

10:00am #2A

6/26/14

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno as Housing Successor to the
Redevelopment Agency of the City of Fresno
2344 Tulare St., Suite 200
Fresno, Ca. 93721
Attention: Executive Director

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

CITY OF FRESNO
City Clerk's Office (Original)

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

By: *Maureen Kelly*
Its: Executive Director

Dated: *June 27, 2014*

AMENDED AND RESTATED
OWNER PARTICIPATION AGREEMENT

by and among

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

and

TFS Investments, LLC
And
Fulton West/Cedar Heights
Scattered Site, LP

541-545 North Fulton Street &
4496-4538 E. Hamilton Avenue
Scattered Site Residential Rental Project
Fresno, CA

ATTACHMENTS

1. Exhibit A: Legal Description of Property
2. Exhibit B: Schedule of Performance/Payment
Schedule
3. Exhibit C: Budget/Financial Plan
4. Exhibit D: Certificate of Completion
5. Exhibit E: Scope of Development and Project
Design
6. Exhibit F: Form of Regulatory Agreement and
Declaration of Covenants and Restrictions
7. Exhibit G: Form of Promissory Note
8. Exhibit H: Form of Deed of Trust

**AMENDED AND RESTATED
OWNER PARTICIPATION AGREEMENT**

THIS AMENDED AND RESTATED OWNER PARTICIPATION AGREEMENT ("Agreement") is entered as of the Effective Date (defined in this Agreement), by and among the CITY OF FRESNO, a municipal corporation, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno, ("Agency"), TFS INVESTMENTS, LLC, a California limited liability company ("Original Owner") and FULTONIA WEST/CEDAR HEIGHTS SCATTERED SITE, LP, a California limited partnership ("Owner").

RECITALS

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

A. Agency is the housing successor in interest to the Redevelopment Agency of the City of Fresno ("Former RDA") pursuant to Resolution No. 2012-12, and as such assumes all housing rights and obligations of the Former RDA; and

B. The Former RDA and Original Owner executed that certain Owner Participation Agreement on March 4, 2011, regarding Fultonia West Apartments at 541-545 N. Fulton Street, Fresno, California ("Original OPA"). Original Owner shall grant by deed to Owner all of its right, title and interest in said property located at 541-545 N. Fulton Street, Fresno, California, Assessor's Parcel Number 452-274-05/16 ("Fulton West"), which property is the subject of this Agreement and now inclusive of said property located at 4496-4538 E. Hamilton Avenue, Fresno, California Assessor's Parcel Number 471-220-55T ("Cedar Heights").

C. Owner is under contract with Original Owner to purchase all of Original Owner's rights, title and interest in fee to the certain real property described in Exhibit "A" attached hereto and incorporated herein (the "Property"), including improvements located thereon which shall be improved by Owner as contemplated by this Agreement and known as the The Fultonia West Project located at 541-545 North Fulton Street, Fresno, California and Cedar Heights Project located at 4496-4538 E. Hamilton Avenue, Fresno, California (the "Project"). The Property and Project are located within the territorial jurisdiction of the Agency.

D. Owner proposes to develop a new residential rental project on the Property consisting of forty-five (45) residential units. All of the residential units (the "Affordable Units") are to be rented and preserved as Affordable Rental Housing.

E. Owner agrees to undertake improvements in accordance with the combined Performance and Payment Schedule described in Exhibit "B" attached hereto and incorporated herein (the "Performance and Payment Schedule").

F. To the extent Housing Set Aside Funds will exceed 50 percent of the cost of producing the Affordable Units, the Agency has determined based on substantial evidence, that the use of the Funds is necessary because the Agency or Owner of the Affordable Units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity. The Project is not feasible and cannot be completed and restricted to the affordable rental housing purposes and uses provided under Law and this Agreement absent the financial support of the Agency.

G. The Property and associated on site and off site improvements are collectively referred to in this Agreement as the "Improvements" or the "Project," all of which will directly benefit the Property and the Plan area, cannot otherwise be reasonably paid for or financed solely through private financing, and are necessary to eliminate blight.

H. Agency is willing to assist Owner's construction of the Affordable Units by making available to Owner as a loan certain Housing Set Aside (Tax Increment) Funds in the amount of \$870,000 (the "Loan") upon the terms and conditions specified in this Agreement.

I. The Loan shall be paid in accordance with the schedule set out in Exhibit "B" to the Agreement and repaid in accordance with the promissory note a specimen of which is attached hereto as Exhibit "G". The Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement shall be evidenced by this Agreement and the Restrictions and Deed of Trust, attached hereto as Exhibit "H," which shall be recorded against and run with and encumber the Property.

J. The Housing and Community Development Commission reviewed the Project and the Original Agreement on November 10, 2010 and recommended that Council approve it. The Housing and Community Development Commission reviewed modifications to the Project on June 11, 2014 and recommended that Council approve it.

K. The Project has been environmentally assessed under Certifying Program Environmental Impact Report No. 03-01 with Attachments by a Joint Resolution of the Council and Redevelopment Agency (Resolution No. 2003-198/1627) adopted on June 24, 2003 and has been determined to have or cause no adverse or reportable conditions or effects pursuant to the California Environmental Quality Act.

O. Agency has further determined this Project is in the best interests of, and will materially contribute to, Plan implementation. Further, Agency has found the Project: (i) will have a positive influence in the Plan Area, and surrounding environs; (ii) is in the vital and best interests of Agency and the health, safety, and welfare of City residents; (iii) complies with applicable federal, state, and local laws and requirements; (iv) will help eliminate blight; (v) will improve and preserve the community's supply of low

income housing available at affordable rent, as defined by Cal. H.&S.C. Sections 50052.5 and 50053, to persons and families of low income, as defined in Cal. H.&S.C. Section 50093 of Code; (vi) will be available to meet the replacement housing provisions in Cal. H.&S.C. Section 33413; (vii) will apply funds solely within the respective Plan areas except to the extent otherwise provided herein and allowed by Law; (viii) all planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of low income housing; (ix) will comply with all owner participation rules and criteria of Agency and the Plan; and (x) will comply with any and all applicable review and other requirements of the City's Historical Preservation Commission.

P. The Owner and the Agency have determined that this Agreement is not subject to Article XXXIV of the California Constitution.

AGREEMENT

1. DEFINITIONS. Besides definitions contained elsewhere in this Agreement, the definitions in this Section will govern the construction, meaning, application and interpretation of the various terms used in this Agreement.
 - 1.1 "ADA" means the Americans with Disabilities Act of 1990.
 - 1.2 "Affordability Period" means a period of fifty-five (55) years commencing from the date Agency records the Certificate of Completion.
 - 1.3 "Affordable Rental Housing" or "Affordable Units" means the thirty (30) Units available at affordable rent, as defined by Cal. H.&S.C. Section 50052.5 (4), to persons and families of low income, as defined in Cal. H.&S.C. Section 50093 of Code, consistent with Recital F above which requirements shall be enforceable by covenants running with the land. As used in this Agreement, the term "Affordable Low Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of sixty percent (60%) of the Fresno Metropolitan Statistical Area Median Income adjusted for the family size appropriate for the Unit.
 - 1.4 "Agency" means the City of Fresno in its capacity as housing successor to the Redevelopment Agency of the City of Fresno.
 - 1.5 "Agreement" means this Amended and Restated Owner Participation Agreement.

- 1.6 "Budget" means the Budget/Financial Plan for the Project attached hereto and incorporated herein as Exhibit "C" (the "Budget").
- 1.7 "Certificate of Completion" means that Certificate issued in the form attached as Exhibit "D" to Owner by Agency evidencing completion of the Project for purposes of this Agreement.
- 1.8 "City" shall mean the City of Fresno, California, a municipal corporation.
- 1.9 "Conditions Precedent of Agency" means the conditions precedent to the effectiveness of this Agreement against the Agency.
- 1.10 "Day" whether or not capitalized, means a calendar day, unless stated otherwise.
- 1.11 "Deed of Trust" shall mean the Deed of Trust recorded against the Property securing the Loan, as shown in Exhibit "H" of this Agreement.
- 1.12 "Default" means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.
- 1.13 "Director" means the Executive Director of Agency.
- 1.14 "Entitlements" mean all permits and fees that the City, County of Fresno, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.
- 1.15 "Effective Date" means the date of complete execution of the Agreement following Agency Board approval thereof.
- 1.16 "Environmental Laws" means any federal, state, or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials or waste including, without limitation, any state or federal lien or "super lien" law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.
- 1.17 "Funding Source" means the Loan and other funding sources secured by Owner to construct the Improvements.
- 1.18 "Financing Plan" means the Budget including sources and uses of funds sufficient for Owner to complete the Improvements according to the Performance and Payment Schedule.

- 1.19 "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated byphenyls, (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (i) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), or (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.*); provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential rental housing or associated buildings and grounds, or typically used in household activities, in a manner typical of other residential rental housing developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Sections 25249.8 *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine.
- 1.20 "Household" means one or more persons occupying an Affordable Unit.
- 1.21 "Housing Set-Aside Funds" means those California Health and Safety Code Section 33334.2 monies held and administered by Agency a portion of which shall be made available as the Loan to Owner for eligible costs and expenses incurred by Owner in constructing the Improvements in such amounts, and upon such terms and conditions specified in this Agreement.

- 1.22 "Improvements" mean the construction of the Affordable Units and other units that Owner will complete on the Property as part of the Project, including associated fencing, and landscaping improvements.
- 1.23 "Law" means the Community Redevelopment Law of the State (California Health and Safety Code Sections 33000 *et seq.*).
- 1.24 "Loan" means the principal sum of \$870,000 provided by Agency to Owner as a loan, upon the terms and conditions set forth in this Agreement and the Promissory Note attached hereto as Exhibit "G" to be secured by a no worse than 3rd position deed of trust lien against the Property. As of the Effective Date of this Agreement, the Agency has paid \$435,000 to Original Owner pursuant to the Original OPA, leaving a balance of \$435,000 available for distribution. If the deed of trust securing the Promissory Note is recorded prior to the recordation of the deed or deeds of trust securing the other Funding Sources consistent with the Financing Plan, the Agency shall subordinate such deed of trust to such other deed(s) of trust, so long as the Agency deed of trust is no worse than third position.
- 1.25 "Loan Documents" are collectively this Agreement and all exhibits and attachments thereto any deed of trust given as security, as they may be amended, modified or restated from time to time.
- 1.26 "Material Change" means a change, modification, revision or alteration to the Loan Documents that significantly deviates from those previously approved by the Agency, provided that fully funded change(s) which do not result in a change in the number or type (i.e. residential, affordable) of Units and/or an increase in the total Loan funding provided in this Agreement shall not constitute Material Change(s).
- 1.27 "Owner" means Fultonia West/Cedar Heights Scattered Site, LP or an affiliated company in which it is a Member, Managing Member, or Principal.
- 1.28 "Plan" means the Redevelopment Plan for the Freeway-99 Golden State Corridor Redevelopment Project Area.
- 1.29 "Project" means the development of forty-five (45) residential Units on the Property, of which thirty (30) Units shall be Low Income Housing.
- 1.30 "Project Area" means the Freeway-99 Golden State Corridor Redevelopment Project Area.

- 1.31 "Project Completion Date" means the date that Agency shall have determined the Project has reached completion in accordance with the plans and specifications in the Performance and Payment Schedule, as evidenced by Agency's issuance of a Certificate of Completion.
- 1.32 "Property" means the real property described in Exhibit "A," attached hereto.
- 1.33 "Release of Restrictions" means a release of those covenants, conditions and restrictions contained in this Agreement.
- 1.34 "Restrictions" means the affordability restrictions contained in this Agreement and Exhibit F thereto, containing all conditions, covenants, and restrictions required by the Law, any other applicable laws and regulations, the Plan, and this Agreement, running with the Property and the Affordable Units thereon and burdening such for the Affordability Period.
- 1.35 "Performance and Payment Schedule" means the schedule attached as Exhibit "B," setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may revise the Performance and Payment Schedule from time to time on mutual written agreement of Owner and Agency, but any delay or extension of the Completion Date is subject to the requirements in this Agreement.
- 1.36 "Security Financing Interest" means a security interest which Owner grants in the Property and the Improvements thereon before the Agency issues and records a Release of Restrictions.
- 1.37 "Unit" mean a residential unit constituting the Project.
- 1.38 "Urban Core" shall mean the area within the Agency's Merged Project Area No. 1 boundaries, including any of the following project areas: Central Business District, Chinatown Expanded, Convention Center, Fulton, Jefferson, Mariposa, South Van Ness Industrial, West Fresno I, or West Fresno II; and, the residential portion of the Freeway-99 Golden State Corridor Redevelopment Project Area.
2. CONDITIONS PRECEDENT TO AGENCY'S OBLIGATION TO PERFORM UNDER THIS AGREEMENT. The following are conditions precedent to Agency's obligation to perform under this Agreement. Until each and all of the conditions are satisfied, Agency is not obligated to take any action, or provide any funding, or further funding, under this Agreement. Agency, in writing by its authorized representative, may waive any condition or agree to extend the time

for satisfaction of any condition set forth in this Section 2. Agency may terminate this Agreement as provided herein for the failure of a condition.

- 2.1 Owner shall pay for and provide a title report, recorded deed or other evidence acceptable to Agency that Owner owns the Property.
- 2.2 Owner has entered into, and provided Agency copies of agreements with any and all funding sources and the general contractor for the Project. All such funding source agreements shall contain a provision whereby the party(ies) to each such agreement, other than Owner, agree to make reasonable efforts to (i) notify Agency immediately of any event of default by Owner under such agreement; (ii) notify Agency immediately of termination or cancellation of such agreement; and (iii) provide Agency, upon Agency's request, an estoppel certificate certifying that such agreement is in full force and effect and Owner is not in default under such agreement.
- 2.3 Owner has submitted evidence that the combined monies from the Funding Sources are not less than the greater of a total development cost of \$9,250,561 or the amount which Agency determines is necessary to complete the Project, including evidence of a loan commitment for such Funding Sources acceptable to the Agency. If Agency determines that said funds are not sufficient to complete the Project, Owner may satisfy this condition as agreed to by Owner and Agency in writing.
- 2.4 Owner will submit its Financing Plan to the Agency for review and acceptance provided that the purpose of Agency's review is solely to confirm Owner has sufficient funds available to complete the Improvements and maintain Project as this Agreement requires.

After Agency accepts the Financing Plan, Owner will not make any Material Change in the Financing Plan without first submitting such change to Agency for review and acceptance, which shall not be unreasonably withheld, delayed or conditioned.

- 2.5 Owner, at Owner's expense, shall have investigated and determined all environmental, soil, seismic, and other surface and subsurface conditions of the Property and the suitability of such conditions for the Project. Owner's responsibility and due diligence includes, but is not limited to, determining the presence of Hazardous Materials. Both Owner and Agency will promptly give the other copies of all reports and test results. Owner will indemnify, defend, and hold Agency harmless from any damages or claims arising out of Owner's inspections and tests.

- 2.6 Should Owner's property assessment/inspection reveal any Hazardous Materials or environmental conditions requiring remediation, Owner will promptly notify Agency. Not later than ten (10) days from and after such notice, Owner shall, at its sole cost and expense, commence to make required submittals, develop required remedial action plans, and thereafter pursue remediation activities as to such Hazardous Materials or environmental conditions and to diligently prosecute such to completion as required by applicable federal, state and local law and in a manner and according a reasonable time frame agreeable to Agency. Without limiting the foregoing, any remediation will be performed pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction and will be performed according to applicable environmental laws and governmental requirements.
- 2.7 Owner shall not be in default of this Agreement and all representations and warranties of Owner contained herein shall be true and correct in all material respects.
- 2.7.1 Owner will have signed and delivered all documents required hereunder.
- 2.7.2 Owner will have received all land use and development approvals, variances, permits and the like required by this Agreement.
- 2.7.3 Owner shall be in full compliance with the Performance and Payment Schedule.
- 2.8 Owner will have provided proof of insurance as required by this Agreement.
- 2.9 This Agreement, the executed Deed of Trust, and the executed Restrictions shall have been recorded with the Fresno County Recorder's Office.

3. OWNER OBLIGATIONS AFTER SATISFACTION OF CONDITIONS PRECEDENT. The following obligations of Owner will run with the land and survive this Agreement:

- 3.1 Owner will take all reasonable precautions to prevent the release into the environment of any Hazardous Materials in, on or under the Property in violation of applicable laws or regulations. Owner will comply with all governmental requirements with respect to Hazardous Materials. In addition, Owner shall install and use equipment and implement and

follow procedures that are consistent with reasonable standards for the disclosure, storage, use, removal and disposal of Hazardous Materials.

- 3.2 Owner will notify the Agency and give Agency a copy of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Property including, without limitation, notices of violation, notices to comply, citations, inquiries, cleanup or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any governmental regulation relating to Hazardous Materials. Within 3 days after each incident, Owner will report to Agency any unusual or potentially important incidents respecting the environmental condition of the Property.

If a release of any Hazardous Materials into the environment occurs, Owner will, as soon as possible after the release, furnish Agency with a copy of any reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Owner will furnish Agency with a copy of any other environmental entitlements or inquiries relating to or affecting the Property including, without limitation, all permit applications, permits and reports, even reports and other matters.

- 3.3 From the Effective Date of this Agreement, Owner shall indemnify, hold harmless and defend Agency, City and each of their officers, officials, employees, agents and volunteers from any and all claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), arising out of (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to any use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property. This indemnity will include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination leak, spill, release or other adverse effect on the environment. Owner's obligations under the preceding sentence shall apply regardless of whether Agency, City or any of their officers, officials, employees, agents or volunteers are negligent, but shall not apply to any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency,

fine, penalty, punitive damage, or expense caused solely by the gross negligence, or caused by the willful misconduct, of Agency, City or any of their officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

- 3.4 The status and qualifications of Owner are of particular concern to Agency. From the Effective Date of this Agreement until the Restrictions expire, no voluntary or involuntary successor-in-interest of Owner will acquire any rights or powers under this Agreement, provided that the parties acknowledge the Owner shall hold the Affordable Units for rental as Affordable Rental Housing as provided in this Agreement. Notwithstanding anything to the contrary herein, Owner shall have the right to transfer ownership of the Property to another person or entity having experience in the ownership and operation of Affordable Rental Housing, as reasonably determined by Agency, which approval shall not be unreasonably withheld, delayed or conditioned.

4. DEVELOPMENT OF THE PROPERTY.

- 4.1 Except as set forth in this Agreement, before Owner begins constructing the Improvements or undertakes any other work of improvement on the Property, Owner, at its own cost and expense, will secure all land use and other entitlements, permits, and approvals that Agency or any other governmental agency with jurisdiction over the Project requires for construction of the Project. Without waiver or limitation, Owner will secure and pay all costs, charges and fees associated with, the following:

4.1.1 All permits and fees that the City, County of Fresno, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.

4.1.2 ADA/Barriers to the Disabled. The Project shall comply with all applicable federal, state and local accessibility requirements.

- 4.2 Scope of Development and Project Design. Owner has submitted a general or basic concept drawing to Agency, which Agency has approved, and a copy of which is attached as Exhibit "E" (the "Scope of Development and Project Design"). Owner will complete the Improvements on the Property in one phase, according to the Scope of Development and Project Design, and the plans, drawings, and documents that Owner submits to Agency. Owner shall carry out construction of the Project including the Improvements in accordance with all applicable local, state and federal laws, codes, ordinances and regulations, including without limitation all applicable state and federal labor standards.

- 4.3 Books and Records. Owner shall make available for examination at reasonable intervals and during normal business hours, all books, accounts, reports, files and other papers or property with respect to all matters covered by this Agreement, and shall permit Agency to audit, examine and make excerpts or transcripts from such records. Agency may audit any conditions relating to this Agreement at Agency's expense, unless such audit shows a materially significant discrepancy in information reported by Owner to Agency in which case Owner shall bear the cost of such audit. Owner shall also reasonably cooperate with and assist the Agency in Agency's compliance with any applicable audit requirements of the California Redevelopment Law including California Health and Safety Code Sections 33080 and 33080.1. This section shall survive for a period of four years after the expiration or termination of this Agreement.
- 4.4 Audit. Owner shall be accountable to Agency for all Loan funds disbursed to Owner pursuant to this Agreement. Owner will cooperate fully with Agency and the State of California in connection with any interim or final audit relating to the Project that may be performed. Owner will maintain accurate and current books and records for the Project using generally accepted accounting principles. Owner agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with Loan funds and to keep all invoices, receipts and other documents related to expenditures financed with Loan funds for not less than four (4) years after the fiscal year in which such expenditures are incurred. For purposes of this section, "books, records and documents" include, without limitation, plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda and electronically stored versions of the foregoing. This section shall survive for a period of four years after the expiration or termination of this Agreement.
- 4.5 Owner shall cause the issuance of all necessary discretionary governmental permits, approvals and entitlements, close any implicated funding or other escrow and begin/complete construction of the Improvements according to the Performance and Payment Schedule.

4.5.1 Project Completion. Agency, acting through and in the discretion of its Director, may extend the completion date of the Project for that period of time that Agency, in its reasonable discretion, determines necessary to overcome any delay if and to the extent such delay is due to a cause which is beyond Owner's reasonable control, and if Owner could not, with reasonable diligence, have foreseen and avoided such cause for delay. Such

causes include, without limitation, acts of God, unusually severe weather or flood, war, terrorism, riot or act of the public enemy, labor disputes, unavoidable inability to secure labor, materials, supplies, tools or transportation, or acts or omissions of any governmental authority having jurisdiction. Agency will not extend the completion date for acts or omissions occurring through the fault of Owner, or for acts of Agency permitted or contemplated by this Agreement. An extension of time as provided in this subsection will be Owner's sole remedy for any delays in the Performance and Payment Schedule the Project completion date.

As a condition precedent to any extension requested by Owner, Owner will give the Agency notice within ten (10) days after any cause for delay occurs, stating the cause and the additional time Owner anticipates needed to complete the Project. Any extension by Agency must be in writing and signed by the Director or the Director's designee, which approval shall not be unreasonably withheld, delayed or conditioned.

4.6 Subject to the terms of this Agreement, the Loan shall be disbursed to Owner according to the Performance and Payment Schedule. All Loan funds shall be used solely for costs of the Project and Improvements.

4.7 Certificate of Completion. Owner will notify Agency when Owner deems the Project complete. Within ten (10) business days after such notice, Agency will inspect the Improvements. When Agency reasonably determines Owner has completed the Improvements as required in this Agreement, the Plan, and the Law, Agency will furnish Owner with the Certificate of Completion. Agency will not unreasonably delay, condition or refuse to issue the Certificate of Completion. The recorded Certificate of Completion will be a conclusive determination that Owner has satisfactorily completed the Improvements required under this Agreement. Any parties then owning or subsequently purchasing, leasing or otherwise acquiring any interest in the Property will not (because of that ownership, purchase, lease or acquisition) after the recording, incur any obligation or liability under this Agreement for constructing the Improvements, but will take such interest in the Property subject to the continuing covenants set forth in this Agreement.

4.7.1 If Agency determines not to furnish the Certificate of Completion, in accordance with Section 4.7 above, Agency will give Owner a written notice stating why Agency has decided not to issue the Certificate of Completion, or why it is delaying the issuance, and the reasonable actions that, in Agency's opinion, Owner must take before Agency can issue the Certificate of Completion.

Agency's failure to give the notice within ten (10) days, however, will not cause the Owner to be entitled to the Certificate of Completion. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

4.7.2 The following are conditions precedent to Agency issuing the Certificate of Completion, and each submission will be in form and substance satisfactory to the Director: Evidence that the time to file all mechanics' liens or material men's liens has expired and any such liens recorded against the Property or Improvements have been released or, if not released, sufficiently bonded (i.e. 150%) against as required by law.

- 4.8 To the extent economically feasible, consistent with the requirements of any permitted encumbrance, or as otherwise approved by Agency or provided in the Agreement, if any building or improvement on the Property is damaged or destroyed by an insurable cause, Owner shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the Scope of Development and Project Design for the Project. Such work or repair shall commence within ninety (90) days after the insurance proceeds are made available to Owner and shall be complete within one (1) year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Owner shall make up the deficiency.
- 4.9 Inspections. Owner shall permit, facilitate and require its contractors to permit and facilitate observation and inspection of the Project by Agency during reasonable business hours and upon reasonable notice for the purpose of determining compliance with this Agreement.
- 4.10 If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners or businesses, Owner shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. Owner 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. For purposes of this Section 4.10 the parties acknowledge that as of the Effective Date the Project Property is vacant and unoccupied.
- 4.11 Reporting Requirements. Owner shall submit to Agency the following reports:

4.11.1 Annual Reports. Annually, beginning in the year following Agency's issuance of the Certificate of Completion, and continuing until the expiration of this Agreement, on such dates as are agreeable between the parties and consistent with all federal and state reporting requirements applicable to the Project, Owner shall submit an annual report to Agency, in a form approved by Agency. Such annual report shall include for each of the Affordable Units: the rent, the annual income and the family size of the Household occupying the Affordable Unit. Such annual report shall also state the date the tenancy commenced for each Affordable Unit, certification from an officer of Owner that the Affordable Unit is in compliance with the Affordable Rental Housing requirements, and such other information the Agency may be required by Law to obtain. Owner shall provide any additional information reasonably requested by the Agency provided such information is directly related to Owner's compliance with this Agreement.

4.11.2 Annual Proof of Insurance. Annually, beginning in the year following Agency's issuance of the Certificate of Completion, and continuing until the expiration of the Agreement, Owner shall submit proof of insurance as required by this Agreement.

4.12 All Leases used to rent the Affordable Units are subject to the following:

4.12.1 Annual Income Certification and Reporting. Owner shall include in leases for all Affordable Units provisions which authorize Owner to immediately terminate the tenancy of any Household one or more of whose members misrepresented any fact material to the Household's qualification as a Household for low income family. 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 low income family such Household's rent may be subject to increase to the amount payable by tenant under federal, state or local law, except that, consonant with the Law, tenants of the Affordable Units that have been allocated to low income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42.

4.12.2 The leases for the Affordable Units shall provide that if the Project is subject to state or federal rules governing low income housing tax credits, the provision of those rules regarding

continued occupancy by, and increases in rent for, Households whose incomes exceed the eligible income limitation shall apply in place of the provisions set forth in subsection 4.12.1 above.

4.13 With respect to the Project, Owner shall comply with the following:

4.13.1 Except to any extent otherwise provided in this Agreement, Owner is specifically responsible for all management functions with respect to the Affordable Units including, without limitation, the selection of tenants, certification and re-certification of Household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. Agency shall have no responsibility for management of the Affordable Units of the Project.

4.14 Owner covenants and agrees the Affordable Units shall constitute Affordable Rental Housing during the entire Affordability Period. If Owner fails to comply the requirement to lease the Affordable Units only to qualified Households during the Affordability period, as described in the attached Form of Regulatory Agreement and Declaration of Covenants and Restrictions attached hereto as Exhibit "F," Agency shall be entitled to enjoin Owner from leasing the Affordable Units in the Project, as Owner acknowledges that damages are not an adequate remedy at law for such breach.

5. **INDEMNITY; INSURANCE**

5.1 Owner shall indemnify, hold harmless and defend Agency, City and each of their officers, officials, employees, agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by Agency, City, Owner, 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 Owner's performance of this Agreement. Owner's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of Agency, City or any of their officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

5.2 Throughout the life of this Agreement, the Owner shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with

an insurance company 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 Agency's Risk Manager or his/her designee. The following policies of insurance are required:

5.2.1 Until the Certificate of Completion is recorded, Builders Risk (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

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

Owner shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Owner shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the Agency's Risk Manager or his/her designee.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to Agency. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Owner shall furnish Agency with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the term of this Agreement, Owner shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The Builders Risk (Course of Construction) and Property insurance policies shall be endorsed to name Agency as a loss payee.

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

If at any time Owner fails to maintain the required insurance in full force and effect, Owner shall immediately discontinue all work under this Agreement until Agency receives notice that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the Agency. Owner's failure to maintain any required insurance shall be sufficient cause for Agency to terminate this Agreement.

The fact that insurance is obtained by Owner shall not be deemed to release or diminish the liability of Owner, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify Agency, City and each of their officials, officers, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Owner. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Owner.

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

- 5.3 Owner will obtain and deliver payment and performance bonds issued by an insurance company admitted in California in good standing as a surety and meeting the criteria for Owner's other insurance under this Agreement, each bond in an amount at least equal to 100% of Owner's estimated construction costs, provided that the Agency hereby waives any requirement for said bonds at all time during which Owner is in full compliance with this Agreement and the Project remains fully funded.
- 5.4 Until Agency issues the Certificate of Completion Agency will have access to the Property, after reasonable notice to the Owner (except in emergencies), without charge or fee, during normal construction hours, for purposes of assuring compliance with this Agreement. Agency representatives will comply with all safety rules while on the Project or the Property.

- 5.5 Owner will design and construct the Improvements, and after that, prior to any allowable transfer or sale thereof, Owner will maintain the Property according to all applicable laws including, without limitation, all applicable state labor standards, Agency zoning and development standards, building, plumbing, mechanical and electrical codes, all provisions of the Fresno Municipal Code and all applicable access requirements. Agency makes no representation about which, if any, of such laws, ordinances, regulations or standards apply to development of the Project.

Owner acknowledges that Owner, not Agency, is responsible for determining applicability of and compliance with all local, state, and federal laws including, but not limited to, any applicable provisions of the California Labor Code, Public Contract Code, and Government Code. Agency makes no express or implied representation as to the applicability or inapplicability of any such laws to this Agreement or to the parties' respective rights or obligations hereunder including, but not limited to, payment of prevailing wages, competitive bidding, subcontractor listing, or similar or different matters. Owner further acknowledges that Agency shall not be liable or responsible at law or in equity for any failure by Owner to comply with any such laws, regardless of whether Agency knew or should have known of the need for such compliance, or whether Agency failed to notify Owner of the need for such compliance.

- 5.6 Owner will take reasonable efforts to not permit any lien or stop notice to be filed against the Property, provided Owner may reasonably determine to contest any such lien or stop notice. If a claim of lien or stop notice is recorded against the Property or Improvements, Owner, within 30 days after recordation of a claim of lien or stop notice or within 5 days after Agency's demand, whichever first occurs, will do the following:

5.6.1 Pay and discharge the same; or

5.6.2 Effect the release of such lien by recording and delivering to Agency a surety bond in sufficient form and amount (i.e. 150%), or otherwise; or

5.6.3 Give Agency other assurance which Agency, in its sole discretion, deems satisfactory to protect the Agency from the effect of the lien or bonded stop notice.

6. **SECURITY FINANCING AND RIGHTS OF HOLDERS.**

- 6.1 Notwithstanding any other provision of this Agreement, Owner may not grant a security interest in the Property before the Agency issues and records a Certificate of Completion, without the written consent of Agency,

provided that Agency hereby approves the recommended security interest of Owner's financial institutions, including their respective successors or assigns, as described in the Financing Plan.

7. CONTINUING OWNER OBLIGATIONS

- 7.1 In its performance of this Agreement, Owner covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person, including contractors, subcontractors, bidders and vendors, on account of race, color, religion, ancestry, national origin, sex, sexual preference, age, pregnancy, childbirth or related medical condition, medical condition (e.g., cancer related) or physical or mental disability, and in compliance with all applicable federal, state and local laws, regulations and rules including without limitation Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Owner will allow Agency representatives access to its employment records related to this Agreement during regular business hours and upon reasonable notice to verify compliance with these provisions when so requested by the Agency.
- 7.2 Owner will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Owner's right to contest in good faith any such taxes. Owner will remove any levy or attachment on the Property or any part of it, or assure the satisfaction of the levy or attachment within a reasonable time. Owner will notify Agency prior to applying for or receiving any exemption from the payment of property taxes or assessments on any interest in or to the Property or the Improvements. Owner further agrees that the prior consent of Agency shall be required if the basis for such exemption is other than for qualified property held by a nonprofit entity that has been determined to be exempt from federal and state income taxation, which consent shall not be unreasonably withheld.

8. **COVENANTS AND RESTRICTIONS RUNNING WITH THE LAND.** The following covenants shall run with the land and shall bind Owner, and Owner's

successors in interest to the Property for the periods stated, and shall be fully binding for the benefit of the Plan community and Agency without regard to technical classification or designation, legal or otherwise.

- 8.1 Owner covenants for itself, its successors, assigns, and every successor in interest to the Property or any part of it that, after closing of any applicable escrow, during construction, and after completing the Improvements, the Owner shall devote the Affordable Units on the Property to the uses specified in this Agreement for the Affordability Period. All uses of the Affordable Units including, without limitation, all activities Owner undertakes pursuant to this Agreement, shall conform with this Agreement and the Law. Without waiver or limitation, each of the Affordable Units to be constructed pursuant to this Agreement shall be maintained as Affordable Rental Housing pursuant to this Agreement and the Restrictions.
- 8.2 Owner and those taking under Owner will maintain the Property and all Improvements on site in reasonably good-condition and repair (and, as to landscaping, if any, in a healthy condition), all according to the Scope of Development and Project Design and related plans, as-amended from time to time. Owner and those taking under Owner shall: (i) maintain all on-site Improvements according to all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the Improvements free from graffiti; (iii) keep the Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to the on-site Improvements; and (v) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials.

Agency will give Owner written notice of any breach of this Section 8.2. Within 10 days from receipt of such notice, Agency and Owner will meet and confer, and agree to corrective actions and a schedule of performance for such corrective actions. Owner must cure the default within the agreed schedule or within (a) 10 days after the Agency's notice for any default involving landscaping, graffiti, debris, waste material, or general maintenance on the Property; or (b) 30 days after Agency's notice for any default involving the Improvements. If Owner does not cure the default within the agreed schedule, Agency, without obligation to, may enter the Property, cure the default, and protect, maintain, and preserve the Improvements and landscaping.

Agency may lien or assess the Property for the Agency's expenses in protecting, maintaining, and preserving the on-site Improvements and

aesthetics of the Property, including any lawful administrative charge in the manner used by the Agency in the abatement of public nuisances. The notice and opportunity to cure provided for herein will supplement the noticing, hearing, and nuisance abatement order used by Agency. Owner will promptly pay all such amounts to Agency upon demand.

- 8.3 From the Effective Date until the expiration of the Affordability Period, Owner covenants to use and operate the Affordable Units on the Property as Affordable Rental Housing pursuant to this Agreement.
- 8.4 Owner covenants for itself and any successors in interest and all persons claiming by, through or under them, in perpetuity, that there shall be no discrimination against or segregation of any person or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Affordable Units, nor shall Owner itself or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Affordable Units.
- 8.5 All deeds, leases, or contracts concerning the Affordable Units shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein, conveyed. The foregoing covenants shall run with the land."

In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, because of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

- 8.6 Agency is the beneficiary of the covenants running with the land for itself and for protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants are provided, without regard to whether Agency has been, remains, or is an owner of any land or interest in the Affordable Units on the Property. Agency may exercise all rights and remedies, and maintain any actions or suits at law or in equity or other proceedings to enforce the covenants for itself or any other beneficiaries.

9. **DEFAULTS AND REMEDIES**

- 9.1 Subject to the extensions of time permitted under this Agreement, either party's failure to perform any material action or material covenant as required by this Agreement, following notice and failure to cure, is a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of, and the cure demanded. Except as otherwise expressly provided in this Agreement, the noticing party shall not begin any proceeding against the other party until the other party is given an opportunity to cure the Default. The other party will have 30 calendar

days after receiving the notice to cure the Default, or, if the party cannot reasonably cure the Default within such 30 days, the other party must begin to cure within the 30 days and diligently pursue the cure to completion, whereupon there shall be no event of Default. Agency agrees to give copies of any notice of Default to Owner's investor and lenders at such addresses as provided in writing by Owner to Agency. Agency shall accept cure of any Default from such investor and lenders on the same basis as if tendered by the Owner.

- 9.2 Subject to first giving the notice and opportunity to cure, a party may begin an action at law to enforce, or in equity to seek specific performance of, the terms of this Agreement, or to cure, correct, or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. A party must bring any legal action in the Superior Court of the County of Fresno, State of California, in an appropriate municipal court in Fresno County, or in the District of the United States District Court serving Fresno County.
- 9.3 If Owner begins any legal action against Agency, it shall serve process on the Agency by personal service on the Director, or in any other manner the law permits. If Agency begins any legal action against the Owner, it will serve process on the Owner by personal service on Owner, Owner's Agent or in any other manner the law permits.
- 9.4 Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and a party's exercise of one or more rights or remedies will not preclude the party's exercise, at the same or different times, of any other rights or remedies for the same or any other Default of the other party.
- 9.5 A party's failure or delay in asserting any right or remedy will not be a waiver of any Default or of any right or remedy, and will not deprive the party of its right to begin and maintain any action or proceeding to protect, assert or enforce any right or remedy.
- 9.6 The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

10. GENERAL PROVISIONS

- 10.1 Any notice, demand, or other communication permitted or required under this Agreement will be in writing and given by personal delivery, or by first-class U.S. mail, postage prepaid, to a party at its respective address below:

To Agency:

Executive Director
Redevelopment Agency of the City of Fresno
2344 Tulare Street, Suite 200
Fresno, CA 93721

To Original Owner:

TFS Investments, LLC
7643 N Ingram Ave #105
Fresno, CA 93711

To Owner:

Fulton West/Cedar Heights Scattered Site, LP
c/o CEO/Executive Director
Housing Authority of the City of Fresno, California
1331 Fulton Mall
Fresno, CA 93721

A party may change its address for notices, demands and communications by giving notice of the new address as provided in this section. The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

- 10.2 All of the terms, covenants and conditions of this Agreement shall be binding upon the Owner and its permitted successors and assigns. Whenever the term "Owner" is used in this Agreement, such term shall include Owner's successors and assigns as permitted under this Agreement.
- 10.3 The Agency may assign or transfer any of its interests, rights, or obligations hereunder at any time to any public agency without the consent of the Owner.
- 10.4 No member, official or employee of the Agency shall be personally liable to the Owner, or any successor in interest to Owner, for any Default or breach by the Agency.
- 10.5 The relationship between the Agency and the Owner is that of redevelopment agency and redeveloper respectively, as permitted by law, and not that of a partnership or joint venture. Agency and Owner shall not be deemed or construed for any purpose to be the agent of the other.

- 10.6 Whenever this Agreement references an action or approval required or permitted by the Agency, the Director or his or her designee is authorized to act for the Agency as agent of the Agency unless this Agreement, the Law, Constitutional and/or local law provide otherwise, or the context otherwise requires.
- 10.7 This Agreement may be signed in multiple counterparts which, when signed by all parties, will be one binding agreement. The parties will sign three copies of this Agreement, each of which is deemed to be original.
- 10.8 This Agreement includes the exhibits and attachments referenced and incorporated in it. This Agreement contains the entire agreement between the parties relating to the transaction contemplated by this Agreement and supersedes all prior or contemporaneous agreements, understanding, representation and statements, whether oral or written.
- 10.9 If either party begins a lawsuit or arbitration proceeding, in law or equity, to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees, court costs, and legal expenses as determined by the court or tribunal having jurisdiction.
- 10.10 Any waiver, alteration, change or modification of or to this Agreement, to be effective, must be in writing, and signed by each party.
- 10.11 If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances is held invalid or unenforceable, the remainder of this Agreement and its application to persons or circumstances, other than those about whom or which it is held invalid or unenforceable, shall not be affected, and shall remain valid and enforceable to the fullest extent permitted by law.
- 10.12 Each party represents and warrants to the other that (a) each has read this Agreement, and (b) is signing this Agreement with full knowledge of any rights and obligations each may have, and (c) each has received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel, and (d) has signed this Agreement without relying on any agreement, promise, statement or representation by or for the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.
- 10.13 No member, official or employee of Agency has or shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member,

official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. Owner represents and warrants that it has not paid or given, and will not pay or give, to any third party any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys.

- 10.14 The parties will execute such other and further documents, and will take any other steps, necessary, helpful, or appropriate to carry out the provisions of this Agreement.
- 10.15 No contractor, subcontractor, mechanic, material man, laborer, vendor, or other person hired or retained by with Owner shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, rather each such person shall be deemed to have agreed (a) that they shall look to Owner as their sole source of recovery if not paid, and (b) except as otherwise agreed to by Agency and any such person in writing, they may not enter any claim or bring any such action against Agency under any circumstances. Except as provided by law, or as otherwise agreed to in writing between Agency and such person, each such person shall be deemed to have waived in writing all right to seek redress from Agency under any circumstances whatsoever.
- 10.16 Owner hereby covenants and warrants that it is a duly authorized and existing California limited liability company, in good standing; that it shall remain in good standing; that it has the full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement; that the execution and delivery of this Agreement were duly authorized by proper action of the Owner and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions of the Owner's part contemplated by this Agreement, except as have been obtained and are in full force and effect; and that this Agreement constitutes the valid, binding and enforceable obligation of the Owner.
- 10.17 In the event of any conflict between the body of this Agreement and any exhibit or attachment to it, the terms and conditions of the body of this Agreement will control.
- 10.18 Investor-required Provisions.
- a. Agency agrees that any partner of Owner shall have the right, but not the obligation to cure any event of default and such cure shall be

accepted by Agency on the same basis as if tendered by the defaulting party.

b. All notices by Agency to Owner shall be concurrently sent to the Owner's limited partners at an address that Owner shall deliver in writing to Agency.

c. Agency agrees that the removal and replacement of the general partner of Owner by the limited partners for cause under the Owner's Agreement of Limited Partnership, as may be amended and restated after the date hereof, shall not constitute a default or breach of any documents, instruments or agreements evidencing the loan from the Agency; provided that, an affiliate of Owner's limited partner is the replacement general partner or if such replacement is not an affiliate of limited partner, the replacement general partner is reasonably acceptable to the Agency.

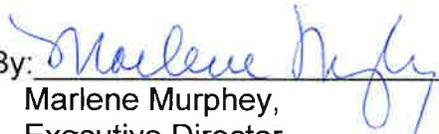
d. Agency agrees that its consent shall not be required for transfers of limited partnership interests in Owner.

10.19 Condition Precedent. This Agreement is contingent upon and shall not be effective until Owner is granted Low Income Housing Tax Credits. If Owner is not awarded Low Income Housing Tax Credits by December 31, 2014, this Agreement shall be void and the Original OPA shall remain in full force and effect.

[Signatures on following page.]

IN WITNESS WHEREOF, Agency, Original Owner, and Owner have signed this Agreement, and the Agency has approved this Agreement, on the dates and in the year set forth below

AGENCY:
CITY OF FRESNO, a Municipal Corporation,
In its capacity as Housing Successor to the
Redevelopment Agency of the City of Fresno

By: 
Marlene Murphey,
Executive Director

Date: 6/27/14

ATTEST:
YVONNE SPENCE, CMC
City Clerk

APPROVED AS TO FORM;
DOUG T. SLOAN
City Attorney

By: 
Deputy

By: 
Deputy

Date: 6/27/14

Date: 6/27/14

ORIGINAL OWNER:
TFS INVESTMENTS, LLC, a California limited liability company

By: 

Date: 6/26/14

Name: Terance Frazier
Title: Managing Member
(Attach notary certificate of acknowledgment)

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Fresno

On 6/27/14 before me, Emma L. Baker, Notary Public
(Here insert name and title of the officer)

personally appeared Marlene Murphy

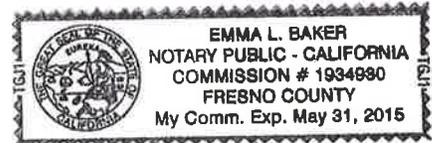
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

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

WITNESS my hand and official seal.

Emma L. Baker
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

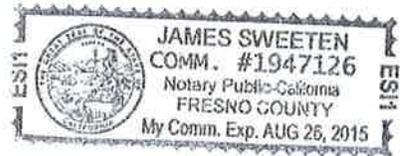
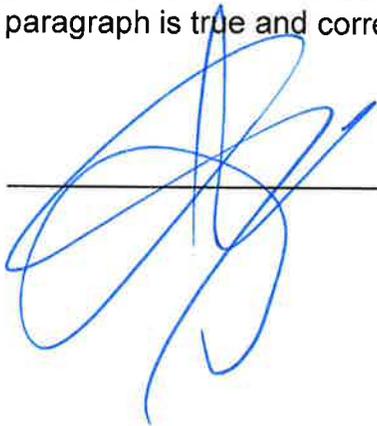
CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California)
)ss.
County of FRESNO)

On June 26 2014 before me, JAMES SWEETEN, Notary Public, personally appeared TERANCE FRAZIER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature _____ (Seal)



OWNER:
FULTONIA WEST/CEDAR HEIGHTS SCATTERED SITE, LP, a California limited partnership

By: Silvercrest, Inc., its managing general partner

By: Tracewell Hanrahan Date: 6/26/14
Name: Tracewell Hanrahan
Title: Treasurer

By: Housing Authority of the City of Fresno, California, its administrative general partner

By: Tracewell Hanrahan Date: 6/26/14
Name: Tracewell Hanrahan
Title: CFO/Deputy Director

Attachments:

- Exhibit A: Legal Description of Property
- Exhibit B: Performance and Payment Schedule
- Exhibit C: Budget/Financial Plan
- Exhibit D: Certificate of Completion
- Exhibit E: Scope of Development and Project Design
- Exhibit F: Form of Regulatory Agreement and Declaration of Covenants and Restrictions
- Exhibit G: Form of Promissory Note
- Exhibit H: Form of Deed of Trust

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

The Fultonia West Property is located at 541-545 N. Fulton Street, Fresno, CA 93728

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

PARCEL ONE:

LOTS 15, 16, 17, AND 18 IN BLOCK 1 OF BLOOMINGTON ADDITION TO THE CITY OF FRESNO, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 6 OF RECORD OF SURVEY, FRESNO COUNTY RECORDS.

APN: 452-274-05

PARCEL TWO:

THE NORTH 13 ½ FEET OF LOT 10 AND ALL OF LOTS 11, 12, 13, AND 14 IN BLOCK 1 OF BLOOMINGTON ADDITION TO THE CITY OF FRESNO, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 6 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

A NOTICE OF VOLUNTARY PARCEL MERGER, APPROVED BY THE CITY OF RESNO WAS RECORDED MAY 31, 2011, DOCUMENT NO. 2011-0072808, OFFICAL RECORDS.

APN: 452-274-16 (NEW ASSESSORS NUMBER)
452-274-06 AND 542-274-07 (OLD ASSESSORS NUMBERS)

The Cedar Heights Property is located at 4496-4538 E. Hamilton Avenue, Fresno, California 93702,

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

THE WEST 120 FEET OF LOT 11, OF GORDONDALE, ACCORDING TO THE MAP RECORDED IN BOOK 8 OF PLATS, PAGE 45, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA.

APN: 471-220-55T

EXHIBIT "B"
Performance and Payment Schedule

SCHEDULE OF PERFORMANCE

<u>Items Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>
Original Owner executes and delivers Agreement and Promissory Note, Deed of Trust and Regulatory Agreement and Declaration of Covenants and Restrictions to Agency (the "Loan Documents").	Within ___ days after receiving Agency Board approval of the Agreement.	03/04/2011
Initial Loan Disbursement. Agency executes the Loan Documents as applicable, and records such documents, with the exception of the Promissory Note and shall make the initial disbursement of loan proceeds in the amount of \$435,000.00 to the Original Owner.		04/11/2011
<u>Re-Submission – Site Plan Review.</u> The Owner shall submit Site Plan, Operating Statement, Architecture and related CEQA documents to the City of Fresno for review.		07/01/2014
<u>Re-Submission – Building Plans.</u> The Owner shall submit Building, Civil Engineering and Fire Protection Plans to the City of Fresno for review.		09/30/2014
<u>Commencement of Construction.</u> Construction shall commence on the improvements to be constructed on the Property.		03/30/2015
Final Remaining Loan Disbursement. The Agency shall make the final loan disbursement to the New Owner in the amount of \$435,000.	Two (2) days prior to Financial Closing, Agency to deposit funds into Escrow Account.	On or before 03/30/2015
<u>Completion of Construction of Owner's Improvements.</u> The Owner shall complete construction of the improvements to be constructed on the Property.	Within the specified months after commencement thereof by the Owner, not to exceed 14 months after commencement of	05/30/2016

	construction	
<u>Issuance – Certificate of Completion.</u> The Agency shall furnish the Owner with a Certificate of Completion on the Project.	Within 15 days after receipt of Certificate of Completion from Agency, Owner shall execute and return said Certificate of Completion to Agency.	06/15/2016

Improvements shall be completed within 14 months of the start of construction.

Construction shall commence by: March 30, 2015

Construction shall be completed by: May 30, 2016

SCHEDULE OF AGENCY LOAN REPAYMENT

Month 660 after the Project Completion Date
set forth in the Certificate of Completion: \$870,000

EXHIBIT "C" Budget/Financial Plan

6/4/2014

Project Concept	
Land Square footage	71,874
Land Acreage	1.65
Gross Building Square Footage	40,534
Residential Square Footage	(plus comm room) 40,339
Total Residential Units	45
Density (du/ac)	27.3
Net Rentable Square Footage	38,584

Total Construction Cost	
Land Cost	\$ 335,146
Soft Cost and Impact Fees	\$ 1,342,982
Construction Costs	\$ 5,504,819
Developer Fee	\$ 1,102,636
Contingency and Reserves	\$ 487,286
Architectural/Eng/Env	<u>\$ 477,692</u>
TOTAL DEVELOPMENT COST	\$ 9,250,561

Unit Mix and Rents			
Affordable @ 60% of AMI		30	
<u>Unit Mix</u>	<u>#</u> <u>Units</u>	<u>SF</u>	<u>Net Rent PU</u>
1 BR/1 BTH	2	697	\$ 420.00
1 BR/1 BTH	1	587	\$ 472.00
2 BR/1 BTH	2	750	\$ 563.00
2 BR/1 BTH	1	752	\$ 563.00
2 BR/1 BTH	15	754	\$ 563.00
2 BR/1 BTH	1	756	\$ 563.00
2 BR/1 BTH	1	758	\$ 563.00
2 BR/1 BTH	2	763	\$ 563.00
2 BR/1 BTH	2	765	\$ 563.00
2 BR/1 BTH	1	785	\$ 563.00
2 BR/1 BTH	1	797	\$ 563.00
2 BR/1 BTH	1	903	\$ 563.00
3 BR/1 BTH	5	1083	\$ 361.00
3 BR/1 BTH	3	1083	\$ 575.00
3 BR/1 BTH	4	1212	\$ 575.00
3 BR/1 BTH	2	1237	\$ 575.00
	44	38,584	
Manager Unit	1		
(3) 1-Bedroom			\$ 1,312.00
(27) 2-Bedroom			\$ 15,201.00
(14) 3-Bedroom			<u>\$ 6,980.00</u>
Monthly Gross Rent Residential			\$ 23,493.00
Annual Gross Rent Residential			\$ 281,916.00
Annual Vacancy (7%)			<u>(19,734.12)</u>
Annual Effective Rent			\$ 262,181.88
Annual Operating Exp.			<u>216,920.00</u>
<i>Total Annual Net Operating Income</i>			45,261.88
Debt Service Bank Loan			-
Cash Flow			45,261.88

Permanent Sources of Funds		
LIHTC Equity	67%	\$ 6,190,561
RDA Funds	9%	\$ 870,000
Fresno HA Seller Financing	1%	\$ 90,000
HOME Funds	23%	\$ 2,100,000
Total Sources of Funds	100%	\$ 9,250,561

Financial Plan		Fulton West/Cedar Heights Project		6/4/2014	
Project Concept			Total Construction Cost		
Land Square footage		71,874	Land Cost		\$ 335,146
Land Acreage		1.65	Soft Cost and Impact Fees		\$ 1,342,982
Gross Building Square Footage		40,534	Construction Costs		\$ 5,504,819
Residential Square Footage (plus comm room)		40,539	Developer Fee		\$ 1,102,636
Total Residential Units		45	Contingency and Reserves		\$ 487,286
Density (du/ac)		27.3	Architectural/Eng/Env		\$ 477,692
Net Rentable Square Footage		38,584	TOTAL DEVELOPMENT COST		\$ 9,250,561
Unit Mix and Rents			Valuation and LTV Analysis		
Affordable @ 50% of AMI		18	FMV based on Capitalization Rat	6.0%	\$ 754,365
Affordable @ 60% of AMI		10	LTV based on Development Cos	23%	
Unit Mix	# Units	SF	Net Rent PU		
1 BR/1 BTH	2	697	\$ 420.00		
1 BR/1 BTH	1	587	\$ 472.00		
2 BR/1 BTH	2	750	\$ 563.00		
2 BR/1 BTH	1	752	\$ 563.00		
2 BR/1 BTH	15	754	\$ 563.00		
2 BR/1 BTH	1	756	\$ 563.00		
2 BR/1 BTH	1	758	\$ 563.00		
2 BR/1 BTH	2	763	\$ 563.00		
2 BR/1 BTH	2	765	\$ 563.00		
2 BR/1 BTH	1	785	\$ 563.00		
2 BR/1 BTH	1	797	\$ 563.00		
2 BR/1 BTH	1	903	\$ 563.00		
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3 BR/1 BTH	3	1083	\$ 575.00		
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3 BR/1 BTH	2	1237	\$ 575.00		
	44	38,584			
(3) 1-Bedroom		\$ 1,312.00			
(27) 2-Bedroom		\$ 15,201.00			
(14) 3-Bedroom		\$ 6,980.00			
Monthly Gross Rent Residential		\$ 23,493.00			
Annual Gross Rent Residential		\$ 281,916.00			
Annual Vacancy (7%)		(19,734.12)			
Annual Effective Rent		\$ 262,181.88			
Annual Operating Exp.		216,920.00			
Total Annual Net Operating Income		45,261.88			
Debt Service Bank Loan		-			
Cash Flow		45,261.88			
Permanent Sources of Funds					
LIHTC Equity	67%	\$ 6,190,561			
RDA Funds	9%	\$ 870,000			
Fresno HA Seller Financing	1%	\$ 90,000			
HOME Funds	23%	\$ 2,100,000			
Total Sources of Funds	100%	\$ 9,250,561			
Investment Analysis					
Funds Leveraged with HOME Investment		\$ 7,150,561			
Per HOME dollar Leverage Ratio		\$ 3.41			
Total Cost per Residential Square Foot		\$ 229			
Cost per Unit		\$ 205,568			
Subsidy per 11 HOME Units		\$ 190,909			

Fulton West/Cedar Heights
15-YEAR CASH FLOW ANALYSIS

6.4.14

INCOME FROM HOUSING UNITS		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Gross Potential Rental Income	2.0%	281,916	287,554	293,305	299,172	305,155	311,258	317,483	323,833	330,310	336,916	343,654	350,527	357,538	364,688	371,982
Misc. Income	2.0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
GROSS POTENTIAL INCOME - HOUSING		281,916	287,554	293,305	299,172	305,155	311,258	317,483	323,833	330,310	336,916	343,654	350,527	357,538	364,688	371,982
VACANCY ASSUMPTIONS																
Vacancy Loss - Residential	7.0%	(19,734)	(20,129)	(20,531)	(20,942)	(21,361)	(21,788)	(22,224)	(22,668)	(23,122)	(23,584)	(24,055)	(24,537)	(25,028)	(25,528)	(26,037)
Misc. Income	7.0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL VACANCY LOSS		(19,734)	(20,129)	(20,531)	(20,942)	(21,361)	(21,788)	(22,224)	(22,668)	(23,122)	(23,584)	(24,055)	(24,537)	(25,028)	(25,528)	(26,037)
EFFECTIVE GROSS INCOME		262,182	267,426	272,774	278,230	283,794	289,470	295,259	301,165	307,188	313,332	319,598	325,990	332,510	339,160	345,943
OPERATING EXPENSES & RESERVE DEPOSITS																
Total Operating Expenses	3.0%	203,420	209,523	215,808	222,283	228,951	235,820	242,894	250,181	257,686	265,417	273,379	281,581	290,028	298,729	307,691
Replacement Reserve	3.0%	13,500	13,905	14,322	14,752	15,194	15,650	16,120	16,603	17,101	17,614	18,143	18,687	19,248	19,825	20,420
TOTAL EXPENSES & RESERVES		216,920	223,428	230,130	237,034	244,145	251,470	259,014	266,784	274,788	283,031	291,522	300,268	309,276	318,554	328,111
NET OPERATING INCOME		45,262	43,998	42,644	41,195	39,649	38,000	36,246	34,380	32,400	30,300	28,076	25,722	23,234	20,606	17,832
DEBT SERVICE (Required)																
Bank Loan		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Required Debt Service		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RESIDUAL CASH FLOW		45,262	43,998	42,644	41,195	39,649	38,000	36,246	34,380	32,400	30,300	28,076	25,722	23,234	20,606	17,832
DEBT SERVICE COVERAGE RATIO																
		N/A														
Residual Receipts Payments																
Deferred Developer Fee*		0														
Investor Asset Mgmt Fee*		5,000	5,150	5,305	5,464	5,628	5,796	5,970	6,149	6,334	6,524	6,720	6,921	7,129	7,343	7,563
MGP Asset Mgmt Fee*		10,000	10,300	10,609	10,927	11,255	11,593	11,941	12,299	12,668	13,048	13,439	13,842	14,258	13,263	10,270
Housing Successor (ROA) Loan	40%	12,105	11,419	10,692	9,922	9,106	8,244	7,334	6,373	5,359	4,291	3,187	1,983	739		
City of Fresno HOME Loan	50%	15,131	14,274	13,365	12,402	11,383	10,306	9,167	7,966	6,699	5,364	3,959	2,479	924		
HA Seller Financing Loan	10%	3,026	2,855	2,673	2,480	2,277	2,061	1,833	1,593	1,340	1,073	792	486	185		
Total Residual Payments	100%	45,262	43,998	42,644	41,195	39,649	38,000	36,246	34,380	32,400	30,300	28,076	25,722	23,234	20,606	17,832

* Fees are currently estimates and subject to change.

RESIDENTIAL DEVELOPMENT BUDGET

Fultonia West/Cedar Heights Project

Acquisition Costs:
 Purchase Price
 Liens
 Closing, Title & Recording Costs
 Extension Payment
 Other: _____
 SUBTOTAL

Construction
 Basic Construction Contract
 Bond Premium
 Infrastructure Improvements
 Hazardous Abate. & Monitoring
 Construction Contingency (5 %)
 * SEE BELOW
 Sales Taxes
 Other Construction Costs: Demo____
 Other Construction Costs: _____
 SUBTOTAL

Development
 Appraisal
 Architect/Engineer
 Environmental Assessment
 Geotechnical Study
 Boundary & Topographic Survey
 Legal
 Developer Fee
 Project Management
 Tax Credit Technical Assistance
 Other Consultants: Market Study
 Other: ___Soft Cost Contingency___
 SUBTOTAL

Other Development
 Real Estate Tax
 Insurance
 Relocation
 Bidding Costs
 Permits, Fees & Hookups
 Impact/Mitigation Fees
 Development Utilities Install
 Construction Loan Fees
 Construction Interest
 Other Tax Credit Investor Fees
 LIHTC Fees
 Accounting/Audit
 Marketing/Leasing Expenses
 Carrying Costs at Rent Up Reserve
 Operating Reserves
 Replacement Reserves:
 SUBTOTAL

Total Development Costs

Total Development Costs	Residential Total	Funding Sources			
		HOME Loan	RDA Loan	Tax Credit Equity	Fresno HA Seller Note
\$335,146	\$335,146		245,146		90,000
\$ 25,184	\$ 25,184		2,259	22,925	
\$360,330	360,330	0	247,405	22,925	90,000
\$5,269,420	5,269,420	2,100,000	437,638	2,731,782	
\$ 33,000	33,000			33,000	
\$ 211,049	\$ 211,049			211,049	
\$ 276,891	\$ 276,891			276,891	
24,350	24,350			24,350	
\$5,814,710	5,814,710	2,100,000	437,638	3,277,072	0
\$9,750	\$9,750		4,750	5,000	
\$477,692	477,692		163,637	313,855	
\$22,375	22,375		16,117	6,258	
\$157,828	157,828		253	157,575	
\$1,102,636	1,102,636			1,102,636	
\$50,000	\$50,000			50,000	
\$ 8,000	\$ 8,000			8,000	
\$76,935	\$76,935			76,935	
\$1,905,216	1,905,216	0	184,957	1,720,259	0
\$20,757	\$20,757			\$20,757	
\$32,000	\$32,000			\$32,000	
\$71,704	71,704			71,704	
\$451,050	451,050			451,050	
\$115,000	115,000			115,000	
\$77,443	77,443			77,443	
\$162,252	162,252			162,252	
20,000	20,000			20,000	
\$41,224	41,224			41,224	
\$25,000	25,000			25,000	
\$20,415	20,415			20,415	
\$25,000	25,000			25,000	
\$108,460	108,460			108,460	
\$1,170,305	1,170,305	0	0	1,170,305	0
\$9,250,561	9,250,561	\$2,100,000	\$870,000	\$6,190,561	\$90,000

EXHIBIT "D"
Certificate of Completion

CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno, as Housing Successor to the
Redevelopment Agency of the City of Fresno
2344 Tulare St., Suite 200
Fresno, Ca. 93721
Attention: Executive Director

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

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

By: _____

Marlene Murphey

Its: Executive Director

Dated: _____

Certificate of Completion
Fulton West, 541-545 N. Fulton Street, Fresno, CA &
Cedar Heights, 4496-4538 E. Hamilton Ave., Fresno, CA
Scattered Site Residential Rental Project

R E C I T A L S :

- A. By an Owner Participation Agreement (the "Agreement") dated [_____], 2014 between Fulton West/Cedar Heights Scattered Site, LP, a California limited partnership ("Owner") and the City of Fresno, a municipal corporation, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno ("Agency"), Owner agreed to construct certain residential units on the premises legally described in Attachment "A" hereto (the "Property") and preserve the Affordable Units, as defined in the Agreement as rental housing for Low- Income Households with the assistance of Agency housing set aside funds while meeting the Affordable Housing, income targeting and other requirements of the Community Redevelopment Law set forth at California Health and Safety Code Sections 33000 et seq. for a fifty-five (55) year Affordability Period according to the terms and conditions of the Agreement.
- B. The Agreement was recorded on [_____], 2014 in the Official Records of Fresno County, California as Instrument No. _____.
- C. Under the terms of the Agreement, after Owner completes the construction on the Property, Owner may ask Agency to record a Certificate of Completion.
- D. Owner has asked Agency to furnish Owner with a recordable Certificate of Completion.
- E. Agency's issuance of this Certificate of Completion is conclusive evidence that Owner has completed the construction on the Property as set forth in the Agreement.

NOW THEREFORE:

1. Agency certifies that Owner commenced the construction work on the Project on [_____], 20__, and completed the construction work on the Project on _____, 20__, and has done so in full compliance with the Agreement.

2. This Certificate of Completion is not evidence of Owner'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 Agreement.

IN WITNESS WHEREOF, the Agency has executed this Certificate of Completion as of this ___ day of _____, 20__.

City of Fresno, a municipal corporation,
In its capacity as Housing Successor to the
Redevelopment Agency of the City of Fresno

By: _____
Marlene Murphey
Executive Director

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

Dated: _____, 20__

FULTONIA WEST/CEDAR HEIGHTS SCATTERED SITE, LP, a California limited partnership

By: Silvercrest, Inc., its managing general partner

By _____ Date: _____
Name: _____
Title: _____

By: Housing Authority of the City of Fresno, California, its administrative general partner

By: _____
Name: Preston Prince
Title: Executive Director
Date: _____

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

ATTEST:
CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Deputy

By: _____
Deputy

Dated: _____

Dated: _____

EXHIBIT A

LEGAL DESCRIPTION

The Fultonia West Property is located at 541-545 N. Fulton Street, Fresno, CA 93728

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

PARCEL ONE:

LOTS 15, 16, 17, AND 18 IN BLOCK 1 OF BLOOMINGTON ADDITION TO THE CITY OF FRESNO, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 6 OF RECORD OF SURVEY, FRESNO COUNTY RECORDS.

APN: 452-274-05

PARCEL TWO:

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APN: 452-274-16 (NEW ASSESSORS NUMBER)
452-274-06 AND 542-274-07 (OLD ASSESSORS NUMBERS)

The Cedar Heights Property is located at 4496-4538 E. Hamilton Avenue, Fresno, California 93702,

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

THE WEST 120 FEET OF LOT 11, OF GORDONDALE, ACCORDING TO THE MAP RECORDED IN BOOK 8 OF PLATS, PAGE 45, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA.

APN: 471-220-55T

**EXHIBIT “E”
SCOPE OF DEVELOPMENT AND PROJECT DESIGN**

Fulton West/Cedar Heights Scattered Site, LP is excited about the opportunity to develop and build forty-five (45) units of quality housing.

Like the City of Fresno and the RDA successor agency, we are committed to the revitalization of neighborhoods in Southeast Fresno and South Tower. Over the past couple years, the development team has worked with the RDA, architects, and other partners to create a unique project which will help further the transformations taking place in the respective neighborhoods.

The current development team is comprised of TFS Investments, LLC (SLP), Housing Authority of the City of Fresno (AGP) and Silvercrest, Inc., an affiliate of the Housing Authority of the City of Fresno (MGP). Marvin Armstrong is contracted to complete the architectural work on the “Fulton West” site and R.L. Davidson, Inc., Architects, is under contract for the “Cedar Heights” site.

The proposed project consists of forty-five (45) apartment units, in two-story structures, with the following unit mix:

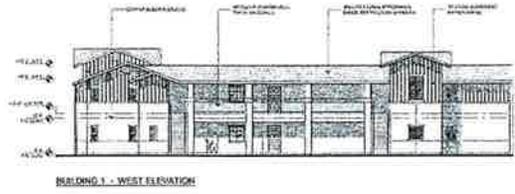
Unit Type	# Units	Square Feet Per Unit
3 bedroom/2 bath – 30%	5	1083-1237
3 bedroom/2 bath – 45%	9	1083-1237
2 bedroom/1 bath - 50%	18	750-903
2 bedroom/1 bath - 60%	9	750-903
2 bedroom/1 bath – N/A	1	754
1 bedroom/1 bath - 45%	2	697
1 bedroom/1 bath - 60%	1	587
Total	45	

All of the units will include amenities that are comparable to recently constructed market rate units in the community. The construction and design of the project is intended to serve a variety of families. The project’s features, array of bedroom

sizes, income range, site amenities, location and empowering onsite services are aimed to serve our target population.

Residents of Fultonia West and Cedar Heights will have access to interior community spaces, outdoor play spaces for children and adult relaxation and recreation places. A community room (1,001 square feet) at Fultonia West will accommodate services for families and children, community events, and property management-related functions. An onsite-manager will help manage and maintain interior and exterior community areas at Fultonia West.

Thank you for the opportunity and we look forward to another successful project.



CEDAR HEIGHTS APARTMENTS

FAMILY APARTMENT COMMUNITY
FRESNO, CA

DEVELOPED BY:
HOUSING AUTHORITIES OF THE CITY AND COUNTY OF FRESNO

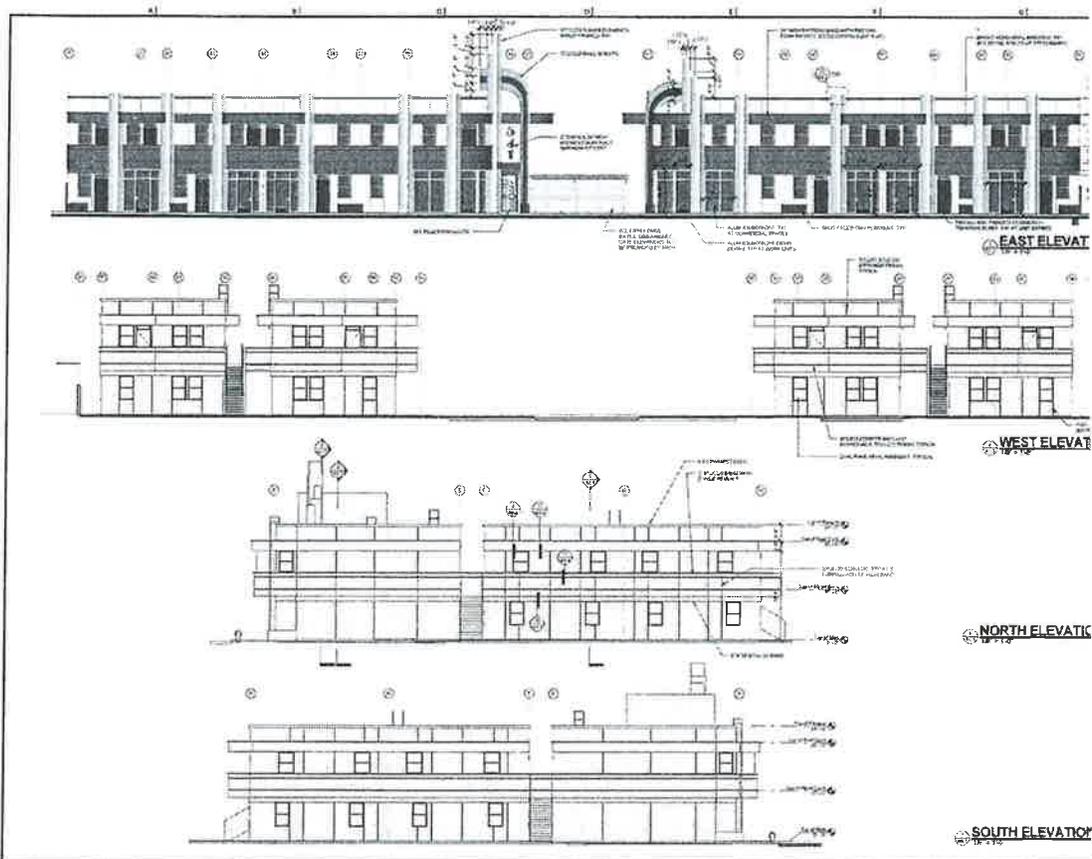


EXHIBIT "F"

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

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF FRESNO
AS HOUSING SUCCESSOR TO
THE REDEVELOPMENT AGENCY
2344 Tulare Street
Fresno, CA 93721
Attn: Executive Director

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

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

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this ____ day of _____, _____, by and between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic ("Agency"), and Fultonia West/Cedar Heights Scattered Site, LP, a California limited partnership ("Owner").

R E C I T A L S:

A. Pursuant to an Amended and Restated Owner Participation Agreement by and between Agency, Original Owner and Owner dated _____, 2014 (the "OPA"), Agency has provided to Owner financial assistance in the amount of approximately Eight Hundred Seventy Thousand Dollars (\$870,000.00) in loan funds (the "Agency Assistance"), for the purpose of assisting Owner in the acquisition of real property and the construction of a residential apartment complex thereon wherein one hundred percent of the units shall be rented to low income households, on that certain real property located in the City of Fresno, County of Fresno, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

B. Pursuant to the OPA, Owner has agreed to construct and maintain a rental apartment housing project consisting of forty-five (45) total residential units

(hereinafter referred to collectively as the "Project") on the Property. The Project is also referred to in the OPA as the "Project," and is further described in the Scope of Development and Project Design attached to the OPA.

C. Agency, City, and Owner now desire to place restrictions upon the use and operation of the Project, in order to ensure that the Project shall be operated continuously as a rental apartment housing project with thirty (30) of the units available for rental by low income persons for the term of this Agreement.

A G R E E M E N T:

NOW, THEREFORE, the Owner and Agency declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Property shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Property, and are established expressly and exclusively for the use and benefit of the Agency, the residents of the City of Fresno, and every person renting a dwelling unit on the Property.

AFFORDABILITY RESTRICTIONS RUNNING WITH LAND

In addition to the covenants and conditions contained in the OPA, the following California Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.) affordability requirements shall be imposed upon the thirty (30) Affordable Units on the Property funded under the Agreement and shall bind the Owner and all purchasers of the Property and their successors until the date that is fifty-five (55) years following recordation of the Agency's Certificate of Completion as defined in the OPA.

The Affordable Units on the Property are held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Agreement, all of which are in furtherance of the Project, the Agency's Community Redevelopment Law and Plan Area obligations including Agency's obligations set forth at California Health & Safety Code sections 33334.2 et seq and 33413 (a) with respect to Housing Set Aside Funds and replacement dwelling units at affordable rent within the jurisdiction of the Agency. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having

or acquiring any right, title or interest in the Affordable Units upon the Property or any part thereof, will inure to the benefit of the Agency, and will be enforceable by it. Any purchaser under a contract of sale or other transferee of an interest covering any right, title or interest in any part of the Affordable Units upon the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenants, and limitations set forth in this Agreement until the date that is fifty-five (55) years following recordation of the Agency's Certificate of Completion.

1. Restrictions. The following covenants and restrictions ("Restrictions") on the use and enjoyment of the Affordable Units upon the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of the Agency and shall run with the Affordable Units upon the Property and be binding on any future owners of the Property and inure to the benefit of and be enforceable by Agency. These covenants and restrictions are as follows:

a. From the date of recordation of this Agreement until the expiration of the Affordability Period, the thirty (30) Affordable Units funded under the OPA are to be used as Low Income Affordable Rental Housing and affordable replacement dwellings as provided for in the OPA and this Agreement. Owner agrees to file a recordable document setting forth the Project Completion Date and the Affordability Period as and when determined by the Agency. Unless otherwise provided in the Agreement, the term "Affordable Rental Housing" shall include without limitation compliance with the following requirements:

Nondiscrimination. There shall be no discrimination against nor segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or handicap in the sale, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall Owner or any person claiming under the Owner, establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Property.

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

Income Requirements. Each of the thirty (30) Affordable Units constituting Low Income Affordable Rental Housing upon the Property may be leased only to (a) natural person(s) whose annual household income at the time of initial occupancy is not greater than sixty percent (60%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable rent for lower income households, consistent with the applicable California Redevelopment Law, including California Health & Safety Code Section 50053(b)(3) (collectively, the "Low-Income Requirements").

Injunctive Relief and Recapture. Should any of the thirty (30) Affordable Units constituting Low Income Affordable Rental Housing upon the Property not continue, at the time of initial occupancy, to satisfy the Low-Income Requirements, then, during the Affordability Period, such Unit(s) shall be made available for subsequent lease only to Households that qualify as a very low-income Household, as defined in California Health & Safety Code Section 50105, for use as the Household's principal residence.

2. Enforcement of Restrictions. Without waiver or limitation, the Agency shall be entitled to injunctive or other equitable relief against any violation or attempted violation of this Agreement, including the Restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof.

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

a. Income Computation. Immediately prior to a Household's occupancy of an Affordable Unit, Owner shall obtain and maintain on file an Income Computation and Certification form, attached hereto as Exhibit "B," from each such Household dated immediately prior to the date of initial occupancy in the Project by such Household. In addition, the Owner will provide such further information as may be required in the future by the Agency. Owner shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part

of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income as is satisfactory to the Agency; and (v) obtain such other information as may be requested by the Agency. A copy of each such completed Income Computation and Certification form shall be filed with the Agency prior to the occupancy of an Affordable Unit by a Household whenever possible, but in no event more than thirty (30) days after initial occupancy by said Household.

b. Income Recertification. Immediately prior to the first anniversary date of the occupancy of an Affordable Unit by a Household and on each anniversary date thereafter, Owner shall recertify the income of such Household by obtaining a completed Income Computation and Certification form based upon the current income of each occupant of the Affordable Unit. In the event the recertification demonstrates that such Household's income exceeds the income at which such Household would qualify to rent the Affordable Unit, such Household will no longer qualify for Affordable Rent. Owner shall provide the Agency with a copy of each such completed recertification with the next submission of Certificate of Continuing Program Compliance, as specified herein.

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

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

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

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

5 **Benefit.** This Agreement and the Restrictions herein shall run with and bind the Property for a term commencing on the date this Agreement is recorded in the Office of the Recorder of the County of Fresno, State of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of Agency and/or any other person entitled to enforce these Restrictions shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

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

7. Waiver. Neither Owner nor any future owner of the Property may exempt itself from liability for failure to comply with the Restrictions required in this Agreement.

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

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

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

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

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

13. Notice. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, or by certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

Agency:	City of Fresno as Housing Successor to Redevelopment Agency 2344 Tulare Street, Suite 200 Fresno, CA 93721 Attn: Executive Director
---------	--

Copy to:

Agency Counsel
Fresno City Hall
2600 Fresno Street
Fresno, CA 92612

Owner:

FULTONIA WEST/CEDAR HEIGHTS
SCATTERED SITE, LP
c/o Housing Authority of the City of
Fresno, California
1331 Fulton Mall
Fresno, CA 93721
Attn: CEO/Executive Director

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

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

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

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

[END -- SIGNATURES ON NEXT PAGE]

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

ATTEST:
CITY CLERK

Deputy

"AGENCY"

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

By: _____
Marlene Murphey
Executive Director

APPROVED AS TO FORM:
CITY ATTORNEY

Deputy

"Owner"
FULTONIA WEST/CEDAR HEIGHTS
SCATTERED SITE, LP, a California
limited partnership

By: Silvercrest, Inc., its managing general
partner

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

By: Housing Authority of the City of
Fresno, California, its administrative
general partner

By: _____
Name: Preston Prince
Title: Executive Director

[END OF SIGNATURES]

Attachments:

- Exhibit A: Legal Description of Property
- Exhibit B: Income Computation and Certification Form
- Exhibit C: Certificate of Continuing Program Compliance

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____ personally known to me (or 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 signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____ personally known to me (or 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 signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

///

EXHIBIT A

LEGAL DESCRIPTION

The Fultonia West Property is located at 541-545 N. Fulton Street, Fresno, CA 93728

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

PARCEL ONE:

LOTS 15, 16, 17, AND 18 IN BLOCK 1 OF BLOOMINGTON ADDITION TO THE CITY OF FRESNO, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 6 OF RECORD OF SURVEY, FRESNO COUNTY RECORDS.

APN: 452-274-05

PARCEL TWO:

THE NORTH 13 ½ FEET OF LOT 10 AND ALL OF LOTS 11, 12, 13, AND 14 IN BLOCK 1 OF BLOOMINGTON ADDITION TO THE CITY OF FRESNO, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 6 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

A NOTICE OF VOLUTARY PARCEL MERGER, APPROVED BY THE CITY OF RESNO WAS RECORDED MAY 31, 2011, DOCUMENT NO. 2011-0072808, OFFICAL RECORDS.

APN: 452-274-16 (NEW ASSESSORS NUMBER)
452-274-06 AND 542-274-07 (OLD ASSESSORS NUMBERS)

The Cedar Heights Property is located at 4496-4538 E. Hamilton Avenue, Fresno, California 93702,

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

THE WEST 120 FEET OF LOT 11, OF GORDONDALE, ACCORDING TO THE MAP RECORDEDIN BOOK 8 OF PLATS, PAGE 45, IN THE CITY OF FRESNO, COUNTY OF FRESNO,STATE OF CALIFORNIA.

APN: 471-220-55T

**EXHIBIT "B" TO REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIONS**



**Redevelopment Agency
of the City of Fresno**

**2344 Tulare Street
Suite 200
Fresno, CA 93721
www.fresnorda.com
559.621.7600**

**Multi-Family Housing Program
INCOME COMPUTATION AND CERTIFICATION**

Property Information

Name of Property:	Number of Bedrooms (see table on page 2 for allowable rents)	Income Category	Income Level of Applicant (percent of Area Median Income)
Property Address:			
Rental Agent (Name):	<input type="checkbox"/> 0 (studio)	Extremely Low	<input type="checkbox"/> 30% of AMI
	<input type="checkbox"/> 1 bedroom	Very Low	<input type="checkbox"/> 50% of AMI
Owner Certification (Signature):	<input type="checkbox"/> 2 bedrooms	Low	<input type="checkbox"/> 60% of AMI
	<input type="checkbox"/> 3 bedrooms	Moderate	<input type="checkbox"/> 80% of AMI
			<input type="checkbox"/> 110% of AMI
			<input type="checkbox"/> 120% of AMI
<input type="checkbox"/> Not Applicable			
Owner has relied on the income certification and supporting information supplied by the Applicant in determining qualification for occupancy of the Affordable Unit, and any material misstatement in such certification by Applicant (whether or not intentional) may be cause for immediate termination of such lease.			

Applicant Contact Information
applicant(s).

Information on primary lease

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

Household Information
listed above.

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

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

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

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

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

Statement and Signature(s)

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

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

I certify that my income does not exceed the stated income level noted on page 1 of this document, and that I am eligible for a unit made available at affordable rent for lower income households, as defined by California Health & Safety Code ("H.&S.C.") Section 50053(b), to persons and families of low income, as defined in H.&S.C. Section 50093, as shown in the table below.

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

APPLICANT

DATE

APPLICANT

DATE

Income Verification

Owner shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii)

obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income; and (v) obtain such other information as may be requested by the Agency. A copy of each such completed Income Computation and Certification form shall be completed and made available for Agency review prior to the occupancy of an Affordable Unit by a Household whenever possible, but in no event more than thirty (30) days after initial occupancy by said Household.

<u>2010 Maximum Income Levels</u>						
	One Person	Two Person	Three Person	Four Person	Five Person	Six Person
Extremely Low (\leq 30% of AMI)	\$11,850	\$13,550	\$15,520	\$16,900	\$18,300	\$19,650
Very-Low Income (\leq 50% of AMI)	\$19,750	\$22,550	\$25,350	\$28,150	\$30,450	\$32,700
Low Income – HOME/CDBG (\leq 80% of AMI)	\$31,550	\$36,050	\$40,550	\$45,050	\$48,700	\$52,300
Moderate Income – HOME/CDBG (\leq 120% AMI)	\$47,300	\$54,050	\$60,800	\$67,550	\$72,950	\$78,350

Source: http://www.treasurer.ca.gov/ctcac/rentincome/10/max_income.pdf

Maximum rent is calculated by dividing the maximum annual income by 12 and multiplying by 30%, for each household size. A studio apartment would use the one person income, a one-bedroom would use two persons, a two-bedroom unit would use three persons, etc.

**Exhibit "C" TO REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**



**Redevelopment Agency
of the City of Fresno**

2344 Tulare Street
Suite 200
Fresno, CA 93721
www.fresnorda.com
559.621.7600

Multi-Family Housing Program

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Period Covered from _____ to _____

The undersigned, Fultonia West/ Cedar Heights Scattered Site, LP, a California limited partnership (the "Owner"), has read and is thoroughly familiar with the provisions of the Owner Participation Agreement ("OPA") and documents referred to therein executed by Owner and the Redevelopment Agency of the City of Fresno ("Agency") including but not limited to the Regulatory Agreement and Declaration of Covenants and Restrictions ("Regulatory Agreement"). As of the date of this Certificate, for the period shown above, the following number of Units in the Project are: (i) occupied by tenants satisfying the Low-Income Requirements (as defined in the Regulatory Agreement) as a principal residence ("Eligible Tenants"), or (ii) currently vacant and being held available for such occupancy and have been so held continuously since the date an Eligible Tenant vacated such Unit:

<u>Occupied Affordable Units</u>	<u>Vacant Affordable Units</u>
_____	_____

Property Information

Name of Property:			
Property Address:	Number of Units by Bedrooms (see table for allowable rents)	Income Category	Number of Units by Income Level of Tenants (percent of AMI)
	0 (studio)	Extremely Low	30% of AMI
	1 bedroom	Very Low	50% of AMI
	2 bedrooms	Low	60% of AMI
	3 bedrooms		80% of AMI
Owner completing this Certificate has relied on the income certification and supporting information supplied by each Applicant in determining qualification for occupancy of the Affordable Unit.		Moderate	110% of AMI
			120% of AMI
			Not Applicable

The Owner certifies that the information contained in the Occupancy Summary attached is true and accurate and hereby certifies that (1) a review of the activities of the Owner during such period and of the Owner's performance under the OPA and the documents referred to therein has been made under the supervision of the undersigned, and (2) to the best knowledge of the undersigned, based on the review described in clause (1) hereof, the Owner is not in default under any of the terms and provisions of the above documents (or describe the nature of any default and set forth the measures being taken to remedy such default).

[Signature on following page.]



2010 Maximum Rent Levels	One Perso n	Two Perso n	Three Perso n	Four Perso n	Five Perso n	Six Perso n
Extremely Low (\leq 30% of AMI)	\$296	\$339	\$388	\$423	\$458	\$491
Very-Low Income (\leq 50% of AMI)	\$494	\$564	\$634	\$704	\$761	\$818
Low Income – RDA (\leq 60% of AMI)	\$591	\$677	\$761	\$845	\$914	\$981
Low Income – HOME/CDBG (\leq 80% of AMI)	\$789	\$901	\$1,014	\$1,126	\$1,218	\$1,308
Moderate Income – RDA (\leq 110% AMI)	\$1,084	\$1,239	\$1,393	\$1,548	\$1,672	\$1,796
Moderate Income – HOME/CDBG (\leq 120% AMI)	\$1,183	\$1,351	\$1,520	\$1,689	\$1,824	\$1,959

Source: http://www.treasurer.ca.gov/ctcac/rentincome/10/max_income.pdf

Maximum rent is calculated by dividing the maximum annual income by 12 and multiplying by 30%, for each household size. A studio apartment would use the one person income, a one-bedroom would use two persons, a two-bedroom unit would use three persons, etc.

EXHIBIT "G"

PROMISSORY NOTE

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

\$870,000.00
[_____] , 2014

Fresno, California

For value received, the undersigned, Fultonia West/Cedar Heights Scattered Site, LP, a California limited partnership ("Borrower"), promises to pay to the order of the Redevelopment Agency of the City of Fresno ("Lender" or "Beneficiary"), the sum of \$870,000.00, to the extent that such funds are loaned to Borrower, without interest on the unpaid principal balance, payable as described herein. This Promissory Note ("Note") is made and entered into in accordance with the terms of the Owner Participation Agreement dated [_____] 2014, entered into between Borrower and Lender ("Agreement").

Principal shall be due and payable from 50% of available annual residual receipts with any unpaid balance due on the date which is fifty-five (55) years after the date of recordation of the Certificate of Completion ("Maturity Date"), along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws.

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

This Note, and any extensions or renewals hereof, is secured by a [Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents] on real estate in Fresno County, California (the "Property"), dated as of the same date as this Note, and executed in favor of and delivered to the Lender ("Deed of Trust"). The Deed of Trust provides for acceleration of the repayment of this Note upon stated events.

Time is of the essence with respect to all terms of this Note. It will be a default under this Note if Borrower defaults under the Agreement or other documents pursuant to the Agreement, including but not limited to the Deed of Trust and Regulatory Agreement and Declaration of Covenants and Restrictions (collectively, the "Project Loan Documents"), and 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 2% of any outstanding payment. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other project loan documents then to the interest and then to principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the Agreement or Project Loan Documents gives 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.

The indebtedness evidenced by this Note may, at the option of the Borrower, be prepaid in whole or in part, at any time, 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, the Agreement or Project Loan Documents, and then to the interest and then to the principal balance.

All payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate, and in the absence of that designation, then to Lender at its address of record provided in the Agreement.

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

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

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

The Deed of Trust provides as follows:

DUE ON SALE-CONSENT BY BENEFICIARY. Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of the Property or

any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of Property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

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

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

Borrower 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.

The Loan shall be non-recourse to the Borrower and all constituent members of the Borrower.

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

Borrower:

**FULTONIA WEST/CEDAR HEIGHTS
SCATTERED SITE, LP**

By: _____

By: _____

Name: _____

Its: _____

EXHIBIT "H"

DEED OF TRUST

**Recording requested by,
and when recorded mail to:**

Redevelopment Agency of the City of Fresno
2344 Tulare St., Suite 200
Fresno, Ca. 93721
Attention: Executive Director

INSTRUCTIONS TO COUNTY RECORDER:

Index this instrument as
(i) a Deed of Trust, and
(ii) a Fixture Filing

Space above for Recorder's Use

DEED OF TRUST AND ASSIGNMENT OF RENTS

This DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is entered into between Fultonia West/Cedar Heights Scattered Site, LP, a California limited partnership whose principal executive office is at _____ (the "Trustor"), in favor of _____ TITLE COMPANY, whose address is _____, Fresno, CA 93711 (the "Trustee"), for the benefit of the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO (the "Beneficiary"), with offices at 2344 Tulare St., Suite 200, Fresno, California 93721.

THE TRUSTOR IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO THE TRUSTEE, in trust, with the power of sale, the real property in the City of Fresno, Fresno County, California, more particularly described in **Exhibit A** attached hereto and made part hereof by reference (the "Property"), together with:

(i) All tenements, hereditaments and appurtenances of or to the Property, including without limitation all easements and rights used in connection therewith or as a means of access thereto, all right, title and interest of the Trustor, now owned or hereafter acquired, in any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, strips and other areas of land adjacent to or used in connection with the Property;

(ii) All oil and gas or other mineral rights in or pertaining to the Property and all royalty, leasehold and other rights of the Trustor pertaining thereto;

(iii) All water rights pertaining to the Property and shares of stock evidencing the same, and all deposits made with or other security given to utility companies by the Trustor with respect to the Property;

(iv) The rents, issues and profits thereof, subject, however, to the right, power and authority of Trustor to collect and apply such rents, issues and profits and set forth in this Deed of Trust;

(v) All buildings and improvements of every kind and description now or hereafter erected or placed on the Property, and all fixtures thereon, including, but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigeration plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed permanently affixed to and a part of the realty;

(vi) All building materials and equipment now or hereafter delivered to the Property and intended to be installed thereon; and

(vii) All articles of personal property owned by the Trustor and now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, and all other goods, chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the ones herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the building or buildings in any manner; subject, however, to (and only to) any purchase money security interests in such personal property.

Said real property and personal property described above, together with appurtenances, are referred to collectively in this Deed of Trust as the "Collateral."

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS:

(a) Payment to the Beneficiary of an indebtedness in the principal amount of Eight Hundred Seventy Thousand Dollars (\$870,000.00), evidenced by a promissory note executed by the Trustor and payable to the order of the Beneficiary, bearing the same date as this Deed of Trust, and any and all modifications, extensions or renewals thereof or substitutions therefor (the "Note"), and performance and satisfaction of each and all other obligations of the Trustor under the Note;

(b) Performance of every obligation or Trustor in this Deed of Trust, the Note, the Owner Participation Agreement between Beneficiary and Trustor related to the Property (the "Owner Participation Agreement") contemplating the improvement of the "Project" (as that term is defined in the Owner Participation Agreement); and

(c) Payment of all sums, if any, and interest thereon that may hereafter be loaned or advanced by the Beneficiary to or for the benefit of the Trustor or to its successors, transferees and assigns, made to the Trustor while the Trustor is the owner of record of fee title to the Property, or any portion thereof, or to the successors, transferees or assigns of the Trustor while they are the owners of record of such fee title, and evidenced by one or more notes or written instruments which recite that they are secured by this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, THE TRUSTOR COVENANTS AND AGREES AS FOLLOWS:

1. The Trustor shall not use or permit the use of any of the Collateral for any purpose other than the use for which it was intended at the time this Deed of Trust was executed, as provided in the Owner Participation Agreement.

2. Upon default under this Deed of Trust or the Note (following delivery of notice and expiration of the cure period, if any, provided therein), the Beneficiary, at its option, may declare the whole of the obligations and sums secured hereby to be immediately due and payable.

3. The person(s) or entity(ies) who have executed this Deed of Trust are fully authorized, and have obtained any and all written authorizations, approvals or consents necessary, to bind the Trustor to this Deed of Trust.

4. All rents, profits and income from the Collateral covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the obligations hereby secured. However, the Trustor shall be permitted, so long as no default exists hereunder or under the Note, to collect such rents, profits and income for use consistent with the provisions of the Owner Participation Agreement.

5. Upon default hereunder or under the Note (following delivery of notice and expiration of the cure period, if any, provided herein or therein), for the purpose of protecting its interests hereunder, the Beneficiary will be entitled to the appointment by a court having jurisdiction, without further notice and without regard to adequacy of any security for the indebtedness secured hereby, of a receiver to take possession of and protect the Collateral described herein and operate same and collect the rents, profits and income therefrom. The entering upon and taking possession of the Property or other Collateral by such receiver, the collection of such rents, profits and income and the application thereof shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. The Trustor, at its sole cost and expense, shall provide and maintain on the entire Property, including all buildings and improvements thereon: (i) a policy of broad-form builder's risk insurance sufficient to cover 100 percent of the replacement value of all buildings and improvements on the Property including; without limitation, labor and materials in place or to be used as part of the permanent construction (including, without limitation, surplus miscellaneous materials and supplies incidental to the work, and scaffolding, staging, towers, forms and equipment not owned or rented by the Beneficiary, the cost of which is not included in the cost of work), insuring against loss or damage by fire, extended coverage perils and such other hazards, casualties or other contingencies as from time to time may be reasonably required by the Beneficiary; (ii) a policy of commercial general liability insurance that includes contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence; and (iii) such other insurance as may be reasonably required by the Beneficiary, in each case in such amounts, in such manner and with such companies as the Beneficiary and Trustor may reasonably approve. The foregoing minimum insurance coverage limits shall be subject to reasonable adjustment from time to time by the Beneficiary. Each such policy shall be endorsed with a standard mortgage clause with loss payable to the Beneficiary and the Trustor, and shall provide that the policy shall not be canceled or materially changed without at least thirty (30) days' prior notice to the Beneficiary. Upon request by the Beneficiary, the Trustor immediately shall deposit with the Beneficiary certificates evidencing such policies.

7. The Trustor shall pay: (i) at least ten days before delinquency, all taxes and assessments affecting the Collateral, including assessments on appurtenant water stock; (ii) when due, all encumbrances, charges and liens, with interest, on the Collateral or any part thereof which appear to be prior or superior hereto; and (iii) all costs, fees and expenses of the Trustee or the Beneficiary reasonably incurred in connection with the trusts created under this Deed of Trust.

8. The Trustor shall: (i) keep the Collateral in good condition and repair and not remove or demolish any buildings on the Property; to the extent insurance or condemnation proceeds are available; (ii) complete or restore promptly and in good and workmanlike manner the buildings and improvements and any other building or improvement which may be constructed, damaged or destroyed thereon; (iii) pay when due all claims for labor performed and materials furnished therefore; (iv) comply in all material respects with all laws affecting the Collateral or requiring any alterations or improvements to be made thereon; (v) not commit or permit waste of or on the Collateral; and (vi) not commit, suffer or permit any act upon the Property in violation of law and/or any covenants, conditions or restrictions affecting the Collateral.

9. The Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee, and shall pay all costs and expenses, including cost of evidence of title and

reasonable attorneys' fees, in any such action or proceeding in which the Beneficiary or the Trustee may appear, or in any suit brought by the Beneficiary to foreclose this Deed of Trust.

10. Should the Trustor fail to make any payment or do any act as herein provided, then the Beneficiary or the Trustee, without obligation to do so, and following notice to or demand on the Trustor, and without releasing the Trustor from any obligation hereof: (i) may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, the Beneficiary or the Trustee being authorized to enter on the Property for such purposes; (ii) may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee; (iii) may pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto (except for the deeds of trust, encumbrances and liens securing the Construction/Permanent Financing Loan(s) and the Agency Loan, as such terms are defined below); and (iv) in exercising any such powers, may pay necessary expenses, employ legal counsel and pay such counsel's reasonable fees. All such amounts paid by the Beneficiary or the Trustee hereunder shall be added to the obligations secured by this Deed of Trust.

The term "Construction/Permanent Financing Loan" means, collectively, the construction financing and take-out financing, and any refinancing or replacement of that financing from time to time, to be provided by a commercial or other lender(s); provided, however, that (i) before entering into any Construction/Permanent Financing Loan, the Trustor shall give the Beneficiary notice of the Construction/Permanent Financing Loan and copies of the loan agreement and all other loan documents evidencing the Construction/Permanent Financing Loan; (ii) the funds disbursed from each Construction/Permanent Financing Loan shall be used only for costs and charges associated with the loan and for the operation, maintenance and/or improvement of the Project or the Property as provided in the Owner Participation Agreement or to refinance existing indebtedness; (iii) the interest on each Construction/Permanent Financing Loan shall be at a reasonable rate based on all the facts and circumstances; and (iv) the combined amounts of all Construction/Permanent Financing Loans or any re-financing thereof and the Note secured by this Deed of Trust shall not exceed one hundred percent (100%) of the fair market value of the Property as improved by the Project under the Owner Participation Agreement (such value to be determined by a qualified appraiser reasonably acceptable to Trustor and Beneficiary. Notwithstanding any limitations set forth above, in the event of any subsequent refinancing of a Construction/Permanent Financing Loan, Trustor may use funds from any refinancing that are in excess of the original principal of the initial Construction/Permanent Financing Loan to compensate Trustor for any negative cash flow of the Project or to fund other projects by Trustor or a related entity in the Urban Core of the City of Fresno. (By way of illustration only, and without limiting the foregoing, if the initial Construction/Permanent Financing Loan for the Project is \$4,000,000 and, while satisfying the rate and loan-to-value limits set forth in subparagraphs (iii) and (iv),

Trustor subsequently obtains refinancing in the amount of \$5,000,000, Trustor may use the additional \$1,000,000 in excess of the original Construction/Permanent Financing Loan to compensate Trustor for negative cash flow or for another project in the Urban Core without making any prepayment on the Note secured by this Deed of Trust.)

11. The Beneficiary shall have the right, but not the obligation, to pay when due fire or other insurance premiums required hereunder if the Trustor fails to make such payments. All such amounts paid by the Beneficiary hereunder shall be added to the obligations secured by this Deed of Trust.

12. The Trustor shall pay immediately upon demand all sums so expended by the Beneficiary or the Trustee under this Deed of Trust, with interest from date of expenditure at the legal rate.

13. If the Trustor fails to pay any amount required by the Note or this Deed of Trust when due and payable, or fails to perform all other covenants, conditions and agreements of the Note, this Deed of Trust or the Owner Participation Agreement (following delivery of notice and expiration of the cure period, if any, provided therein), the amount of the Note, including unpaid principal and late charges, and all other charges and amounts required by the Note and this Deed of Trust shall, at the option of the Beneficiary, become immediately due and payable. This shall be in addition to and without limitation on any other remedy or right available to the Beneficiary for such failure.

14. The Trustor shall not voluntarily create or permit to be created against the Collateral any lien or liens except as specifically permitted by this Deed of Trust or otherwise authorized by the Beneficiary. The Trustor shall keep and maintain the Collateral free from the claims of all persons supplying labor or materials who will enter into the construction, rehabilitation, renovation or repair of any and all buildings or improvements now existing or to be erected on the Property.

15. By accepting payment of any sum secured by this Deed of Trust after its due date or by accepting partial payment of any such sum, the Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for the Trustor's failure to pay.

16. If the Trustor, without the prior written consent of the Beneficiary: (i) agrees to or actually sells, conveys, transfers or disposes of the Collateral or any interest therein or portion thereof, or (ii) assigns or delegates any right or obligation under the Owner Participation Agreement, the Note or this Deed of Trust, then all amounts secured by this Deed of Trust may be declared immediately due and payable, at the option of the Beneficiary. The Beneficiary shall not unreasonably withhold its consent to any such transaction. The Beneficiary's consent to one transaction of this type shall not be a waiver of the right to require consent to future or successive transactions.

DUE ON SALE-CONSENT BY BENEFICIARY. Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of Property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

17. As further security for the full and complete performance of each and every obligation, covenant, agreement and duty of the Trustor contained herein or in the Note, the Trustor hereby grants and conveys to the Beneficiary a security interest in and lien on all of the Collateral. This Deed of Trust shall serve as a security agreement and financing statement created pursuant to the California *Commercial Code*, and the Beneficiary will have and may exercise all rights, remedies and powers of a secured party under the California *Commercial Code*. Further, this Deed of Trust is filed as a fixture filing pursuant to the California *Commercial Code* and other applicable law, and covers goods which are or are to become fixtures.

18. Should the Property, the buildings or improvements thereon, or any part of any of them be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire or earthquake or in any other manner, the Beneficiary will be entitled, subject to the rights of the holder of any senior deed of trust securing a Construction/Permanent Financing Loan, to all of the Trustor's interest in compensation, awards and other payments or relief therefor; and, following the occurrence of a default as defined in the Note, the Beneficiary shall be entitled, jointly with the Trustor, at the Beneficiary's option, to commence, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any fire and other insurance affecting the Property or the buildings or improvements thereon, are hereby assigned to the Beneficiary, subject to the rights of the holder of any senior deed of trust securing a Construction/Permanent Financing Loan. After deducting therefrom all its expenses, including reasonable attorneys' fees, and if there has not occurred a default under the

Note, the Beneficiary shall apply all such proceeds to restoring the Property or the buildings or improvements thereon, or if there has been such default, or if the Trustor determines not to rebuild, the Beneficiary shall retain the proceeds to the extent of the amount due under the Note and any amounts due under this Deed of Trust. Any balance of such proceeds still remaining shall be disbursed by the Beneficiary to the Trustor.

19. If the Trustor fails to perform any covenant or agreement in this Deed of Trust or the Owner Participation Agreement, or if a default occurs under the Note, the Beneficiary may declare all obligations and sums secured hereby immediately due and payable by delivery to the Trustee of written declaration of default and demand for sale and written notice of default and of election to cause the Collateral to be sold, which notice the Trustee shall cause to be duly filed for record, and the Beneficiary may foreclose this Deed of Trust; provided, however that the Trustor shall not be deemed to be in default hereunder for failure to make any payment when due or for failure to perform any other covenant or agreement contained herein until thirty (30) days after written notice of such failure is given to the Trustor and Trustor is afforded a reasonable opportunity to cure the default. The Beneficiary shall also deposit with the Trustee this Deed of Trust, the Note and all other documents evidencing the obligations or sums secured hereby.

20. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, the Trustee, without demand on the Trustor, shall sell the Property at the time and place fixed by the Trustee in the 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. The Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may further postpone the sale by public announcement at the time fixed by the preceding postponement. The Trustee shall deliver to the purchaser its deed conveying fee title to the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Trustor, the Trustee and the Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of the sale to payment of: (i) the expenses of the sale, together with the reasonable expenses of the trust created by this Deed of Trust, including reasonable Trustee's fees and attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (ii) the cost of any search and/or other evidence of title procedure in connection with the sale and of revenue stamps on the Trustee's deed; (iii) all sums expended under the terms hereof not then repaid, with accrued interest at the legal rate; (iv) all other sums then secured hereby; and (v) the remainder, if any, to the person or persons legally entitled thereto.

21. The Beneficiary may from time to time substitute a successor or successors to the Trustee named herein or acting hereunder to execute the trusts under this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by the Beneficiary, containing reference to this Deed of Trust and its place of record, which instrument, when duly recorded in Fresno County, California, shall be conclusive proof of proper appointment of the successor trustee.

22. Upon written request of the Beneficiary stating that all obligations secured hereby have been satisfied and all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to the Trustee for cancellation and retention, and upon payment of its fees, the Trustee shall reconvey, without warranty, the Collateral 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."

23. The trusts created by this Deed of Trust are irrevocable by the Trustor.

24. This Deed of Trust applies to, inures to the benefit of, and binds of the Trustor, the Beneficiary and the Trustee and their respective administrators, executors, officers, directors, transferees, successors and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder, including pledges, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular includes the plural.

25. In addition to and without limitation on any other rights or remedies of the Trustee or the Beneficiary, if the Trustee or the Beneficiary commences any legal action or proceeding to enforce or interpret any provision of this Deed of Trust or the Note, the Trustor shall pay all costs and expenses incurred by the Trustee or the Beneficiary in connection with such action or proceeding, including legal expenses and reasonable attorneys' fees and court costs.

26. The Trustee accepts the trusts hereunder when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which the Trustor, the Beneficiary or the Trustee is a party, unless brought by the Trustee.

27. The Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at 7643 N Ingram Ave #105, Fresno, CA 93711.

28. The Trustor shall cause a copy of each deed of trust securing a Construction/ Permanent Financing Loan to be provided to the Beneficiary immediately upon its recordation, so that the Beneficiary may prepare and record a request for notice of default and notice of sale thereunder pursuant to California *Civil Code* Section 2924b.

29. **PROVIDED THAT NO NOTICE OF DEFAULT HEREUNDER THEN APPEARS OF RECORD AND SUBJECT TO THE CONDITIONS IN SECTION 10 ABOVE AND/OR IN THE OWNER PARTICIPATION AGREEMENT, THIS DEED OF TRUST SHALL BE SUBORDINATE AND SUBJECT TO ANY DEED OR DEEDS OF TRUST SECURING A CONSTRUCTION/PERMANENT FINANCING LOAN. BENEFICIARY SHALL, UPON REQUEST OF TRUSTOR, EXECUTE SUCH SUBORDINATION AGREEMENT OR OTHER DOCUMENTATION REASONABLY NECESSARY TO SUBORIDINATE THE LIEN AND CHARGE OF THIS DEED OF TRUST TO LIEN OF ANY DEED OR DEEDS OF TRUST SECURING A CONSTRUCTION/PERMANENT FINANCING LOAN, AS PROVIDED IN THE OWNER PARTICIPATION AGREEMENT.**

30. This Deed of Trust shall be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties hereunder shall be determined, according to California law.

31. Capitalized terms not otherwise defined herein shall have the meanings given them in the Owner Participation Agreement or the Note.

* * * * *

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date set forth above.

TRUSTOR:
Fulton West/Cedar Heights Scattered Site,
LP,
a California limited partnership

By: _____

By: _____

Name: _____

Its: _____

Attachment:

Exhibit A: Legal Description of Property

EXHIBIT A

LEGAL DESCRIPTION

The Fultonia West Property is located at 541-545 N. Fulton Street, Fresno, CA 93728

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

PARCEL ONE:

LOTS 15, 16, 17, AND 18 IN BLOCK 1 OF BLOOMINGTON ADDITION TO THE CITY OF FRESNO, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 6 OF RECORD OF SURVEY, FRESNO COUNTY RECORDS.

APN: 452-274-05

PARCEL TWO:

THE NORTH 13 ½ FEET OF LOT 10 AND ALL OF LOTS 11, 12, 13, AND 14 IN BLOCK 1 OF BLOOMINGTON ADDITION TO THE CITY OF FRESNO, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 6 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

A NOTICE OF VOLUTARY PARCEL MERGER, APPROVED BY THE CITY OF RESNO WAS RECORDED MAY 31, 2011, DOCUMENT NO. 2011-0072808, OFFICAL RECORDS.

APN: 452-274-16 (NEW ASSESSORS NUMBER)
452-274-06 AND 542-274-07 (OLD ASSESSORS NUMBERS)

The Cedar Heights Property is located at 4496-4538 E. Hamilton Avenue, Fresno, California 93702,

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

THE WEST 120 FEET OF LOT 11, OF GORDONDALE, ACCORDING TO THE MAP RECORDED IN BOOK 8 OF PLATS, PAGE 45, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA.

APN: 471-220-55T