

Once completed, Sierra Gateway Senior Residence II will assist the City in meeting its affordable housing goals as identified in the Housing Element of the 2025 General Plan and 2010-2014 Consolidated Plan.

SCPH is a well known non-profit corporation that has over 56 years of experience with development and management of affordable housing projects. SCPH currently operates over 36 developments including 24 affordable housing communities with 1,700 units. In May, 2007, SCPH successfully completed Sierra Gateway Senior Residence I, an 80-unit affordable senior housing complex adjacent to the Phase II site. SCPH proposes to establish a special purpose non-profit, Sierra Gateway Senior Residence II, as a tax exempt nonprofit public benefit entity that will own, manage and operate the project. Once the entity is established, SCPH will assign, and Sierra Gateway Senior Residence II will assume, the HOME Program Agreement and loan.

REPORT TO COUNCIL

Agreement with Southern California Presbyterian Homes for Development of Sierra Gateway Senior Residence II

September 15, 2011

Page 3 of 3

ENVIRONMENTAL FINDING

The City completed a National Environmental Policy Act assessment on September 24, 2004, which resulted in a Finding of No Significant Impact. On October 28, 2004, the City received HUD environmental clearance and authorization for use of HOME funds for Sierra Gateway Senior Residence II. On August 24, 2004 Council considered and adopted California Environmental Quality Act (CEQA) Environmental Assessment No. R-04-24/C-04-62: Finding of Conformity to the 2025 Fresno General Plan Master Environmental Impact Report (MEIR 10130) (Please see Exhibit F – CEQA Documents). With the mitigation imposed, there is no substantial evidence in the record that this project may have additional significant, direct, indirect or cumulative effects on the environment that are significant and that were not identified and analyzed in the MEIR. After conducting a review of the adequacy of the MEIR pursuant to Public Resources Code, Section 21157.1, staff has determined no substantial changes have occurred with respect to the 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 has become available. The project is not located on a site which is included on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to, lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that Section. Therefore, any necessary environmental review required by CEQA has been completed for the project. As with Phase I, Southern California Presbyterian Homes hopes to enhance the Sierra Gateway II project by adding solar energy facilities as programs and rebates become available. This type of renewable energy improvements will reduce energy consumption, greenhouse gases and air pollutant emissions, and help support objectives and policies of the City's recently-adopted Air Quality update to the 2025 Fresno General Plan with the City's sustainability initiatives.

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 project are available in the Development and Resource Management Department's Fiscal Year 2012 Budget. The project's total construction cost is estimated at \$10.7 million, of which a majority of funding is expected to come from HUD Section 202 funds and a total of \$750,000 is proposed to come from the City's HOME Program.

APPENDICES

Exhibit A - HOME Program Agreement

Exhibit B - Project Location Maps

Exhibit C - Project Sources and Uses of Funds

Exhibit D - Plans and Elevations

Exhibit E - Resolution 2011-77

Exhibit F - CEQA Documents:

1. Notice of Determination;
2. Finding of Conformity;
3. MEIR Mitigation Monitoring Checklist; and
4. Ordinance No.: 2004-84