City of FRESNO

Section 108 Loan Guarantee Application
Affordable Housing Development Loan Pool

U.S. Department of Housing and Urban Development
Community Planning and Development Programs

Planning and Development Department
Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721
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August 30, 2026

Contents

Executive Summary

As a recipient of Community Development Block Grant (CDBG) funding, the City of Fresno is eligible to participate in the Section 108 Loan Guarantee program administered by the U.S. Department of Housing and Urban Development (HUD). Under this program, the City can leverage up to five times its annual CDBG allocation for large community development investments.

The City's 2025-2029 Consolidated Plan identified affordability as the primary housing issue facing low- and moderate-income residents. Approximately one-third (35%) of all households in Fresno experience cost burden, meaning a household's monthly housing costs (including mortgage payments, property taxes, insurance, and utilities for owners and rent and utilities for renters) exceed 30% of monthly income. Households with low incomes are particularly vulnerable to severe cost burdens with a quarter (25%) of low-income households being severely cost burdened, meaning a household's monthly housing costs exceed 50% of monthly income.

Based on these statistics and resident input, the 2025-2029 Consolidated Plan identified the need for increasing access to safe and affordable housing through development and acquisition. Although the City faces many challenges to increasing the supply of affordable housing, the need for more funding remains the most overarching and consistent challenge. To meet this need the City of Fresno is proposing to apply for a Section 108 Loan Guarantee to fund a loan pool for non-profit developers of affordable housing for land acquisition and acquisition of manufactured homes to support the development of affordable housing.

Amount of Section 108 Request

The City is requesting a Section 108 Loan Guarantee for an Affordable Housing Development Loan Pool including the Section 108 financing fee. The total amount available via the Section 108 Loan Guarantee program is equal to five times the City's current annual CDBG entitlement less any unpaid principal on prior loans. The City can borrow up to $15,494,680 calculated as follows:

$35,494,680 (five times the City's current annual CDBG entitlement of $7,098,936)
-$20,000,000 (less prior loan for the development of the Senior Activity Center)
$15,494,680 (amount available)

The City will request Section 108 loan proceeds in the amount of $15,000,000.

SOURCE OF FUNDING	AMOUNT	FUNDING TYPE	STATUS
CDBG 108 Loan Guarantee	$15,000,000	Repayable Loan	Subject Request
TOTAL	**$15,000,000**	**100% Debt**	

Project Description

The $15 million in Section 108 Loan proceeds will be used to fund an Affordable Housing Development Loan Pool. Funds will be made available to eligible non-profit developers through a Notice of Funding Availability (NOFA) that will request applications for affordable housing development projects in need of support for land acquisition and/or acquisition of manufactured housing units.

The NOFA will outline the criteria by which applications will be evaluated and scored. Funding will be available city-wide with a preference for projects in high-opportunity areas. Applications will be evaluated through an underwriting and technical assessment process conducted by staff in the City's Community Development Division. Staff's funding recommendations will be considered by the Planning & Development Department Assistant Director and/or Director, in consultation with the City Administration. Projects proposed for funding will be sent to the HUD Field Office for eligibility determination. Upon receipt of HUD's determination letter, staff will take proposed projects to City Council for consideration and final approval of the loan and regulatory agreements.

The Section 108 Loan application and establishment of the Affordable Housing Development Loan Pool is covered under the City's environmental review of its Program Year 2025 administrative activities. Project specific environmental reviews will occur as projects are evaluated for funding before any choice limiting actions are taken.

Form of Assistance

Section 108 Loan funds will be awarded to non-profit developers selected through the NOFA process for land acquisition and/or acquisition of manufactured housing units through a loan and regulatory agreement with a 55-year affordability covenant approved by City Council. Each loan and regulatory agreement will include the terms of the given loan.

To provide the most flexibility and increase the number of potentially eligible projects, the City will not establish minimum or maximum loan amounts. Loan amounts will be determined based on each project's budget and demonstrated financing gap. Section 108 loans will generally be structured as a loan forgivable at the end of the affordability period.

Projects will be evaluated by City staff through an underwriting process consistent with HUD policies (see Attachment 1). As the Borrower in HUD's Section 108 loan program, the City will manage funding requests and repayment obligations to HUD and engage with the HUD Field Office throughout project evaluation to request Determination Letters in support of project funding. A portion of the City's future CDBG entitlement funds will repay the Section 108 Loan, plus interest.

Projects will be evaluated based on criteria including but not limited to the following:

1. Demonstrated ability to meet all federal rules and requirements.
2. Development team's capacity and experience to demonstrate the ability to perform the proposed project including meeting deadlines within budget.
3. History of successful completion of similar projects.
4. Project feasibility and readiness.
5. Extent to which the project aligns with the City's housing goals and objectives.
6. Project costs, sources and uses of funds, and financing gap needed.
7. Documentation that demonstrates a viable financing structure to support operations throughout the affordability period.
8. Proposed sources of collateral that meet HUD's loan-to-value and debt service coverage ratios.

Loans for projects selected will be serviced by the City's Community Development Division as part of its administration of HUD entitlement funds including Section 108 Loans. Administration and management of the loans will include loan origination, loan and regulatory agreement drafting and execution, recordation of a Declaration of Restrictions, and annual monitoring.

Description of Compliance with HUD National Objectives for Community Development

If approved, the City would use the Section 108 Loan to create a loan pool for affordable housing development through either land acquisition or acquisition of manufactured housing units. Under the CDBG regulations, this activity is considered eligible at 24 CFR 570.703 (a) as follows:

> *(a) Acquisition of improved or unimproved real property in fee or by long-term lease, including acquisition for economic development purposes.*

HUD CPD Notice 2023-10 states that HUD will treat the purchase of manufactured housing units that are part of the community's permanent housing stock as CDBG-eligible acquisition.

The City is required to fund CDBG activities that meet one of three national objectives. The three national objectives are:

- Benefit to people with low- and moderate-incomes (LMI)
- Aid in the prevention or elimination of slums or blight
- Meet an urgent need

The proposed activity will benefit people with low- and moderate-incomes (LMI). To meet the LMI national objective, the proposed activity will fall under the Low Housing Activity (LMH) category. Specifically, the NOFA will stipulate that eligible projects must have at least 51% of the units developed on land acquired using the Loan Pool occupied by households who are low- or moderate-income at initial occupancy, and that 100% of any manufactured units purchased using the Loan Pool occupied by households who are low- or moderate-income at initial occupancy. Under the following limited circumstances, development projects (excluding manufactured housing acquisition) with less than 51% low- and moderate-income households may be assisted according to HUD's guidance:

- Assistance is for an eligible activity that reduces the development cost of new construction of non-elderly, multifamily rental housing project; and
- At least 20 percent of the units will be occupied by low- and moderate-income households at an affordable rent; and

The portion of cost borne by CDBG funds is no greater than the proportion to be occupied by low- and moderate-income households.

Information on Organizational Arrangements

Section 108 Loan funds will be awarded to non-profit developers of affordable housing selected through a NOFA process. The City will service and administer the loans including loan origination, engaging with the HUD Field Office throughout project evaluation to request Determination Letters in support of project funding, managing funding requests and repayment obligations to HUD, and on-going monitoring of projects.

Information for Financial Underwriting

To access the $15 million in Section 108 financing, the City proposes to pledge a portion of its future CDBG grants (Program Years 2026 – 2046) as collateral for repayment. The City proposes to use the maximum repayment period allowable, twenty years, to minimize the potential reduction of CDBG grant funds in any given year. In the event the United States Congress terminates the CDBG program prior to loan payoff, the City pledges the future subject land and/or housing units as collateral, subject to HUD's 80% loan-to-value requirement. The City will provide adequate collateral as required by HUD.

The $15 million will be used to fund an Affordable Housing Development Loan Pool for land acquisition and/or acquisition of manufactured housing units.

SOURCES	AMOUNT		USES	AMOUNT
CDBG 108 Loan Guarantee	$15,000,000		Affordable Housing Development Loan Pool	$14,913,000
			Section 108 financing fee	$87,000
TOTAL	**$15,000,000**		**TOTAL**	**$15,000,000**

The City is estimating the following financing terms for the Section 108 funds:

- 0.58% financing fee, equal to $87,000 ($15,000,000 * .0058) to be paid for with Section 108 loan proceeds.
- 20-year term with variable interest rate based on the 13-week Treasury Bill, which is at 3.59% as of February 26, 2026. As of May 1, 2021, HUD has required 35 basis points, or 0.35%, be added to the variable interest rate. This makes the City's total interest rate 3.94%.

The City's future CDBG grant funds will serve as collateral for the loan and be used for repayment of the loan. The land and/or housing units acquired would serve as additional collateral for the loan.

A proposed debt service schedule is attached below.

Proposed Repayment Schedule

Principal Amount	$15,000,000
Interest Rate	3.94%
Term	20 years
Payments (Semi-annual)	40

Estimated Annual Rate	Payment #	Payment Date	Est. Semi Rate	Semi-Annual Debt Service	Semi-Annual Interest Payment	Principal Payment	Principal Balance	Annual Debt Service Payments
3.940%							$15,000,000	
	1	Feb-27	2.03%	$304,875	$304,875			
4.065%	2	Aug-27	2.03%	$1,054,875	$304,875	$750,000	$14,250,000	$1,359,750
	3	Feb-28	2.05%	$291,413	$291,413			
4.090%	4	Aug-28	2.05%	$1,041,413	$291,413	$750,000	$13,500,000	$1,332,825
	5	Feb-29	2.06%	$277,763	$277,763			
4.115%	6	Aug-29	2.06%	$1,027,763	$277,763	$750,000	$12,750,000	$1,305,525
	7	Feb-30	2.07%	$263,925	$263,925			
4.140%	8	Aug-30	2.07%	$1,013,925	$263,925	$750,000	$12,000,000	$1,277,850
	9	Feb-31	2.08%	$249,900	$249,900			
4.165%	10	Aug-31	2.08%	$999,900	$249,900	$750,000	$11,250,000	$1,249,800
	11	Feb-32	2.10%	$235,688	$235,688			
4.190%	12	Aug-32	2.10%	$985,688	$235,688	$750,000	$10,500,000	$1,221,375
	13	Feb-33	2.11%	$221,288	$221,288			
4.215%	14	Aug-33	2.11%	$971,288	$221,288	$750,000	$9,750,000	$1,192,575
	15	Feb-34	2.12%	$206,700	$206,700			
4.240%	16	Aug-34	2.12%	$956,700	$206,700	$750,000	$9,000,000	$1,163,400
	17	Feb-35	2.13%	$191,925	$191,925			
4.265%	18	Aug-35	2.13%	$941,925	$191,925	$750,000	$8,250,000	$1,133,850
	19	Feb-36	2.15%	$176,963	$176,963			
4.290%	20	Aug-36	2.15%	$926,963	$176,963	$750,000	$7,500,000	$1,103,925
	21	Feb-37	2.16%	$161,813	$161,813			
4.315%	22	Aug-37	2.16%	$911,813	$161,813	$750,000	$6,750,000	$1,073,625
	23	Feb-38	2.17%	$146,475	$146,475			

4.340%	24	Aug-38	2.17%	$896,475	$146,475	$750,000	$6,000,000	$1,042,950
	25	Feb-39	2.18%	$130,950	$130,950			
4.365%	26	Aug-39	2.18%	$880,950	$130,950	$750,000	$5,250,000	$1,011,900
	27	Feb-40	2.20%	$115,238	$115,238			
4.390%	28	Aug-40	2.20%	$865,238	$115,238	$750,000	$4,500,000	$980,475
	29	Feb-41	2.21%	$99,338	$99,338			
4.415%	30	Aug-41	2.21%	$849,338	$99,338	$750,000	$3,750,000	$948,675
	31	Feb-42	2.22%	$83,250	$83,250			
4.440%	32	Aug-42	2.22%	$833,250	$83,250	$750,000	$3,000,000	$916,500
	33	Feb-43	2.23%	$66,975	$66,975			
4.465%	34	Aug-43	2.23%	$816,975	$66,975	$750,000	$2,250,000	$883,950
	35	Feb-44	2.25%	$50,513	$50,513			
4.490%	36	Aug-44	2.25%	$800,513	$50,513	$750,000	$1,500,000	$851,025
	37	Feb-45	2.26%	$33,863	$33,863			
4.515%	38	Aug-45	2.26%	$783,863	$33,863	$750,000	$750,000	$817,725
	39	Feb-46	2.27%	$17,025	$17,025			
4.540%	40	Aug-46	2.27%	$767,025	$17,025	$750,000	$0	$784,050
				$21,651,750	**$6,651,750**	**$15,000,000**		**$21,651,750**

Expected Sources for Loan Repayment and Loan Fee Payment

The City's future CDBG grant funds will be used to repay the $15 million Section 108 Loan. The estimated amount of funds available for loan repayment is equal to the City's annual CDBG entitlement with the most recent CDBG allocation, PY 2025, totaling $7,098,936.

The Section 108 loan fee will be paid by Section 108 loan proceeds.

Statutory and Proposed Additional Security

The City pledges all grants made or for which it may become eligible under the CDBG program to secure the Section 108 loan.

As a requirement of the loan and regulatory agreements, selected developers will be required to pledge the land and/or housing units acquired with Section 108 loan funds as additional collateral. The City will secure the collateral and assign it to HUD. Each project will be required to provide an appraisal that demonstrates sufficient collateral to meet HUD's loan-to-value requirements.

Contact Information

Local Point of Contact

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Karen.Jenks@fresno.gov

Field Office Point of Contact

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MaryKate.Bevel@hud.gov

Congressional District and Delegation

California's 21st Congressional District

Additional Information

The City will follow its adopted Citizen Participation Plan to receive citizen input on this proposal. The City will undertake the following activities that will allow citizens to participate and comment on the proposal.

Public Hearing

The City will hold a public hearing at City Hall on October 8, 2026, in City Council Chambers. The City will accommodate translation and interpretation for Spanish, Hmong, and other languages, and for people with disabilities if a request is made at least 72 hours in advance. If the City cannot accommodate translation and interpretation, the City will make alternative opportunities available for non-English speaking people and people with disabilities to participate.

Public Comments

The City will accept public comments regarding Substantial Amendment 2025-02 (Attachment 2) and this loan proposal from August 30, 2026, to September 30, 2026, at 5 PM. All comments received will be considered when preparing the final application to HUD and will be included as an attachment.

Submit Comments by Mail:
City of Fresno
Planning and Development Department
Attn: Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721

Submit Comments by Email:
HCDD@fresno.gov
Please include “Sub Amend 2025- 02” in the subject line

Submit Comments by Phone:
559-621-8300

Submit Comments by TTY:
559-621-8721

Submit Comments by Fax:
559-457-1579

Submit Comments Online:
https://forms.cloud.microsoft/g/CU3w190csU

The Substantial Amendment is scheduled for consideration by the Council of the City of Fresno at its October 8, 2026, meeting. For more information on the City Council meeting, visit www.fresno.gov/calendar.aspx and select the agenda for the meeting. The agenda will be posted at least 72 hours in advance. Accommodations are available upon request by contacting the office of the City Clerk at (559) 621-7650 or clerk@fresno.gov at least three business days prior to the meeting.

Attachment 1: Housing Development Underwriting Guidelines

City of FRESNO

Section 108 Loan Guarantee Program
Loan Underwriting and Servicing
Income Producing Real Estate Projects

U.S. Department of Housing and Urban Development
Community Planning and Development Programs

Planning and Development Department
Community Development Division

EQUAL HOUSING OPPORTUNITY

May 2026

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Summary

Section 108 Program Loan:

As an annual entitlement jurisdiction of Community Development Block Grant (CDBG) Program funds, the City of Fresno (City) is participating in a Section 108 Guarantee Program Loan administered by the U.S. Department of Housing and Urban Development (HUD). These funds will help the City meet its affordable housing goals as outlined in the City of Fresno Consolidated Plans to HUD as well as the City of Fresno's Housing Element, as required by the State of California. The City is providing approximately $15,000,000 in financial assistance in the form of a low interest forgivable loan.

Funds will be provided as "gap financing" for property acquisition and/or acquisition of manufactured housing units that have long-term affordability covenants of up to 55 years. Eligible non-profit applicants may request Section 108 Program loan funds for eligible hard costs of a proposed project.

Section 108 Program loan funds shall be requested through a City-issued Notice of Funding Availability (NOFA) and on a City-issued Section 108 Program application. Over-the-counter applications are not accepted and there are currently no exceptions. Eligible non-profit developers are required to secure outside senior financing as the primary funding source for their respective project(s) and shall commit up to 10% of equity toward the project costs.

Application Process:

A Notice of Funding Availability shall be posted on the City's Planet Bids website at https://www.fresno.gov/capitalprojects/projects/bid-opportunities/, published in the Fresno Bee and Business Journal, and sent out as a blast email to the developers on the developer contact list. The NOFA will also be posted on the City of Fresno Community Development Division (HCD) website. Section 108 Program loan funds are limited and for the exclusive use of affordable housing property acquisition and/or acquisition of manufactured housing units.

Upon receipt of Section 108 Program applications, the HCD staff shall perform preliminary underwriting and a layering/subsidy financial analysis on prospective project applications received in response to a City-issued NOFA. The City Loan Committee shall make a recommendation to the City Manager who shall make a recommendation to the Fresno City Council. The Fresno City Council shall have final approval of all Section 108 Program Loans.

Eligible Applicants:

Non-profit affordable housing developers in good standing with State and local laws, as evidenced by a Certificate of good standing from the Secretary of State. Has a tax exemption ruling from the Internal Revenue Service (IRS) under section 501(c)(3) or 501(c)(4) of the IRS of 1986, as evidenced by either a conditional or final 503 (c) designation as evidenced by a copy of the IRS letter, a copy of a California Franchise Tax Board letter, or if classified as a subordinate of a central organization non-profit under Section 905 of the IRS Code, as evidenced by a group exemption letter from the IRS. Has among its organizational purposes, the provision of decent housing that is affordable to low- to moderate-income households as evidenced by a statement in the organization's Charter, Articles of Incorporation, By Laws or Resolutions.

Underwriting

In-House Underwriting:

A City Project Manager will perform an initial technical review, preliminary underwriting of the financials, analysis of the applications for eligibility, and completeness of the content requested. The Project Manager may interview development teams, contact references, investigate previous projects and current commitments, and conduct any other type of inquiry and investigation necessary to determine the qualifications to deliver the proposed project. Applicants may be requested to submit additional or clarifying information. Incomplete, ineligible, financially deficient applications will be eliminated from further funding consideration at this point.

Recommendation:

Community Development Division staff familiar with the development process will rank the proposed projects using the selection and point criteria. Once the ranking is completed, staff will forward the list for review by the Section 108 Program Loan Committee. The Loan Committee shall submit a memo to the City Administration for a determination of which project(s) shall be recommended to the City Council for approval. Upon the recommended selection of a project(s), a second-tier underwriting shall be performed prior to entering into a funding agreement.

Approval:

The Fresno City Council has final approval of funding for a proposed project(s).

Project Status:

Projects submitted for funding must be as close to shovel ready as possible.

Form of Assistance:

Section 108 Program Loan funds are provided as a low interest forgivable loan for eligible acquisition costs and/or hard construction costs.

Affordable Units:

Eligible non-profit development projects shall have units that are equal regardless of income restrictions, have access to the same amenities, are comparable in size, and have the same interior finishings, design, and function.

Project Partnership Structure:

The City encourages developers to partner with local governments, public housing authorities, other non-profit housing developers, for-profit developers, and service providers in order to produce the greatest number of units for the most reasonable public investment, and to provide appropriate.

In accordance with the NOFA and prior to entering into an agreement, the developer must submit a Resolution from the organization's Board authorizing a designated individual as signatory for their project documents/agreements. The signature authorization instrument is required prior to the City Attorney's Office review and signature on any final documents.

If the non-profit developer forms a partnership to construct a project, obtain the partnership agreements and the filing of the partnership with the State of California. If there are Articles of Incorporation and By Laws, obtain a copy of those documents as well. Keep these on file for future reference and as part of the underwriting of the project.

Program Priorities:

The City Council adopted the development funding priorities listed below:

- Projects that leverage City funds with other available local, private, State, and/or federal funding resources.
- Projects that generate additional revitalization or investment, instill community pride, and effect positive changes in the surrounding project area.
- Developers/investors that are locally owned and/or headquartered in Fresno.
- Mixed-use and mixed-income projects to encourage economic integration of neighborhoods through the use of affordable housing development financing.
- Adaptive re-use of historic buildings to limit the demolition of historic buildings.
- Infill development that utilizes the capacities of the City's existing infrastructure (confirmed by the City's Department of Public Utilities and/or Public Works).
- Projects developed on major transportation corridors or within ¼ mile of an existing transit stop.
- Projects that create local jobs and/or provide training/education.
- Projects developed in close proximity to, or include amenities such as grocery stores, banking facilities, or farmers' markets.
- Projects ready to proceed, including those with site control, environmental clearance, preliminary design, or where proposed financing is identified and/or secured.
- Projects that have a cost per gross square foot indicative of construction type.
- Identified development capacity and/or experience utilizing federal funding.
- Projects that can be certified through the Fresno Green Incentive Building Program.

Notice of Funding Availability (“NOFA”):

HCD publishes an annual NOFA which states the amount of City funds available, and the necessary information needed from an applicant to determine project eligibility and feasibility. A copy of the NOFA and Section 108 Program loan application is placed on the City’s Planet Bids and HCD’s website, and is published in the Fresno Bee and Business Journal, and released through blast email.

Section 108 Program loan funding available for a given program year will be determined by the Planning Director, Assistant Planning Director and/or Housing Manager. HCD will decide the amount of Section 108 Program funds to a project through the project underwriting and evaluation process.

Application Process:

The application contains guidelines used by HCD staff for reviewing and underwriting project proposals.

Eligible Applicants:

The following types of organizations/entities are eligible for funding:

- Non-profit development organizations

Application Stage:

Once applications are received, HCD reviews the content of each application and performs preliminary underwriting. With assistance from the developer, HCD shall prepare and/or analyze the following items:

- Cash Flow Statement: 30-year (S-F) or 55-year (M-F) (Excel format)
- Budget Finance Worksheet (Excel format)
- Developer’s skills and experience with the type of project proposed
- HUD Underwriting Templates (Excel format)
- Market Study Analyses (from a third party)
- Project Cost Sheet (Excel format)
- Itemized Project Worksheet (Excel format)
- Rents and Comparables (Excel format)
- Operating Costs (list including replacement reserve)
- Construction Costs (list)
- Senior Financing (contracts and agreements)
- HUD form: 7.5 (S-F) or 7.7 (M-F)
- Sources and Uses of Funds (Excel format)
- Contracts, Resolutions, Commitment Letters
- Underwriting formulas

HCD may request additional information as needed. Developers are expected to provide additional items requested without delay.

Meet and Concur:

After the applicants have passed preliminary underwriting, HCD and Planning Division staff meet to discuss the viability of the proposed projects and evaluate the merits of each in comparison to all the application submittals. At this stage, each staff person completes an evaluation worksheet. The evaluation sheet consists of inserting a “Y” for yes and “N” for no in the following criteria categories as follows:

- Leveraging of other resources
- Additional investment in the immediate area
- Locally owned headquarters in Fresno
- Mixed-use/income project
- Infill development (or rehabilitation)
- Near transit
- Create local jobs and training
- Proximity to amenities
- Readiness to proceed
- Cost per gross square foot at $676 or under
- Capacity and experience with federal funds
- Fresno Green Certification

Each “Y” response receives one point. There are no pointes deducted for “N” responses.

Those project(s) that receive the most points for “Y” responses will receive further underwriting. The most viable project(s) will be recommended for funding and a list of viable project(s) is/are presented to the City Manager and/or Mayor for further consideration. After the City Manager and/or Mayor have either concurred with HCD’s recommendation or made a different selection, project(s) moving forward receive further underwriting.

The selected project(s) is/are reviewed further by the Project Manager to determine viability based on the following:

- Ratio of subsidy to total project costs
- Subsidy per square foot of total development costs
- Number of units to subsidy ratio
- Ability to obtain senior funding
- Phasing of subsidy
- Compliance with Housing Element, Consolidated Plan, and One Housing Strategy
- Financial wherewithal
- Developer experience with the proposed project

Environmental Review and Assessments:

Prior to recommendation to the City Council, projects must be assessed in accordance with the California Environmental Quality Act (CEQA). The developer shall pay the Planning Division for preparation of the CEQA determination. The project must also be assessed in accordance with the provisions of the National Environmental Policy Act (NEPA) prior to Council approval and execution of an Agreement.

The environmental assessment of project activities shall include a Phase I and Phase II, if applicable, in addition to any required studies or analysis such as Lead-Based Paint, Asbestos, Traffic, Acoustical Analysis, Historic Preservation, Archaeological, etc. If not completed at the time of application submittal, the developer shall commission a qualified environmental specialist to complete an environmental assessment of the project activities. HCD shall review the completed environmental assessment, upload environmental assessment and supporting documentation into HEROS, review the noticing, and submit a request for release of funds and certification (form 7015.15) to HUD via HEROS, and follow for an electronically signed Authorization to Use Grant Funds (form 7015.16) from HUD via HEROS.

Applications must include the conclusion page of a Phase I Environmental Assessment and/or Phase II, if applicable. If recommended by Phase I, a conclusion page for Phase II must also be provided before a project will be considered for project evaluation. Phase II assessments must include a discussion of the impact of any recommendations and the effect on the project budget, design, etc. The developer must be able to track any mitigation measure outlined in the assessment. A copy of the environmental assessment must be provided to the general contractor working on the project.

Although the source and amount of funds provided to successful applicants is unknown at the time of application submittal. Applicants <u>must not</u> undertake activities that will have an adverse environmental impact or will otherwise limit the choice of reasonable alternatives between the time of application submittal and the time HCD obtains HUD approval of the environmental review. Such “choice limiting actions” include acquiring, rehabilitating, converting, leasing, repairing, or constructing property or expending or committing HUD <u>or</u> non-federal funds for activities with respect to the project.

City Council Approval:

Project(s) that are being recommended to the Council will undergo further underwriting prior to presentation to the City Council. Projects presented to the Council should include or have attached to the staff report, the following:

1) Details about the project and the developer,
2) Project budget, and
3) Cash Flow Statement or Sources and Uses of Funds, and
4) Cost worksheet, and
5) Location map, and

6) Final electronically signed Agreement by the developer and City Attorney, and
7) Preliminary site plan and elevations.

Non-profit developers are required to be present at the Council meeting to answer questions. If a developer is not able to attend, it is recommended that at the very least a representative of the development team be present. If a developer or a representative is not able to attend, the item will be removed from the Council agenda until such time that the project can be adequately represented.

The funding agreement will not be executed until the developer has provided evidence to HCD that all the necessary funding to complete the project is secured, either by letter, agreement, Resolution, or contract. It is strongly recommended that developers do not return to the Council requesting additional City funds as this may reflect poorly on the developer's capacity to gauge and estimate the financing of their project. If the developer insists on requesting additional funding beyond the amount already approved, the developer will need to present their request to the Council.

Funding Commitment:

After the Council has approved funding for the property acquisition or acquisition of manufactured housing, HCD will final an agreement and developers shall sign and submit the required items outlined in the Agreement such as the required insurances and bonds.

Agreement Documents:

Non-profit developers shall enter into a Program Agreement for funding. The Agreement provides for: 1) terms of the loan, 2) representations and warrants of the developer, 3) covenants of the developer, 4) property management, 5) disbursement of funds, 6) development and construction, 7) project operations, 8) insurance and indemnity, 9) default remedies, and 10) general provisions.

Declaration of Restrictions:

A 55-year affordability covenant shall be recorded on the property for the City-assisted units. Non-profit developers are required to execute a Declaration of Restrictions outlining the period of affordability requirements. The Declaration of Restrictions will ensure affordability covenants are met by the developer or any successors to the property.

Deed of Trust and Assignment of Rents:

A Deed of Trust and Assignment of Rents shall be recorded against the property receives a recorded Notice of Completion. The Deed may be subordinated to a senior debt instrument in the event the project is deemed to be infeasible without senior financing.

Promissory Note:

Non-profit developers or the entity (LLC or LP) created to own the project shall execute a Promissory Note for the amount of Section 108 Program Loan funds to the project. At times, the non-profit developer will sign the agreements and related documents and then assign their interest to an LLC or LP that will assume the Agreement and related documents.

Outreach:

At a non-profit developer's sole cost and expense, developers are expected to notify the public about an upcoming project through formal meetings or by flyer or other types of information dissemination. This effort is above and beyond that required by the City Planning and Development Department for development projects.

Event Planning:

Non-profit developers are expected to meet with the Councilmember for the district in which the project is located. Non-profit developers are also expected to hold a groundbreaking and grand opening ceremony for their projects and invite local dignitaries and City staff as applicable, and mention the City, HUD in press releases, statements to the media, and signage at the site.

Non-profit developers shall develop a timeline as part of the project as follows:

- Groundbreaking and grand opening ceremonies shall be scheduled at least three to four months ahead of time.
- Developers shall contact the Mayor's office and Councilmember's office at least three months ahead of time and arrange for applicable audio, visuals, podiums, media, refreshments, invitations, etc.
- Once invitations are in draft form, the developer shall contact the Councilmember and City's Public Relations staff to review the press release.

Relocation:

If relocation is required, the developer must submit a temporary or permanent relocation plan to HCD for approval. Once approved, HCD will issue an approval letter to the developer for use on other funding applications and as part of the underwriting of the project. The request must be accompanied with the plan, current rent roll, and budget.

Prevailing Wage:

Non-profit developers shall be solely responsible for all aspects of the developer's conduct in connection with their respective project, including but not limited to, compliance with all local, State, and federal laws including without limitation, as to prevailing wage and public bidding requirements. Housing development projects are a "public work" project for federal purposes including David Bacon and Related Acts wage requirements absent written direction/determination otherwise by HUD or a court of competent jurisdiction. Housing development projects are a "public work" project for State purposes including California Labor Code Section 1720 et seq. wage requirements, to which Section 1771 applies, absent written direction/determination otherwise the California Department of Industrial Relations or a court of competent jurisdiction. Based thereon a developer shall cause their respective project work to be performed as a “public work.” The Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification or type of workman needed in the execution of contracts for the City. A copy of the resolution is on file at the Office of the City Clerk. Actual wage schedules are available upon request at the City’s Construction Management Office. Without limiting the foregoing, developers shall be solely responsible for the quality and suitability of the work completed and the supervision of all contracted work, qualifications, and financial conditions of and performance of all contracts, subcontractors, consultants, and suppliers. Any review or inspection undertaken by the City with reference to a project and/or payroll monitoring/auditing is solely for the purpose of determining whether the developer is properly discharging its obligation to the City and shall not be relied upon by the developer or by any third parties as a warranty or representation by the City as to governmental compliance and/or the quality of work completed for a project. Should the project require the payment of Davis-Bacon, HCD will pull the required wage rates for the project once an agreement is fully executed. In addition, HCD will monitor certified payroll for the duration of construction and perform on-site interviews of construction staff. HCD shall keep separate labor compliance folders with the project files. If the developer hires a consultant to perform this work, the consultant shall provide HCD with the reviewed payroll and interview forms as they are completed and/or certified.

Green Building:

Fresno Green incorporates standard credits, such as energy and water conservation from national and regional Green building programs and is specific to Fresno’s climate and ecology. There is no additional fee for review under Fresno Green other than the standard building and entitlement fees.

The incentives under the Fresno Green Program are as follows:

- 20% fee reduction for many planning fees (site plans/CUPs, EAs);
- 20% minor deviation from property development standards (e.g., parking);
- Expedition processing; and
- City sponsored award programs.

The Fresno Green Residential Checklist can be found on the City’s website.

Subordination:

The Section 108 Program Loan Agreement and the Deed of Trust may be subordinated to certain approved financing (in each case, a “Senior Lender”) to no worse than forth position, but only on condition that the following conditions are satisfied:

- All of the proceeds of the proposed Senior Loan, less any transaction costs, must be used to provide construction or permanent financing for the Project consistent with an approved financing plan;
- Developers must demonstrate to the City's reasonable satisfaction that subordination of the Section 108 Program loan Deed of Trust is necessary to secure adequate construction or permanent financing to ensure the viability of the project;
- The subordination agreement must provide the City with adequate rights to cure any defaults by the developer including providing the City or its successor with copies of any notices of default;
- Upon satisfaction of the above, the City Manager or his/her designee will be authorized to execute the approved subordination agreement, inter-creditor agreements, standstill agreements, and/or other documents as may be reasonably requested by the senior lender to evidence subordination to the project financing, without the necessity of any further Council action or approval provided that such agreements contain written provisions that are no more onerous and which are consistent with the customary standard requirements imposed by the financing source(s), on subordinate cash flow obligations under their then existing senior financing policies, and further provided that the City Attorney approves such document(s) as to form.

Lead-Based Paint:

The non-profit developer shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 CFR Part 35, including the HUD 1012 Rule, and 24 CFR 982.401(j), and any amendments thereto, and EPA Section 402(c)(3) of the Toxic Substances Control Act 9TSCA) to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities. Contractors performing renovations in lead-based paint units must be EPA-certified renovators. These requirements apply to all units and common areas of a project. The non-profit developers shall incorporate or cause incorporation of this provision in all contracts and subcontracts for work performed on a project, which involves the application of paint. The developer shall be responsible for all disclosure, inspection, testing, evaluation, and control and abatement activities.

Build America, Buy America (BABA):

Non-profit developers shall comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the developer's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver. BABA requirements can be found on the HUD Exchange at https://www.hudexchange.info/programs/baba/

Broadband Infrastructure:

If the Section 108 Program Loan funds were committed to the project after January 19, 2017, and the project involves new construction or substantial rehabilitation (as defined in 24 CFR 5.100) of a building with more than 4 rental units, the construction must include the installation of broadband infrastructure, as the term is defined in 24 CFR 5.100. [24 CFR 251(a)(2)(vi)]. If the Section 108 Program Loan funds were committed to the project after January 19, 2017, and the project did not include broadband infrastructure, the City must determine: For new construction projects: The location of the project makes installation of broadband infrastructure infeasible, or the cost of installing the infrastructure would result in a fundamental alteration of the City's program or activity, or in an undue financial burden. [24 CFR 92.251(a)(2)(vi)]. For substantial rehabilitation (as defined in 24 CFR 5.100) of a building with more than 4 rental units: The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible, the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of the PJ's program or activity, or in an undue financial burden, or the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible. [24 CFR 92.251(b)(1)(x)] UPCS and 24 CFR 92.251(f)(1)(i)].

Signage During Construction:

Before the start of construction, non-profit developers shall place a minimum 4'X4' poster or sign with minimum 4-inch font size identifying the City and HUD as project participants. The sign shall also include the City's Housing Logo, as well as the Equal Housing Opportunity logo, as mandated by HUD. The poster/sign shall be appropriately placed, secured, and remain in place throughout construction of the project.

Mixed-Income Project:

Development projects that include units affordable to a range of household incomes are eligible. Although this type of project is encouraged, Section 108 Program Loan funds may only be used for hard costs of the units that meet the HUD rent, affordability, and other regulatory requirements. Therefore, Section 108 Program Loan funds will be used exclusively for the units within the project that meet program requirements.

Zoning:

Non-profit developers must obtain a letter/email from the Planning Department as evidence that the site is properly zoned for the type of project proposed. If a variance, special or conditional use permit is required, the developer must obtain, from the Planning and Development Department, assurance that such approval can be obtained prior to execution of an Agreement.

Consolidated Plan, Housing Element, One Fresno Housing Strategy:

Projects assisted with Section 108 Program Loan funds must demonstrate consistency with the above-mentioned plans.

Affirmative Fair Housing Marketing Plan (AFHMP):

In projects with five or more assisted units, the developers shall comply with affirmative marketing requirements, including without limitation, those set out at 24 CFR 92.350 and 24 CFR 92.351, to provide information and otherwise attract eligible tenants/owners from all racial, ethnic and gender groups in the housing market. Developers shall maintain records of actions taken to affirmatively market the assisted units, and to assess the results of these actions. The developer must send a request to HCD to review the AFHMP approximately 90 days before the end of construction. HUD no longer signs off on this document. However, the developer is still responsible for submitting the AFHMP document to HCD for review and approval prior to leasing the units.

Income Limits:

Non-profit developers shall use the income limits established and published by HUD annually to qualify occupants for tenancy and for recertification thereafter.

Rent Levels:

Non-profit developers shall use the maximum rent limits established and published by HUD annually, less utility allowance to determine cash flow. Rents for units with a combination of funds such as 202, 811, 220, or LIHTC may be lower. If this is the case, the most restrictive rent will apply. Properties may now use the limit of a rent subsidy provider such as Section 8. This will help and improve cash flow sightly.

Non-profit developers are expected to provide the deepest level of rent affordability that the completed project can sustain. This includes efficient design, using quality materials and workmanship during construction, and providing quality property management after construction and for the duration of the period of affordability.

One or two on-site unrestricted manager units are allowed per property. No additional unrestricted units will be allowed in the development. Each development project must have comparable affordable project rents to other rents in the immediate area. This information should be provided in the application but may be provided later at the underwriting stage. If the project is a mixed-income development, the developer must list by name the complexes with comparable market rate rents in the immediate area.

Utility Allowance:

Developers shall obtain the corresponding utility allowance applicable to their project. The utility allowance must be developed using the HUD Utility Schedule Model:

https://www.hudexchange.info/training-events/courses/hud-utility-schedule-model-calculating-utility-allowances-for-home-webinar/ In most cases, the developer will get a form prepared by The Nelrod Company, the Housing Authority's energy consultant.

Underwriting Projects:

There will be three underwriting stages: pre-development, development, and completion of the project. Any non-Section 108 Program Loan funds remaining if the project comes in under budget shall be allocated to pay down permanent debt or capitalized to replacement reserve for operations of the property.

Project and Financial Consultants:

Non-profit developers are expected to select consultants, attorneys, environmental specialists, etc. that have experience with affordable housing. A developer's budget must reflect the total costs for consultant contracts for work to be performed for the project. Section 108 Program Loan funds may not be used to pay for consultant work.

Deferred Developer Fee/Developer Equity:

The City will allow deferral of a developer fee as a source of funds to help finance a project. In the event of a deferred developer fee, the developer can charge an applicable interest rate on the deferral. A developer's fee shall receive priority payment from project cash flow. A deferred developer's fee or balance shall be tracked in the entity's annual audited Financial Statement. In addition, obtain a resolution from the developer's organization committing to the fee deferral.

Tenant Service Providers:

If a project is also financed with 9% Low-Income Housing Tax Credits, the project must provide various tenant services. This is an eligible expense and must be reflected in the annual audited Financial Statement and should not be counted as debt service. Therefore, the total amount should not be reflected in the Debt Service Coverage Ratio. Check the monthly amount and annual payment in the property budgets and at the annual monitoring of the property. Also, obtain the sign-in sheet for each event held by the service provider to gauge the level of participation from the tenants. If there is a low level of participation by the tenants, more outreach about the programs offered needs to be done or a different program may need to be introduced.

Lease-up Income:

The income generated from lease-up must be used to reduce the construction loan principal and/or interest upon conversion of the construction loan to permanent loan status.

Equity Contributions:

The owner's equity documentation must be provided to HCD. In the case of cash equity, the developer shall provide HCD with evidence of pre-paid items. The 10% equity contribution requirement shall be approved by the entity's Board via Resolution or minute order.

Readiness Threshold:

Developers must show project readiness through the following:

- Site control as evidence by a fee simple title, option to purchase, Purchase and Sale Agreement, or documented communication between the owner of the property and the developer;
- Entitlements or provide proof of sufficient advanced approvals of entitlements for the property as established through the City Planning and Development Department;
- CEQA and NEPA and other required environmental assessments, such as traffic study, acoustical analysis, structural engineering, or historic preservation study;
- Submittal of Agreement requested items; and
- Ability to monitor the project during construction and provide HCD with milestone thresholds per a construction schedule.

Proposals that do not meet the threshold requirements may be disqualified and asked to resubmit in subsequent NOFA rounds.

Financing:

The goal of the City is to minimize the amount of Section 108 Program Loan funds to a project by maximizing other funds committed to the project. Therefore, non-profit developers are required to secure other outside senior project financing. The City reserves the right to determine the amount of subsidy to a single project.

Developer New Construction Fee:

The maximum developer's fee for a new construction project is 10% to 15% of hard construction cost.

Developer Rehabilitation Fee:

The maximum developer's fee for a rehabilitation project is 10% to 12% of hard construction cost.

Cash Flow Statement:

The rates for various sections of the cash flow are as follows:

- Annual income increases should be no more than 3% to 3.5%
- Annual expenses increases should be no more than 4% to 4.5%
- Operating expenses should be between 30% to 70% or about $5,000 per unit
- Vacancy rates should be between 5% to 7% (less for senior complexes)
- Property management fee should be between 5% to 7%
- Property tax should be 1.2% (zero if a non-profit entity)
- Need to state miscellaneous income on the cash flow statement
- Debt service ratio should be at least 1.1
- Replacement Reserve should be at least $300 to $500 per unit annually

Cost Per Square Foot:

Only projects that can meet the most recently approved $676, cost per square foot requirement, or less, shall be considered for Section 108 Program Loan funding. A higher cost may be permitted on a case-by-case basis and upon approval by the City Council. The highest cost per square foot to date is $676, which was approved on March 30, 2023, by the Council for the Avalon Commons Phase I project in northwest Fresno.

Underwriting Formulas:

HCD staff shall use HUD's cost allocation worksheet and Multifamily Underwriting template to determine minimum and maximum funding. Other forms of templates may be used but must cover the same requested information or more. Costs for development projects must include the line-item costs listed in the Multi-family Underwriting Template or the Low-Income Housing Tax Credit sources and uses and line-item template.

Soft Costs:

Soft costs consist of work write ups, environmental reviews, environmental studies, assessments, fees, certain costs to process and settle the financing, private lender origination fees, credit reports, fees for title evidence, legal fees, accounting fees, filing fees for zoning, fees for planning review and approval, private appraisal fees, fees for independent costs estimates, other lender required third-party reporting fees, fees for recordation, costs of audits, for new construction the cost of impact fees, and costs of property insurance during construction.

Miscellaneous Income:

The cash flow statement must show any miscellaneous income expected to be generated by the project such as laundry machine income, storage, vending machine, etc.

Operating Costs:

Operating costs shall mean the actual, reasonable and customary (for comparable quality, construction of rental housing in Fresno County) costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the project in a calendar year, including, without limitation: painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certificates, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings which are not paid from the capital replacement reserve, fees and expenses of property management and common area expenses, fees and expenses of accountants, attorneys and other professionals, the cost of social services, repayment of any completion or operating loans including any and all deferred contractor's fees per the budget, made to the developer, its successors or assigns, and other actual operating costs and capital costs which are incurred and paid by the developer, but which are not paid from reserve accounts. The cash flow statement, after deducting the above operation costs, must show long-term anticipated revenues, usually 55 years.

In most cases, the operating costs should be approximately 30 percent to 70 percent of total revenues. In most cases expenses increase annually by 2.5 to 3.5 percent.

Vacancy Rate Assumptions:

The underwriting of a project will be written with a vacancy rate assumption appropriate for the type of project. The rate should range from 5% to 7% for multifamily and not be less than 5% unless the project is 100% senor affordable housing. Single Room Occupancy projects shall have a vacancy rate assumption of 10%.

Operating Expenses:

The total operating expenses shall be approximately $5,000 per unit, per year or higher depending on the level of property maintenance. This amount may be exceeded if uncontrollable repair and replacement expenses exist. Such as, increase in property and liability taxes, water, or other utilities, in-depth service programs, turnover of units that need more than just cleaning and minor repair, increase in management or other service provider fees, and excess property maintenance.

Replacement Reserve:

The replacement reserve for each unit shall not exceed $300 per unit per year. Projects that have a larger number of units with large bedroom sizes may have a higher replacement reserve due to excess wear and tear. For those types of projects, the City shall evaluate the replacement reserve on a case-by-case basis. In any case, the total amount accumulated in the replacement reserve cannot be used for another reserve accounts or expenses.

Debt Service, Debt Coverage Ratio, and Interest Rate:

If hard debt is used as permanent financing, the budget must reflect sufficient cash flow to pay debt service, and an amortization schedule must be provided. The debt ratio for the hard debt shall be between 1:15 to 1:20, after expenses and replacement reserve set aside. The interest charged on hard debt must be comparable to interest charged on similar financing structures. Debt service charges are calculated for all amortized loans. If more than one amortized loan, layer each calculation. If there are multiple loans on the property, stack the loans in senior priority to get the final Debt Coverage Ratio.

Partnerships or Asset Management Fees:

For Low-Income Housing Tax Credit projects, a developer may deduct an annual fee for partnerships or asset management for the duration of the 15-year tax credit period. Any additional fee may only be deducted from residual receipts prior to payment of the Section 108 Program Loan. These fees must also be reflected in the annual audited financial statement.

Developer Fee:

A developer fee for a new construction project shall not exceed 10% to 15% of the total project. A developer fee for a rehabilitation project shall not exceed 10% to 12%.

Mixed-Use/Mixed-Income Projects:

Separate underwriting will be performed on those projects that have both a housing and commercial / retail component. Those types of projects will also require floating units in equal amounts to be assigned within each building. Also, separate budgets must be submitted for each component of the project. In most cases and on most budgets, the item costs sit side by side with two different columns and totals.

General Contractor, Overhead, and General Conditions:

The allowable costs shall be as follows: The General Contractor's <u>general requirements</u> cost shall not exceed 6% of the total construction contract. The General Contractor's <u>overhead</u> cost shall not exceed 2% of the total construction contract. The General Contractor's <u>profit</u> shall not exceed 6% of the total construction contract. These costs shall be itemized on the developer's construction budget. In some cases, the overhead and the profit are combined, however, cannot exceed the total percentages for this category.

General Requirements:

The items in the General Contractor's general requirements must be itemized and generally include costs for an on-site trailer, tool shed, porta-potty, personal protection equipment, utilities, equipment rental, cell phone usage, security guard, security camera, signage, temporary fencing, disposal, and the like.

Payment and Performance Bond:

Non-profit developer's general contractor must be able to obtain bonds with no conditions. Also, the costs for the payment and performance bond cannot be included in the construction contract. The cost shall be a separate line-item on the pro forma budget "Insurance During Construction". The City Attorney's Office must review the Bonds "as to form" and the City's Risk Management Division must review the Bond for proper execution. After receiving approvals, keep the original Bonds until a recorded Notice of Completion is received for the project. All development projects require a Payment and Performance bond. The original bonds or a conformed copy of the bond shall be held until the recordation of a California Notice of Completion is with HCD. Upon project completion, release the original bond or conformed copy to the Bank, developer, or general contractor.

Construction Contingency:

The construction contingency may not exceed 5% of the construction costs. Larger contingencies will be reviewed on a case-by-case basis.

Pre-Closing Documents:

Non-profit developers shall submit the senior loan, and the construction loan documents to the HCD at least 30 days prior to closing of escrow. If a developer fails to provide these documents, at the very least, final drafts must be to HCD for review. The developer will be responsible for extending the escrow closing date at the developer's expense. The loan documents are needed as evidence that the developer has secured all the funding necessary to complete the project.

The developer shall provide to HCD:

- Copy of the set of the plans and specifications submitted to the City Building and Safety Division for approval
- Site plan of the project, including off-sites and landscaping
- Preliminary Title report showing the exceptions
- CEQA determination
- If the property is owned by the developer, a Phase I and Phase II (if applicable)
- Complete copy of the construction contract with exhibits. Contracts must be in the most current form provided by the American Institute of Architects
- List of the subcontractors to perform work on the project
- Applicable insurances and performance bonds
- Agreements/contracts from all funding sources
- Copy of the City-issued CUP or Conditions of Approval (if applicable)
- Construction schedule in bar chart and percentage detail
- Building permits as they become available
- On- and Off-site permits as they become available
- Landscaping permits as they become available

- Streetlight permits as they become available
- Encroachment permits as they become available
- Copy of consultant contracts (if applicable)

Site and Neighborhood Standards:

As part of the underwriting, a HUD Site and Neighborhood Standards form must be completed for each new construction project. Keep a copy of the completed form along with supporting documentation in the event of a HUD audit.

Requirements for Committing of funds to "Specific Local Projects":

In addition to the Site and Neighborhood form, this HUD form is required for each new construction or substantial rehabilitation project.

HUD Required at Audit:

At the completion of each project, fill out HUD form 7.7 for rental projects or HUD form 7.5 for single-family projects. The forms are used in the event of a HUD audit.

Preliminary Underwriting Sections:

Create an Excel spreadsheet with the information listed below. Each project will sit side by side so you can gauge and compare costs of each project by product type. Try to keep similar project next to one another. These preliminary underwriting sections help select which project(s) move forward. This spreadsheet may also be used for cost comparison since the budget item numbers will be the most current available for any given housing type. If a project is resubmitting an application, do not use the previously submitted information.

Project Development/Type:

- Type of Construction: new, rehabilitation, adaptive reuse, etc.
- Project type: Single Family, Multifamily, Single Room Occupancy, etc.
- Occupant type: Seniors, Households, Workforce, Special Needs, etc.
- Height/Elevations: Number of stories and elevator for the buildings

Primary Financing:

- LIHTC/HOME/CHDO/PLHA/CDBG/LHTF/Bonds/Other.
- Status of LIHTC Application: There are two rounds, so this information is needed.
- If 4% LIHTC layered with Bonds, over the counter – need the date.
- If HOME-ARP must be for homeless or at risk of becoming homeless.
- If only CDBG for acquisition, it must be part of a complete project.

Property Information:

- Address from the City Geographic Information System (GIS)
- Land Price from an appraisal. This should be as current as possible.
- Land Price from comparables, if no appraisal.
- Acquisition Status (ordered, in process, PSA, in discussions with owner)
- Appraisal (withing 6 months)
- Cost per residential unit (total/units)
- Land square footage from the City GIS
- Land Acreage from the City GIS
- Gross Residential square footage (total units x square footage)
- Cross community room square footage – need for calculating sq. ft. cost.
- Number of residential units – count all the affordable and manager units.
- Density (units/land acreage)
- Leverage ratio (total/total City funds)

Developer fees:

- Developer fee amount – see various program caps.
- Interest on the Developer fee – not allowed under this program.
- New Developer fee 10 percent to 15 percent of hard cost.
- Rehabilitation Developer fee 12 percent of hard cost.

Operating Costs:

- Operating expenses 30 to 70 percent of revenues – explain if higher.
- Vacancy rate 5 to 7 percent annually (Loss/GPR) – explain if higher.
- Property Management fee 5 to 7 percent of total operating costs – explain if higher.
- Property tax 1.2 percent of Value ($0 for non-profits) – explain if higher.
- Miscellaneous Income on Cash Flow Statement – must include this information.
- Debt Coverage 1.15 (NOI/Mortgages) – can be higher. Explain if lower.
- Operating Expenses $5K (total OP/Units) – should be this or lower.
- Replacement Reserve $300 to $500 per unit per year – can be higher.

Construction Costs:

- Residential structures cost from the budget
- On-site infrastructure cost from the budget
- Off-site infrastructure cost from the budget
- General requirements (6 percent or less) of Hard Costs from the budget
- Contractor Overhead (2 percent or less) of Hard Costs from the budget
- Contractor Profit (6 percent or less) of Hard Costs from the budget

Financing:

- Construction loan interest - get this from the construction contract.
- Construction loan amount - get this from the construction contract.
- Months of construction (12-24 months) – get this from the construction contract.
- LTV 60 to 80 percent (Perm loan/Total Dev) – calculation only.
- Construction loan position – this is usually the senior lender.
- Contracts/Agreements for financing.

Soft Costs:

- Legal fees – Legal fees for projects may not exceed $100,000. The City may approve a higher dollar amount if the complexity of a project warrants additional legal and specialized services. For a tax credit project, the amount may not exceed $200,000.
- Reserves – Are allowed in order to meet tax credit underwriting requirements.
- Soft Costs – Contingency shall not exceed 3 percent of the project soft cost.

Other Costs:

- Soft cost (Total less the sum of Land+Hard+Dev fee) – calculation only.
- Soft cost (20 percent) (Soft cost/total cost) – calculation only.
- Hard cost (75 – 85 percent) of Total Cost – calculation only.
- OP Reserves (3-month debt coverage) – calculation only.
- Consultant fees – Are limited to .5 percent of the total project cost.

Fees:

- Legal fees conventional $100,000 maximum – non-LIHTC projects only.
- Legal fees Tax Credit $200,000 maximum - tax credit projects only.
- General consultant fees .5 percent of total development – both non- and tax credit projects.
- Energy efficiency consultant fees are 5 percent of total development.

Annual Expenses:

- Annual income increases 3 - 3.5 percent - calculation only.
- Annual expense increases 4 - 4.5 percent - calculation only.
- Residual Receipts – this will be on the cash flow statement at the bottom.
- Year repayments start – this will be on the cash flow statement.

Section 108 Requirements:

- Subsidy per unit: Use the annual subsidy limits table.
- Sources and uses table: this must show all funds and what they pay for.

- Market Study: Should be completed by an independent third party.
- Fair Share-Subsidy Layering: Use the HUD template for these calculations.
- Rents: Get this from the most current HUD rent limits off the HUD Exchange.
- Interest on the Section 108 Program Loan: this is usually 1 – 4 percent (negotiable).
- Number of assisted units: If more than 11, the project is subject to Davis-Bacon.
- Davis-Bacon (if applicable)
- Utility Allowance: Must use one of the HUD methods for calculating the UA.
- NEPA: This must be completed before a commitment of funds to the project.
- Relocation (if applicable)
- Asbestos/LBP (if applicable)
- Phase I and Phase II (if applicable)
- Underwriting of financials
- Section 108 set up, funding, and draws

Planning Matters:

- Conditional Use Permit issued by the City of Fresno Planning Department.
- Conditions of Approval issued by the City of Fresno Planning Department.
- CEQA issued by the City of Fresno Planning Department.
- Re-zone/Zoning Clearance: Prepared by the City of Fresno Planning Department.
- Site Plan Status when submitted to the Planning Department for review and comment.
- General Plan Amendment (if applicable) prepared by the Planning Department.
- All permits as they become available

Other:

- What District number is the project located.
- Councilmember for the district where the project is located.
- State Prevailing wage (if applicable). If other funds require the payment of prevailing wage.
- LIHTC tie-breaker score.
- Condition of other properties (if applicable).

Second Stage Underwriting:

Once a project or projects have been selected, they will start to move forward with their primary/construction lending. At this point, a project or projects are preparing to close escrow on the senior financing. If Section 108 Program Loan funds are going to be wired into an escrow, prepare the City of Fresno Finance Department form at least a week prior to the funds being released. If the funds are not wired into an escrow, do nothing. The developer will submit periodic requests for reimbursement of funds in accordance with the Agreement.

Collect the following documents for the second phase of underwriting:

- Correct and final Deed with the legal description
- Final secured lending agreements, contracts, Resolution, etc.
- Final budget for the project – this will continue to change slightly prior to close of escrow.
- Tax ID number
- Incorporation, Articles of Incorporation, and By-Laws
- 501C3 (if applicable)
- Subordination Agreements for City to sign off (there may be more than one if there are multiple senior lenders)
- Intercreditor Agreements for the City to sign off (if applicable)
- Construction loan documents and final budget (this may continue to change just prior to closing
- State California Certification of Formation of the LP
- Organizational Chart for the LP
- State of California Letter of Good Standing
- Evidence of Tax Abatement or Tax Exemption Opinion
- Final or current property appraisal
- Debt Opinion Letter from an attorney
- Equity Opinion Letter from an attorney
- Lien searches for pending suits and judgements, bankruptcy, federal tax, and state tax lien from the senior lender.
- UCC Search completed by the senior lender.
- ALTA from the escrow tittle company
- In some cases, the other funding sources will want a “Will Serve” letter from the City. If provided, keep a copy on file.
- Property Management Agreement and if ready, the AFHMP, Tenant Lease, Tenant Selection Plan.
- Architectural final AIA, design plans, specifications, and elevations approved by the City Planning Department – a reference number will be issued.
- Signed Relocation Plan and letters (if applicable)
- Architect Resume, Certification, and license
- General Contractor Contract, license, construction breakdown, draw schedule, insurances and bonds, construction schedule, resume, list of subs.
- Final Master Statement from the title company handling the transaction.
- Prepare the “No Fee at Closing” letter for the borrower.
- In some cases, the senior lenders will want an Estoppel letter from the City for the Section 108 Program Loan funds if the Agreement was previously recorded.
- Assumption and Assignment Agreements (if applicable)
- All documents have been obtained or can be obtained at the close of escrow.
- Send an instruction letter to the escrow company requesting these documents at the close of escrow along with conformed copies of **all** documents recorded at the close of escrow and an ALTA in the amount equal to the funding.

Final Stage Underwriting:

Once the project is complete, obtain the following information prior to closing the project in IDIS.

- Final construction budget with itemized cost
- Change Orders for the project if not already done so previously.
- EA mitigation measures completed in Excel format if not already done so previously.
- Final and recorded Notice of Completion
- Final Architect certification that the project was completed with the City-approved plans and specifications.
- Final and City-issued certificate of occupancy for each building.
- Rent roll of the tenants occupying the project. If also funded with CDBG for acquisition, obtain a full rent roll for compliance with the 20% rule.
- List of ADA units by type
- Property management documents if not already done so previously.

Construction Standards:

The non-profit developer shall construct the proposed project in compliance with all applicable City of Fresno codes, ordinances, and zoning requirements in effect at the time of the issuance of the City's building permits.

The City of Fresno has enacted several Amendments to the Municipal Code (i.e., Zoning Ordinance) in recent years that provide contemporary and more flexible standards for new development projects as follows:

- Second Unit Ordinance – The Ordinance provides for the addition of a second dwelling unit to be placed, with some limitations and conditions, on lots that are zoned for single-family development. The second unit is permitted by right.

- Group Home Ordinance - This Ordinance removes previous impediments of the Zoning Ordinance, to housing choices for elderly, disabled, or persons with special needs. The Ordinance redefines the use, classifies it as permitted in a wide choice of Zone Districts, and establishes some reasonable standards of development.

- Mixed Use Ordinance – The Ordinance provides for significant change as it permits Commercial Districts for residential development. The development standards are flexible enough to encourage and permit innovative project design.

- Variety Pak #3 - An amendment to the text of the Zoning Ordinance that is entitled, "Variety Pak," contains amendments to several unrelated sections of the Code. It addresses and attempts to resolve a variety of issues related to zoning.

This Ordinance accomplished the following:

a. Reduced the lot area (and dimensions) of the R-1 District, from 6,000 to 5,000 square feet, which increases the density from 7.26 to 8.7 units per acre;

b. Increases the range of consistent residential density of the Medium Low Residential Plan Designation from a maximum of 4.98 to 6.00 units per acre;

c. Deletes the "Drop down" provision of the Planned Land Use Consistency Criteria, whereas development was previously allowed at a lesser than planned density. Development shall now take place according to the planned densities.

d. Defines and classifies residential types for special groups housing needs such as assisted living facilities, rest homes, homes for the aged and convalescent homes.

e. Refines the Mixed-Use Ordinance previously discussed, by adding the use to C-M (Commercial-Light Manufacturing) and M-1 (Light Manufacturing) Districts when located in the Central Plan Area, i.e., downtown.

f. Deletes the two-acre minimum requirement for the construction of a planned development. As a planned development, the project may receive up to a thirty-percent reduction in lot area, thereby reducing the size of an R-1 lot to 3,500 square feet.

- Density Bonus – This Ordinance (2007-75) enables the City of Fresno to offer a density bonus, and/or concessions, incentives whenever a proposed housing development reserves a specific number of dwelling units, for a specific time period, for very low, low, and moderate-income households.

Ordinance No. 2013-21: Provides for an exemption of development impact fees on any replacement or reconstruction of an existing single-family, duplex, triplex or fourplex unit that has been destroyed or demolished, where the use of the property will not change or be intensified.

Ordinance No. 2008-51: Allows developers of affordable housing projects to defer payment of impact fees until the Planning Division has issuance Certificate of Occupancy.

Ordinance No. 2015-44: Proposes to eliminate development impact fees (Fire, Police, Streets, Traffic Signals) when certain development criteria are met. Water and Sewer connection charges are not subject to the exemption.

The incentives listed above are not inclusive and should be provided to the developer at the pre-development stage or sooner of a project and if they are applicable to the development.

Construction Costs:

Costs shall be itemized in the 16 Divisions as defined by the Construction Specifications Institute (CSI) and provided by the General Contractor.

Pre-Construction and Owner/Architect/Contract Meetings:

Prior to commencement of construction, the non-profit developer and/or General Contractor shall schedule a meeting to review procedures for submitting certified payroll, signage, disbursement of funds, safety requirements, insurances, and monitoring schedule. Currently this is being held virtually via Zoom, WebEx, Meet.goto.com, Teams, and most electronic media platforms. There have been no in person meeting post Covid. This meeting is also called an Owner, Architect, Contractor (OAC) meeting.

Draw Meetings:

Non-profit developers shall inform HCD of any scheduled draw meetings set up by the senior lender(s) and shall invite staff to attend. If staff are not able to attend, due to scheduling, the developer shall provide a copy of the meeting minutes and any proposed Change Orders, Potential Change Orders, or Request for Information for review and approval.

Scheduling and Unavoidable Delay:

Non-profit developers shall be the responsible for coordinating and scheduling the work to be performed so that the commencement of the project and issuance of the Certificate of Completion will take place in accordance with the provisions of the project schedule as outline in the Agreement: Exhibit B – Project Schedule. The time for completion contained in the Agreement project schedule may be administratively amended by either party without Council approval but not later than the prescribed completion – typically within four years. HCD staff are afforded an administrative time amendment of up to 180 days. Any extension of time beyond 180 days must go back to Council for an Amendment to the Agreement.

Request for Reimbursement:

Non-profit developers must email a Request for Reimbursement form along with a copy of the check and supporting invoices. The form must be in the form provided by HCD. All requests for reimbursement must be provided in sufficient detail and only for eligible acquisition and/or hard costs applicable to the approved budget.

Conditions Precedent to Disbursement:

HCD shall not be obligated to make or authorize any disbursements of funds unless all the following conditions are satisfied:

- There exists no event of default.
- The non-profit developer submitted its Finance Plan to HCD.
- HCD has approved the requested reimbursement of eligible project costs.
- The non-profit developer has obtained insurance coverage and delivered it to HCD as evidence of insurance required.
- The non-profit developer has provided HCD with a written request for funds (in the CITY-provided form), for reimbursement of eligible project costs, and detailing such eligible costs applicable to the request.

Disbursements of Section 108 Program Loan funds to reimburse the developer for expenditures shall occur within thirty (30) days after HCD receives the certification and to the extent HCD has annually allocated and available funds, the request for reimbursement packet is in complete order, legible, and reimbursement is approved, by the Business Manager and the Finance Department.

Mechanics Liens:

HCD will not reimburse if a dispute exists as evidence by a mechanics lien. Once the lien is paid, the developer shall submit to HCD a copy of the lien release.

Bidding Requirements:

If a development firm does not use a general contractor-arm of the company, the developer or development company is required to bid for a general contractor. The general contractor is required to bid for subcontractors. The bidding process requires that at least three bids be obtained for each trade. If the lowest responsible bid is not accepted, the developer must notify HCD.

Contractors and Subcontractors:

All demolition, hazardous waste abatement, construction work, and professional services for a project shall be performed by persons or entities licensed or otherwise legally authorized to perform the applicable work or service in the State of California and the City of Fresno.

The non-profit developers shall provide HCD with copies of all agreements entered into with general contractors. The developers shall require that each general contractor agreement contain a provision whereby the parties to the agreement other than the developer agree to: (i) notify HCD immediately of any event of default by the developer; (ii) notify HCD immediately of the filing of a mechanic's lien, (iii) notify HCD immediately of termination or cancellation of the agreement; and (iv) provide HCD, upon request, an

Estoppel Certificate certifying that the agreement is in full force and effect and developers are not in default. The developer shall notify HCD immediately of termination or cancellation of any such agreement(s), notice of filing of a mechanic's lien, or breach or default by other parties.

Utilities:

Non-profit developers, at their sole cost and expense, shall be responsible for determining the location or relocation of any utilities on the property and for negotiating with the utility companies, as necessary, to complete service to the project. This includes Verizon, Comcast, and other broadband and cable lines.

Reporting Requirements:

From the date of the Agreement execution until issuance of the recorded Certificate of Completion, developers shall submit a quarterly report, in the form provided by the HCD, which will include the progress of construction, affirmative marketing efforts, and Section 3 reporting. Quarterly reports are due within 15 days after each March 31st, June 30th, September 30th, and December 31st. Send out an email reminder at least one week in advance and then follow up for reports that are past due.

Monitoring During Construction:

HCD staff will perform periodic on-site monitoring of a project for the duration of construction. Prior to a request for reimbursement, developers shall schedule a meeting with staff to perform progress payment monitoring and/or obtain the construction schedule to gauge the percentage completed.

Retention:

A 10 percent retention may be retained until HCD has received a conformed copy of the recorded Notice of Completion. Upon receipt of a recorded Notice of Completion and within 30 days, HCD will release the 10 percent retention. Developers must report beneficiary data for uploading within 120 days from the last draw. If the developer cannot meet that deadline, hold the retention until such time as the requirement can be met.

Certification of Completion:

HCD records a Certificate of Completion upon submittal of the following:

- Certification that the project has been constructed in accordance with the final plans and Conditional Use Permit or Conditions of Approval;
- A cost-certifying of the final itemized budget for the project where a developer shall identify the actual costs of construction of the project;
- A copy of the Certificate of Occupancy for the project;
- A recorded Notice of Completion for the project; and

- Architect's certification that construction was completed in accordance with the City-approved plans and specifications.

Closeout:

Non-profit developers shall schedule a final walkthrough with HCD to perform a final inspection. HCD will perform a final inspection and may develop a punch list of items to be corrected. Non-profit developers are required to make corrections and once the corrections are completed shall inform HCD in writing that the items have been corrected. HCD may check a second time to ensure the corrections have been made. Developers must also provide HCD with an Excel spreadsheet listing tenant information for uploading into IDIS at project closeout.

Compliance with CDBG Regulations and Underwriting Policies

Other Laws and Regulations:

Non-profit developers shall comply with other federal laws and regulations including, but not limited to, the following:

24 CFR Part 570 – Community Development Block Grant

- 24 CFR 58.6 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128)
- Not intend to use any financing that is secured by a mortgage insured by HUD in connection with the project as part of its demolition or construction of the project.
- Project shall not be located in a tract identified by the Federal Emergency Management Agency as having special flood requirements.
- Subject to Subpart F of 24 CFR Part 92, as applicable and in accordance with the type of affordable units assisted, including, but not limited to, the limit on the per-unit subsidy, as amended.
- Property standards set forth at 24 CFR 92.251.
- Requirements concerning equal employment opportunity, including compliance with Executive Order (E.O.) 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor".
- Subject to provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations at 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States".
- Subject to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.
- Provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).
- Provision of E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24.
- Provisions of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.
- Title 8 of the Civil Rights Act of 1968 PL. 90-284.
- Executive Order 11063 on Equal Opportunity and Housing.
- Section 3 of the Housing and Urban Development Act of 1968.
- Housing and Community Development Act of 1974.
- Clean Water Requirements 33 U.S.C. 1251
- Civil Rights Requirements, 29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 C.F.R. Parts 60 et seq.
- Not engage in any prohibited activities described 24 CFR 92.257.

- Violence Against Women Act (VAWA), 24 CFR 92.359 and 24 CFR 92.504(c)(3)(v)(F), including but not limited to notice requirements, obligations under emergency transfer plan, bifurcation of lease requirements, imposition of requirements for the duration of the period of affordability, and inclusion of VAWA lease addendum requirements.
- Broadband infrastructure requirements for new construction and rehabilitation projects as set forth in 24 CRF Part 92.251.
- Build America Buy America (BABA) as set forth in 2 CFR Part 184.
- National Standards for the Physical Inspection of Real Estate (NSPIRE) at 24 CFR Part 5, Subpart G.

CDBG Underwriting Policies:

1. Project Feasibility and Rationale: Determine if the project is realistic and if Section 108 Program Loan funds are truly necessary, rather than replacing private financing
2. Cost Reasonableness: Ensuring development costs are reasonable and that the project is not over-subsidized.
3. Financial Capacity and Experience: Evaluating the borrower's capacity to complete the project, including their track record with similar projects.
4. Market Analysis: Reviewing the market demand to support projected revenue, expenses, and occupancy rates.
5. Cash Flow and Debt Service: Analyzing projected income to ensure the project generates sufficient cash flow to cover debt payments.
6. Collateral Value: Assessing the value of the security (e.g., real estate) to ensure it can cover the loan in case of default.

Site and Development Analysis

Market Analysis:

Non-profit developers must demonstrate the need for the project units by providing a market study when submitting a Section 108 Program Loan application to HCD. In the event a full market study is not available at application submittal, developers may provide a rental survey of similar properties in the immediate vicinity or alternate market study information acceptable to HCD. The market study/survey information should contain rent information, vacancy rates, crime statistics, etc. Prior to funding, the developers shall have a market study prepared by an independent third-party individual or company with the qualifications and certifications to produce a quality and meaningful document on which HCD will use to determine the need for the proposed project units. A market study must provide current demographic information from a reliable source and an analysis of the data, identifying assumptions, estimates, and projections used in the analysis. Recommendations should be based on market conditions and not used to support a case for the developer's funding request. A resume describing the author's qualifications, experience and background must be included in the market study. Developers must demonstrate in their application for funding that the proposed project is needed in the area and that sufficient demand exists for such a project type in the proposed area.

Site Analysis:

Discuss any issues with site control, zoning, special permits, environmental hazards and how they can be resolved in a timely manner. Describe the property to be acquired, constructed and/or substantially rehabilitated. Include a physical description of the proposed project that includes the size, number of stories, type of construction, layout of the buildings, and any other unique features of the proposed project and target population. Describe the project location and the surrounding neighborhood. Include a discussion of the transportation options, amenities, nearby health and medical services, schools, etc.

Include the following:

- Status of site control. If in discussions with a property owner, provide a tentative purchase and sale agreement or similar commitment.
- Status of the architectural plans and design elements.
- Description of all proposed and firm financing sources and a plan for obtaining additional financing including a timeline. Provide any letters of commitment.
- Proposed project consistency with existing zoning and permit process. If not, describe the steps necessary to alleviate the inconsistency.
- Discuss any required mitigation of existing conditions noted in the environmental assessment, Phase I, Phase II, and any special study prepared for the site.
- Substantial rehabilitation projects shall include a discussion for abatement of asbestos, lead-based paint, and/or mold as noted in the environmental documents and studies.

- If a site has not been identified, describe the characteristics of the location being sought.
- Include any final environmental documents completed.

Appraisal:

Non-profit developers are expected to have site control or a current and fully executed purchase and sale agreement at the time of application submittal. At the very least, developers need to have documentation of communication between the property owner and the developer regarding purchase of the property. Developers must submit a current appraisal (not more than 6 months old) for transactions involving acquisition of property, donation of land, or carry-back loans. For rehabilitation projects, developers must submit an “as is” appraisal and an “after-rehabilitation” appraisal. The land cost listed in the project budget must reflect the current appraised fair market value or less. Under no circumstances shall the land budget reflect an amount in excess of the current fair market appraised value. It is City policy that real estate brokers, agents and affiliates or related party fees are not paid for with City funds or other project funds. In addition to the appraisal, obtain a preliminary title report of the property to ensure the property is clear of liens, loans, or title issues. Document the address, APN(s), price, lot square footage from GIS, and the acreage from GIS at close of escrow. At close of the escrow the title company shall be prepared to issue an ALTA to the City for the acquisition costs and or development costs.

Development Team and Credit Analysis

Developer Experience and Capacity:

Non-profit developers are expected to propose a project that commensurate with the developer's experience and capacity. Developers must have successfully completed at least two projects similar to the one proposed in response to a NOFA. See the most recently released NOFA for developer and team requirements. If other projects have been completed, check that they have been completed on time and within budget and if the units are fully occupied. Pull a HUD SAMS to make sure the developer is not barred from participating in federally funded projects. Prepare the Developer Evaluation form and keep this on file as evidence of underwriting the developer's capacity. Also check the references of any project partners to the project. Check for compliance violations, lawsuits, and other pertinent information to determine capacity. Check references if provided. Determine if the organization is adequately staffed with knowledgeable personnel to complete the project. If in doubt, request at least two tax returns or any audits completed on the organization. Check the organizations current workload and projects in the pipeline to determine if the developer has the time and manpower to take on the project as proposed. Conduct any other investigation that is warranted. Minimum net worth should be the greater of $5 million or 25 percent of the total development cost. Minimum net liquid assets should be the greater of $1 million or 5% of the total development costs.

Architect Experience and Capacity:

A non-profit developer's architect is expected to have the experience and capacity that commensurate with other similarly completed projects. NOFA applications must have the architect's resume as an attachment to the application. The resume should include the number and types of projects completed, the total costs of the project, and location. Obtain the resumes of all staff working on the project and the principals/owners of the organization. Conduct any other investigation that is warranted.

General Contractor Experience and Capacity:

Non-profit developers shall have procured for a general contractor to construct the project. The selected general contractor shall submit a resume at the application stage or after selection. The general contractor is expected to have relevant experience with the construction of affordable housing. Developers are expected to ensure the following are provided to HCD:

- Copy of the fully executed construction contract;
- Applicable payment and performance bonds;
- Copy of the contractor license;
- A list of subcontractors proposed to work on the project;

- Contractors must be experienced with local, State, and federal wage rates as applicable;
- SAM confirmation as evidence that the selected contractor has not been debarred from working on federally funded projects.

A non-profit developer's general contractor is expected to have the experience and capacity that commensurate with similarly completed projects. Resumes of the general contractor shall be obtained and should include the number and types of projects completed, the total costs of the project, and location. Obtain the resumes of all staff working on the project and the principals/owners of the organization. Conduct any other investigation that is warranted.

Sample ABC Developer Evaluation:

Project Name:	ABC Project
Governing Document:	CA Certificate of Status IL Certificate of Good Standing CA Statement of No Change CA Statement of Information Organizational Chart
Physical Addresses:	XXXX N. Figarden Drive, Suite XXX Fresno, CA 937XX
State of Formation/ Incorporation:	Illinois April X, 20XX
Tax Identification:	32-XXXXXX
Project Partners:	ABC Partners
Principals:	ABC Managing Members Non-profit Homes
Contact Information:	Phone: 312-375-9909 E-Mail: jlkjlkjlkjsa.net
Business Description:	Affordable Housing Development

1) Does the project represent a valid public policy issue?

Yes. Affordable housing is a priority as stated in the City of Fresno's state-certified 2015-2023 Housing Element of the 2035 General Plan. The Housing Element is one of the seven mandated elements of the General Plan that sets forth the City's policy on housing matters and the creation of affordable housing. In addition, the project addresses housing policy matters as stated in the City's 2020-2024 Consolidated Plan as submitted to the U.S. Department of Housing Development (HUD) regarding the planned uses of the City Program funds.

a) Is the project consistent with the objectives and policies of the Comprehensive Economic Development Policy and Program?

Yes. The above-mentioned project is consistent with the Economic Development objectives of the Comprehensive Economic Development Policy in that it affords an opportunity for the City to leverage Program funds with other federal, State, and local funds.

b) Do projects of this nature fall within the purview of the private sector?

Yes. There are several local private, for- and non-profit developers that develop, own, and manage affordable housing projects. Some of these developers seek Program funds from the City to close the financial gap of proposed affordable housing projects. The City regularly provides funding for, and sponsors, eligible and capable affordable housing developments to help meet its goal of providing safe, decent, affordable housing to lower income households.

c) Are community organizations other than the City more suited to sponsor or partner with this type of project?

No. The City receives an annual allocation of HUD Program funds to help facilitate affordable housing projects within its jurisdiction. In addition, the City's State-certified 2015-2023 Housing Element and 2020-2024 Consolidated Plan, commits the City to facilitating and sponsoring affordable housing projects with its federal funds. Other sponsors whose mission includes support for the development of affordable housing are Self-Help Enterprises, Habitat for Humanity Fresno, and EAH Housing, Inc., to name a few. It is through the collaborative efforts of these housing agencies that affordable housing projects come to fruition. Additionally, the Program funding received by the City, through HUD, is regularly utilized by cities and other jurisdictions to sponsor and partner with developers for projects such as The Dakota Senior Housing Project.

d) Does the project benefit a special interest above the general interest of the public?

No. The lack of affordable housing is considered a national, statewide, and local crisis.

2. Does the business case appear to make financial sense, based on available information?

Yes. The financing of the above-mentioned project makes financial sense and is based on sound market-based projections that meet the stringent lending criteria requirements of the California Tax Credit Allocation Committee (CTCAC) for receipt of an allocation of Low-Income Housing Tax Credit (LIHTC) funding.

a) In general, does the project make financial sense given the current economic and industry conditions? What is the long term viability of the project? Has independent research been provided to support the project?

The above-mentioned project makes financial sense as most of the funding will come from an allocation of LIHTC (tax credit investor) equity. Typically, the development of affordable housing is not adversely impacted by the current economic and industry conditions. Any financially adverse condition can be mitigated with the amount of LIHTC allocated to a project. The LIHTC is one of the most viable sources of financing for the development of affordable housing. Few other federal, State, or local funding source can match the amount of LIHTC funds allocated to projects annually by the CTCAC.

The anticipated long-term viability of the project is estimated at 55 years – the duration of the affordability covenants. The long-term viability of a project is a requirement of the LIHTC and is enforced through a regulatory agreement.

Research has been provided through a market study prepared by an independent consultant and provides statistical analysis that supports the need for this type of new construction project in the community.

b) What is the requested assistance from the City? Does the City have sufficient resources to assist the project? What is a reasonable estimation of the City's contribution in soft costs including personnel, legal, consultant/contractor, and other non-financial resources for the project? Given the costs to the City, what are the potential benefits? Is the project not feasible without City assistance? If not, why not?

The initial requested assistance was $$$ million in Program Funds. However, after reviewing all the applications and projects being proposed, the City offered the developer $$$ in 20XX-20XX Program funding. The funding is in the Housing and Community Development Division 20XX budget.

There is no estimated dollar amount for the City's contribution toward soft costs. The City's reasonable contribution to the project is the amount necessary to make the project feasible and secure a no worse than 4th position lien.

Benefits to the City are the addition of ## affordable housing units to the City's housing stock. In addition, the City's financial assistance to the project will bring the City closer toward achieving Housing Element and Consolidated Plan goals.

The proposed project could not be feasible without the City's Program funding assistance.

c) Does the applicant have the tenure/control of the project site? Will demolition and/or relocation be required? Is there a high probability that an eminent domain action will be required by the City?

The developer's non-profit partner has an Option Agreement dated May 25, 2021, to purchase the site from the owner. There will be no demolition or relocation required as the existing building will be converted to a senior center and the senior housing will be new construction on the site. There will also be no requirement for the use of eminent domain.

d) Is the proposed project plan consistent with existing City land use plans and policies including the 2035 General Plan?

The proposed project plans were reviewed by the City's Development Services Division for consistency with local plans and policies of the 2035 General Plan for new development.

e) Is the infrastructure in place to accommodate the proposed project?

The project's utility needs will be serviced by the City's existing water and sewer mains. The site is a former restaurant that will be converted into a senior center and senior housing. The developer is also performing rehabilitation to the adjacent property which was converted from a former hotel into affordable housing.

3) Do the project proponents represent responsible partners for the City?

Yes. ABC is an affordable housing developer from the Chicago area and is now doing development in the City of Fresno. This will be the first time the City has assisted this developer with an affordable housing project. The developer is also proposing a development at the corner of Blackstone and Shaw avenues (The Glenn).

a) What is the track record of the applicant/principals with other projects in our community and other communities? Have these other projects been successful, i.e. have they achieved intended goals.

As stated above, the developer is new to the City of Fresno. ABC has developed a portfolio of housing over the past 15 years including 1,418 existing units, 344 units under construction, and 595 units in the pre-development stages. One Thousand Sixty-Two of these units are permanent supportive housing, for which ABC partners with a high-capacity local service provider to deliver on-site supportive services. ABC's projects are located throughout five states and dozens of local jurisdictions. All ABC's projects are financed by a combination of LIHTC, HOME funds, and conventional first mortgage and other loans/grants.

The development team will employ the Housing First model in engaging with resident with special housing needs. The Housing First model highlights the importance of providing the at-risk population with stable housing as soon as possible to stabilize their conditions. Once the residents have been housed, the priority will be to provide comprehensive case management and spread awareness of the full range of voluntary supportive services to residents.

ABC is developing ABC Housing Project in response to the enormous need for high quality, affordable housing in Fresno and acknowledges that the most vulnerable senior and special needs populations struggle most. The ABC development team is led by ABC and co-sponsored by ABC Homes, a 501c3, and Fresno-based builders.

b) Who is the competition for the proposed project and should the City consider a competitive bidding process for the same or similar projects? Have other funding sources approved of the project proponents?

There is no competition to develop the proposed project at the site. No other developer has proposed to re-purpose the building into new affordable housing at that site. The City cannot consider a competitive bid process because the City does not own the parcel. The City did release a Notice of Funding Availability that is ranked on a competitive process. This project was ranked second and is being recommended for an award of funds in the amount of $$$.

c) Will the project applicant accept the prescribed due diligence investigation requirements and will they agree to the prescribed oversight requirements?

Yes. The developer has agreed to provide the necessary documents to complete underwriting of the project. This is evidenced by the acceptance of a Program application that requests several supporting documents to underwrite the project.

4) Are the potential risks associated with a failure of the project acceptable when compared with the potential benefits?

Yes. The Program funds are being provided to help develop a ##-unit affordable housing apartment complex. The Program funds are proposed to be used for hard construction only. Infeasibility of the proposed project will not pose a financial risk to the City.

a) What is the risk of loss to the City in the event of project failure including the impact on the general funds, the bond rating and other City resources?

In the event of project failure, there is no financial risk of loss to the City, its General Fund, bond rating or other City resources. Should the project fail halfway through construction, the Agreement bond requirement will be enforced to secure another developer to complete construction. The Surety Bond requirement is equal to 100% of the project construction cost.

b) Are there clear accountability measures for the project?

Yes. Accountability measures are included in the Program Agreement, HUD Program regulations, and if allocated, the LIHTC regulatory Agreement. The HUD Program has thorough monitoring and reporting requirements that are strictly enforced by City's Housing and Community Development Division staff. For example, project activities are monitored from the inception of the Agreement through the duration of construction, up to completion of the project and occupancy of the units, and then annually thereafter during the 55-year affordability period. Requests for reimbursement of eligible costs are reviewed and approved at three management levels. If the owner is non-compliant with Program regulations, the City's Program Agreement includes a provision which identifies, among other equitable relief, acceleration of the Loan.

Credit Memo and Recommendations for Loan Review Committee

MEMORANDUM

DATE: May 28, 20XX

TO: ____________________, City Manager

FROM: ____________________, Assistant Director

SUBJECT: **Credit Committee Memo to City Manager Regarding Recommendation for Section 108 Program Loan Funds**

Summary: On ________ XX, 20XX, __________, the Community Development Division Section 108 Program Loan Committee met to discuss Program Loan funds in the amount of $_________ to the _______________ Project. Based upon underwriting of the project, the LP has provided sufficient evidence that it has secured senior financing to complete the project and has the required 10% equity to help fund the project. The Section 108 Program Loan Committee therefore recommend the City Manager, recommend to the Council, Section 108 Program Loan funding to the project in the amount of $____________.

Mitigation Factors: If the owner is non-compliant with a particular regulatory requirement, the Section 108 Program Loan Agreement includes a provision which identifies, among other equitable relief, acceleration of the Section 108 Program loan.

Terms and Conditions: The Section 108 Program Loan Committee recommends a residual receipts loan to the LP in the amount of $___________ at 3% interest, in no worse than 4th position, for a period of __ years, with principal and interest due at loan maturity.

Annual Review of Financial Statements: The Community Development Division shall request and review an annual audited Financial Statement and Residual Receipts calculation each year to determine the financial wherewithal of the project property.

Risk Rating: In accordance with the underwriting for the project, the risk rating is as follows ________.

If you have any questions, please contact _____________ at extension 8###.

MEMORANDUM

DATE: May 28, 20XX

TO: ___________________, Credit Loan Committee

FROM: ___________________, Project Manager

SUBJECT: **Memo Regarding Recommendation for Section 108 Program Loan Funds**

Applicant: ACB LP

Project Name: ABC Affordable Housing Project

Requested Loan Amount: $$ Million

Project Description: ABC Apartments will consist of a 114-unit multifamily residential development on 1.89 acres within a gated community and include one one-bedroom manager units, and on- and off-site improvements. Project Units will be 1bedroom/1bath, 2bedroom/1bath, and 3bedroom/2bath units ranging from 540 square feet for a 1bedroom, 770 square feet for a 2bedroom and 950 square feet for a 3bedroom. The project site will offer on-site parking, bicycle racks/lockers, and landscaping and irrigation. Security for the site will be provided through a combination of gate-controlled access, walls and fences, and exterior lighting. The development will also be equipped with comprehensive video surveillance cameras. The project will consist of eleven (11) two- and three-bedroom assisted units (3 units at 50% of AMI and 8 units from 60% to 80% of AMI.

Location: The project site is located at #### N Blackstone Avenue, Fresno, CA 937##, in west central Fresno (APN: 435-###-11).

Collateral: Deed of Trust Assignment of Rents

Target Closing Date: September XX, 20XX

Analysis

A. **Project Description:** ABC Apartments will consist of a 114-unit multifamily residential development on 1.89 acres within a gated community and include one one-bedroom manager units, and on- and off-site improvements. Project Units will be 1bedroom/1bath, 2bedroom/1bath, and 3bedroom/2bath units ranging from 540 square feet for a 1bedroom, 770 square feet for a 2bedroom and 950 square feet for a 3bedroom. The project site will offer on-site parking, bicycle racks/lockers, and landscaping and irrigation. Security for the site will be provided through a combination of gate-controlled access, walls and fences, and exterior lighting. The development will also be equipped with comprehensive video surveillance cameras. The project will consist of eleven (11) two- and three-bedroom assisted units (3 units at 50% of AMI and 8 units from 60% to 80% of AMI.

B. Section 108 Program Compliance:

1. Section 108 Eligible Activity Under 24 CFR 570.703
2. Nation Objective Criteria Under 24 CFR 570.208
3. Public benefit standard as required for projects qualifying under 570.703(i) and 570.203 or 570.204 activities.
4. Environmental Review: On March 16, 2023, the Planning and Development Department determined that the project activities, as described were exempt from CEQA under Section 15332/Class 32 of the CEQA Guidelines. None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to the project. On November 15, 2021, the developer completed an environmental review of the project activities pursuant to the National Environmental Policy Act guidelines that resulted in a Finding of No Significant Impact and received authorization to use grant funds from the U.S. Department of Housing and Urban Development on February 9, 2022.

C. Evaluation of Compliance with Underwriting Guidelines:

1. Project Feasibility and Readiness
2. Experience and Management Capacity
3. Borrower Financial Capacity and Creditworthiness
4. Project Financial Analysis
5. Collateral (including any Loan Repayment Guarantees)

D. Risk and Mitigation Factors:

Conclusion and Recommendation

A. Recommendation and rationale for approval/disapproval. If recommendation is approved, provide the following information:

B. Loan Amount

C. Primary and Secondary Collateral

D. Conditions:

   a. Receipt of commitment approval documentation from other funding sources
   b. Satisfaction of insurance requirements, Geneal Liability, Builder's Risk and Property Insurance
   c. Receipt of an updated lender's Title Policy in favor of the Recipient
   d. HUD release of funds from environmental conditions

e. Confirmation of lien and judgement-free status (search) prior to closing
f. Receipt of approval from HUD
g. Receipt and execution of loan documents from HUD
h. Receipt of updated documents from third party borrower (budgets, contracts, other documents) as required

E. Schedule for Repayment of Section 108 Program Loan:

F. Third Party Loan Terms:

a. Interest rate: should be pegged rate on Section 108 Program Loan
b. Term
c. Payment frequency (monthly or quarterly)
d. Special provisions (e.g., principal amortization deferral, balloon payment)

Exhibits: Sources and Uses Budget
Cash Flow Statement
Appraisal
Site Plan and Specifications
Finance Plan

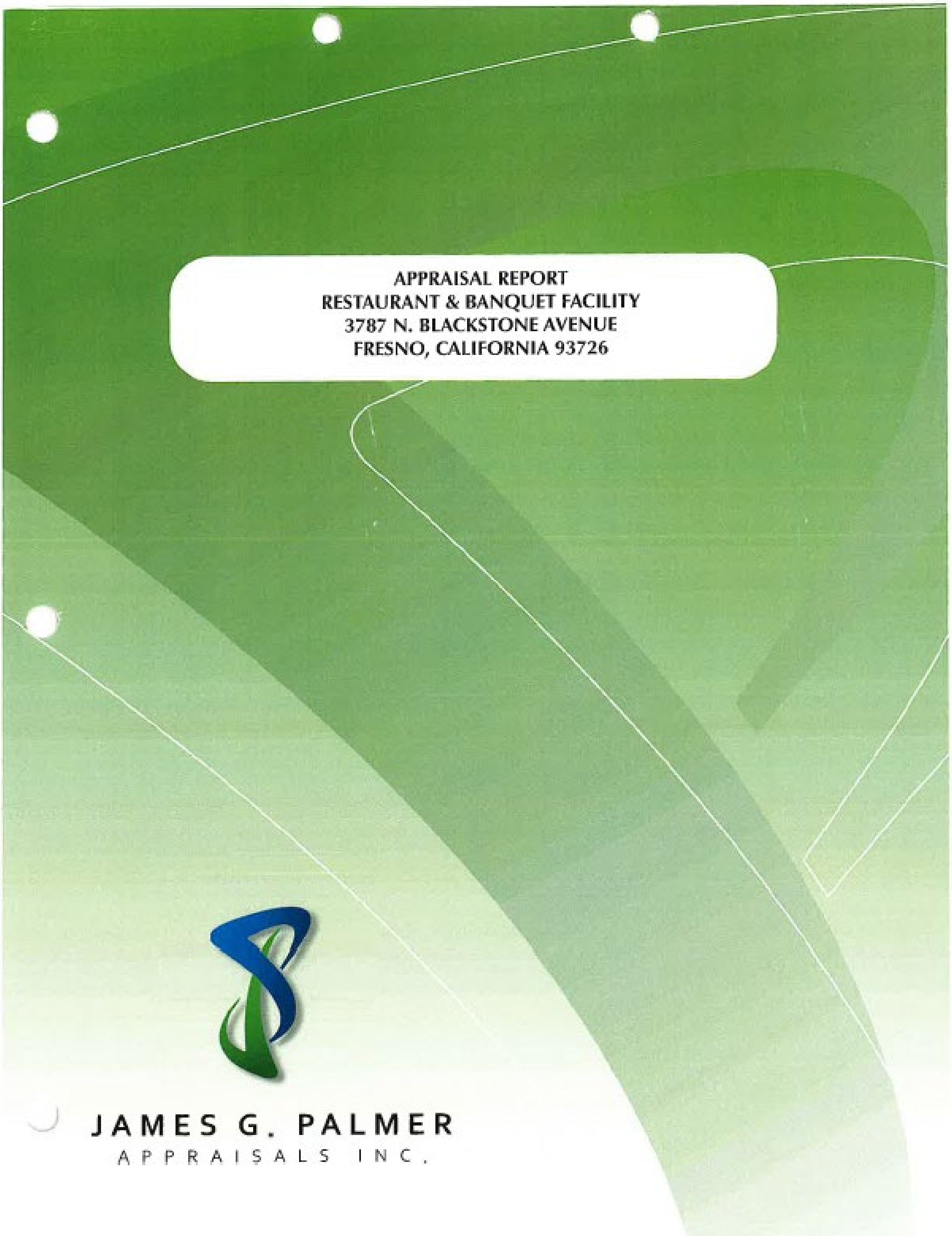
Sample Sources and Uses Budget:

PROJECT NAME						
	Total Costs	Funding Sources				
		HOME	Source	Source	Source	Source
ACQUISITION						
Purchase Price	$ -	$ -	$ -	$ -	$ -	$ -
Liens	$ -	$ -	$ -	$ -	$ -	$ -
Closing, Title & Recording Costs	$ -	$ -	$ -	$ -	$ -	$ -
SUBTOTAL	$ -	$ -	$ -	$ -	$ -	$ -
CONSTRUCTION						
Basic Construction Contract	$ -	$ -	$ -	$ -	$ -	$ -
Bond Premium	$ -	$ -	$ -	$ -	$ -	$ -
Infrastructure Improvements	$ -	$ -	$ -	$ -	$ -	$ -
Hazardous Abate. & Monitoring	$ -	$ -	$ -	$ -	$ -	$ -
Construction Contingency	$ -	$ -	$ -	$ -	$ -	$ -
Sales Taxes	$ -	$ -	$ -	$ -	$ -	$ -
Other Construction Costs:	$ -	$ -	$ -	$ -	$ -	$ -
SUBTOTAL	$ -	$ -	$ -	$ -	$ -	$ -
DEVELOPMENT						
Appraisal	$ -	$ -	$ -	$ -	$ -	$ -
Architect/Engineer	$ -	$ -	$ -	$ -	$ -	$ -
Environmental Assessment	$ -	$ -	$ -	$ -	$ -	$ -
Geotechnical Study	$ -	$ -	$ -	$ -	$ -	$ -
Boundary & Topographic Survey	$ -	$ -	$ -	$ -	$ -	$ -
Legal	$ -	$ -	$ -	$ -	$ -	$ -
Developer Fee	$ -	$ -	$ -	$ -	$ -	$ -
Project Management	$ -	$ -	$ -	$ -	$ -	$ -
Technical Assistance	$ -	$ -	$ -	$ -	$ -	$ -
Consultant	$ -	$ -	$ -	$ -	$ -	$ -
SUBTOTAL	$ -	$ -	$ -	$ -	$ -	$ -
OTHER DEVELOPMENT COSTS						
Real Estate Tax	$ -	$ -	$ -	$ -	$ -	$ -
Insurance	$ -	$ -	$ -	$ -	$ -	$ -
Relocation	$ -	$	$ -	$ -	$ -	$ -
Permits, Fees & Hookups	$ -	$ -	$ -	$ -	$ -	$ -
Impact/Mitigation Fees	$ -	$ -	$ -	$ -	$ -	$ -
Development Period Utilities	$ -	$ -	$ -	$ -	$ -	$ -
Construction Loan Fees	$ -	$ -	$ -	$ -	$ -	$ -
Construction Interest	$ -	$ -	$ -	$ -	$ -	$ -
Other Loan Fees (State HF, etc.)	$ -	$	$ -	$ -	$ -	$ -
LIHTC Fees	$ -	$ -	$ -	$ -	$ -	$ -
Accounting/Audit	$ -	$ -	$ -	$ -	$ -	$ -
Marketing/Leasing Expenses	$ -	$ -	$ -	$ -	$ -	$ -
Carrying Costs at Rent Up	$ -	$ -	$ -	$ -	$ -	$ -
Operating Reserves	$ -	$	$ -	$ -	$ -	$ -
Replacement Reserves:	$ -	$ -	$ -	$ -	$ -	$ -
SUBTOTAL	$ -	$ -	$ -	$ -	$ -	$ -
TOTAL DEVELOPMENT COSTS						

Sample Cash Flow Statement (take out to 30 or 50 years):

OPERATING PRO FORMA									
REVENUES:									
Rental Income			Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	
Annual Rents (% of inflation factor)			$ -	$ -	$ -	$ -	$ -	$ -	$
Operating Subsidies			$ -	$ -	$ -	$ -	$ -	$ -	$
Total Non-Residential Income			$ -	$ -	$ -	$ -	$ -	$ -	$
Othe misc income			$ -	$ -	$ -	$ -	$ -	$ -	$
Less Residential Vacancy (at %)			$ -	$ -	$ -	$ -	$ -	$ -	$
Less Non-Residential Vacancy (at %)			$ -	$ -	$ -	$ -	$ -	$ -	$
		GROSS INCOME	$ -	$ -	$ -	$ -	$ -	$ -	$
OPERATING EXPENSES:			$ -	$ -	$ -	$ -	$ -	$ -	$
Operating Expenses (% / year inflation factor)			$ -	$ -	$ -	$ -	$ -	$ -	$
		TOTAL EXPENSES	$ -	$ -	$ -	$ -	$ -	$ -	$
		NET OPERATING INCOME	$ -	$ -	$ -	$ -	$ -	$ -	$
DEBT SERVICE:	Loan Rate	Amortize/Term	$ -	$ -	$ -	$ -	$ -	$ -	$
Lender	%	(years)(years)	$ -	$ -	$ -	$ -	$ -	$ -	$
1__________			$ -	$ -	$ -	$ -	$ -	$ -	$
2__________			$ -	$ -	$ -	$ -	$ -	$ -	$
3__________			$ -	$ -	$ -	$ -	$ -	$ -	$
4__________			$ -	$ -	$ -	$ -	$ -	$ -	$
			$ -	$ -	$ -	$ -	$ -	$ -	$
		TOTAL DEBT SERVICE	$ -	$ -	$ -	$ -	$ -	$ -	$
		PROJECTED CASH FLOW	$ -	$ -	$ -	$ -	$ -	$ -	$
		DEBT COVERAGE RATIO (DCR)	$ -	$ -	$ -	$ -	$ -	$ -	$

Sample Appraisal (include all pages):



APPRAISAL REPORT
RESTAURANT & BANQUET FACILITY
3787 N. BLACKSTONE AVENUE
FRESNO, CALIFORNIA 93726

JAMES G. PALMER
APPRAISALS INC.

Sample Site Plan and Specifications:

Sample Finance Plan:

Financial Plan **ABC Project** **X/XX/20XX**

PROJECT INFORMATION	
Land Square footage	189,186
Land Acreage	4.34
Gross Building Square Footage (w/Comm Room)	59,375
Residential Square Footage	56,494
Total Residential Units	60
Density (du/ac)	13.8
Parking Spaces	107
Parking Garage Square Footage	29,070
Net Rentable Square Footage (Residential & Commercial)	56,844

UNIT MIX / RENTS / CASH FLOW	
Affordable @ 20% of AMI	7
Affordable @ 30% of AMI	10
Affordable @ 40% of AMI	9
Affordable @ 50% of AMI	8
Affordable @ 60% of AMI	8
Affordable @ 70% of AMI	9
Affordable @ 80% of AMI	8
One 3-bed Mgr Unit	**59**

Unit Mix	# Units	SF	Net Rent PU
1Bed/1Bath	7	5040	$ 292.00
1Bed/1Bath	1	750	$ 365.00
2Bed/1Bath	7	6,209	$ 426.00
2Bed/1Bath	6	5,322	$ 602.00
2Bed/1Bath	6	5,322	$ 777.00
2Bed/1Bath	4	3,548	$ 953.00
2Bed/1Bath	5	4,435	$ 1,128.00
2Bed/1Bath	4	3,548	$ 1,304.00
3Bed/2Bath	2	2,232	$ 480.00
3Bed/2Bath	3	3,348	$ 683.00
3Bed/2Bath	2	2,232	$ 886.00
3Bed/2Bath	4	4,464	$ 1,088.00
3Bed/2Bath	4	4,464	$ 1,291.00
3Bed/2Bath	4	4,464	$ 1,494.00
3Bed/2Bath Manager	1	1,116	$ -
	60	56,494	$ 48,606.00
11 of the 1-beds are for special needs			
1-Bedroom			$ 2,409.00
2-Bedroom			$ 25,924.00
3-Bedroom			$ 20,273.00
Monthly Gross Rent Residential			$ 48,606.00
Annual Gross Rent Residential			**$ 583,272.00**
Total Gross Subsidy Income			$ 294,048.00
Annual Commercial Income			$ -
Misc. Annual Income			$ 4,160.00
Annual Scheduled Income			**$ 881,480.00**
Annual Vacancy (5%) - Residential			$ 29,164.00
Annual Vacancy (5%) - Section 8			$ 14,702.00
Annual Vacancy (5%) - Misc			$ 208.00
Effective Gross Income			**$ 837,406.00**
Annual Operating Exp. - Residential			$ 503,100.00
Annual Operating Exp. - Commerical			$ -
Total Annual Net Operating Income			**$ 334,306.00**
Debt Service Bank Loan			272,732.00
Cash Flow			**61,574.00**

Bids came in higher than expected - rework the budget 3/29/23.
There are now 11 NPLH units.

Net Federal Proceeds .964541	Gross	$ 24,247,575.00
Net State Proceeds .795497	Gross	$ 6,048,951.00
	Total	$ 30,296,526.00

CONSTRUCTION CATEGORY COSTS	
Land Cost	1,817,000
Soft Costs/Other	4,635,842
Hard Construction	**30,086,100**
Developer Fee	2,200,000
Contingency and Reserves	2,063,291
Architectural/Eng/Env/Profession Fees	840,565
Financing fees	484,154
Development fees/studies/permits	1,609,504
TOTAL DEVELOPMENT COST	**43,736,456**

VALUATION AND ANALYSIS		
FMV based on Capitalization Rate	6.0%	5,571,767
LTV based on Development Costs	7%	
ROI based on Developer fee	N/A	

PERM SOURCES OF FUNDS		
Perm Loan	7%	3,122,000
HRFC Loan	4%	1,800,000
Accrued/Deferred Interest HRFC Loan	0%	78,541
State NPLH Capital	5%	2,183,000
HOME RR Funds	6%	2,654,771
Accrued/Deferred Interest HOME Loan	0%	96,564
PLHA RR Loan	1%	345,229
Accrued/Deferred Interest PLHA Loan	0%	12,557
Fresno Housing Authority Loan	0%	211,673
Accrued/Deffered Interest FHA Loan	0%	5,068
Fresno Housing Authority Gap Loan	4%	1,708,290
Accrued/Deferred Interest FHA Gap Loan	0%	62,137
Deferred Developer Fee	3%	1,160,000
General Partner Capital	0%	100
Tax Credit Equity	69%	30,296,526
Total Sources of Funds	**100%**	**43,736,456**

CONSTRUCTION SOURCES OF FUNDS		
Wells Fargo Construction Loan	72%	31,293,391
HRFC Loan	4%	1,800,000
Accrued/Deferred Interest HRFC Loan	0%	78,541
HOME Loan	6%	2,654,771
Accured/Deferred Interest HOME Loan	0%	96,564
PLHA Loan	1%	345,229
Accrued/Deferred Interest PLHA Loan	0%	12,557
Fresno Housing Authority Pre/Perm Loan	0%	211,673
Accured/Deferred Interest FHA Loan	0%	5,068
Fresno Housing Authority Gap Loan	4%	1,708,290
Accrued/Deferred Interest FHA Gap Loan	0%	62,137
Costs Deferred until Conversion	3%	1,278,482
Deferred Developer Fee	3%	1,160,000
General Partner Capital	0%	100
Limited Partners	7%	3,029,653
Total Sources of Funds	**100%**	**43,736,456**

INVESTMENT ANALYSIS	
Funds Leveraged with HOME Investment	$ 41,081,685
Per HOME dollar Leverage Ratio	$ 15.47
Total Cost per Residential Square Foot	$ 774.18
Cost per Unit	$ 728,941
Subsidy per 11 HOME Units	$ 241,343
234 Max Limit for 11 (3-bed/2bath)	$ 2,972,321

Loan Settlement

Sample Agreement with terms and conditions attached as Attachment “A”

Permanent Loan Servicing

MEMORANDUM OF UNDERSTANDING

LOAN SERVICING FOR
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING PROGRAMS AND ACTIVITIES

City of Fresno
Planning and Development Department
Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721
621-8300

and

City of Fresno
Finance Department
2600 Fresno Street, Room 2156
Fresno, CA 93721
621-7001

Updated August 2024

Revised August 7, 2024
275099v1

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FRESNO PLANNING AND DEVELOPMENT DEPARTMENT, COMMUNITY DEVELOPMENT DIVISION, AND CITY OF FRESNO FINANCE DEPARTMENT, GRANTS MANAGEMENT/COLLECTIONS DIVISION

This Memorandum of Understanding ("MOU") is made and entered into effective this 1st day of July, 2024, by and between the City of Fresno, Planning and Development Department, Community Development Division ("CDD") and the City of Fresno Finance Department, Grants Management/Collections Division ("Collections") to establish the nature of services to be provided between the Parties.

RECITALS

WHEREAS, CDD is responsible for the administration of the City's U.S. Department of Housing and Urban Development ("HUD"), HOME Investment Partnerships ("HOME") Program and also administers other federal programs such as the HUD-funded Neighborhood Stabilization Program, and various other grant funding programs the City may apply to from time to time; and

WHEREAS, CDD's mission is to enhance affordable housing and to develop viable communities and neighborhoods through implementation of various housing related programs in the area of new housing development, homeowner rehabilitation, and homebuyer assistance; and

WHEREAS, to advance these housing objectives, CDD administers its housing programs through the use of loans, grants, loans/grants, and other types of financial assistance to developers of affordable housing, lower income residents, and homeowners or its representatives (e.g., escrow company requesting loan payoff information), collectively referred herein as "Borrowers"; and

WHEREAS, CDD staff is responsible for underwriting applicants requesting funds under these housing programs. If the financial assistance is provided in the form of a loan, there may be interest earned, there may be a deferral of payment, or forgiveness of loan funds if specific criteria is met; and

WHEREAS, the City expects repayment of the loans and therefore loan monitoring and collections are required to ensure repayment of loan funds to support future housing related programs; and

WHEREAS, CDD is requesting loan servicing from Collections for its loans generated as a result of financial assistance provided by one or more of the housing programs and activities administered by CDD; and

WHEREAS, Collections' loan services are important to the City's overall responsibility to administer HUD and other various housing loan programs.

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

1. PARTICIPATING DEPARTMENTS AND DESIGNATED CONTACT PERSONS

CDD Representative:	Jennifer K. Clark, Director Planning and Development Department 2600 Fresno Street, Room 3065 Fresno, CA 93721
Collections Representative:	Santino Danisi, Controller Finance Department 2600 Fresno Street, Room 2156 Fresno, CA 93721

2. ROLES, CONTRIBUTIONS, AND RESPONSIBILITIES

COLLECTIONS shall provide loan-servicing activities as follows:

- Create a record receivable when a CDD loan is made;
- Maintain records of the loan activity for the life of the loan;
- Maintain copies of loan documents received from CDD (i.e., application, Evidence of Disbursement, Declaration of Restrictions, etc.), and original Promissory Note and Deed of Trust during the term of the loan until that time in which is four years after the loan has been paid off, defaulted, or determined to be uncollectible. Four years after the loan has been paid off, defaulted, or determined to be uncollectible, COLLECTIONS shall deliver the loan file to CDD for safekeeping until the records retention time period has been satisfied;
- Provide loan balance and pay-off information to CDD and Borrowers;
- Determine recapture share net proceeds calculation during the period of affordability on loans which include recapture requirement in loan documents with assistance of CDD (i.e., Rider to Deed of Trust);
- Periodically check on loans to verify obligations are being met (title checks/deceased/occupancy certificates for forgivable or questionable loans);
- Mail Housing Counseling letter if notified of a late payment by a primary lender (Exhibit A);
- Call all loans out of compliance (i.e., deceased, not residing, etc./example shown in Exhibit B);
- Provide audit confirmation information to CDD;
- Prepare amortization schedules for development projects;
- Invoicing and intake of payments;
- Make Program Income deposits into the Fund Account by funding source;
- Reconcile loan disbursements and receipts in Tyler and Nortridge;
- Contact CDD with requests from Borrowers for formal payment arrangements and payoffs or any other special request;
- Provide CCD with loan account reports;
- Loan collection activity (demand letters, phone calls, reminder letters, insurance requests, etc.);
- Issuance and recording of lien satisfied upon loan pay-off, including delivery to borrower of original Promissory Note and Deed of Trust;

- Allow Subordinations as set forth in Subordination Requirements Letter and Request Forms – See Exhibit C for loans that specify closing costs cannot be included and Exhibit D for all others (Title providing Agreement);
- Process partial/full forgiveness on specified forgivable loans after verifying obligations have been met by confirming title and receiving an Occupancy Certification (Exhibit E);
- Prepare journal entries to reflect loans made and payments on the loans in the City's Annual Comprehensive Financial Report; and
- Request City Attorney's review and recommended action of complex loan files with CDD Manager's approval. The City Attorney may send loan files to an outside attorney for review and recommendation as to the next steps to be taken. This process must also be approved by the CDD Manager before routing to the outside attorney. An outside attorney cannot take action to remedy a collection issue or problem. This includes any action above and beyond the review and recommendation phase.

<u>COLLECTIONS loan servicing activities do not include the following</u>:

- Notary services of original loan documents;
- Recording services of original loan documents;
- Legal advice;
- Annual checks of owner-occupancy on homebuyer and home improvement loans to verify obligations are being met;
- Responding to miscellaneous CDD Program questions from Borrowers; and
- Collections on new development loans (Collections will bill and process payments as directed by CDD).

<u>CDD shall provide the following services</u>:

- Maintain original loan documents received (i.e., original application, Evidence of Disbursement, Declaration of Restrictions, etc.), and copies of the Deed of Trust and Promissory Note;
- Deliver original Promissory Note and Deed of Trust to COLLECTIONS along with copies of all other documents;
- Monitor and collect on residual receipts loans made for new development or substantial rehabilitation projects including insurance requirements;
- Underwrite applicants requesting funds under HUD housing programs and activities;
- Monitor owner-occupancy on homebuyer and home improvement loans;
- Assist Collections with complex homebuyer loans requiring recapture net proceeds calculation;
- Respond to miscellaneous CDD Program questions from Borrowers; and

<u>CDD Management shall:</u>

  - Negotiate payment arrangements and payoffs;
  - Provide approval for the City Attorney to send project files to an outside attorney for review and recommendation.

9. SEVERABILITY

The provisions of this MOU are severable. The invalidity or unenforceability of any one provision in this MOU shall not affect the other provisions.

10. ENTIRE MOU

It is mutually understood and agreed that the foregoing along with the attached Exhibits constitutes the entire MOU between the parties. Any modifications or amendments to this MOU must be in writing signed by an authorized agent of each party.

PLANNING AND DEVELOPMENT DEPARTMENT CITY OF FRESNO	FINANCE DEPARTMENT CITY OF FRESNO
By: ______________	By: ______________
Jennifer K. Clark, Director	Santino Danisi, Controller

Exhibits:

A. Housing Counseling Letter
B. Example Call Note Letter
C. Subordination Request Letter and Request Form (no Closing Costs)
D. Subordination Request Letter and Request Form (including Closing Costs)
E. Occupancy Certification Form

Page 5

Attachment "A" – Sample Loan Settlement Agreement

Attachment “A”
Sample Loan Settlement

Recorded at the Request of
and When Recorded Return to:

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

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

This Section 108 Program Agreement is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103

CITY OF FRESNO

By:_________________________
City Manager

Date:______________________

CITY OF FRESNO
SECTION 108 PROGRAM LOAN AGREEMENT

by and between

CITY OF FRESNO,
a municipal corporation

and

________________________, LP

regarding

Property Acquisition
Address
Fresno, CA 937XX (APN: XXX-XX-XXX)

TABLE OF CONTENTS

SECTION 108 PROGRAM LOAN AGREEMENT

This Section 108 Program Loan Agreement (herein after referred to as the ("Agreement") is entered into this_____ day of, 20XX, by and between the City of Fresno, a municipal corporation, acting through its Planning and Development Department – Housing and Community Development Division (herein after referred to as the "CITY", and L.P., a California limited partnership (herein after referred to as "DEVELOPER").

RECITALS

A. WHEREAS, the CITY has received Section 108 Program loan funds under Section 108 of the Housing and Community Development Act of 1974 as the loan guarantee component of the Community Development Block Grant (CDBG) Program found at 24 CFR 570, Subpart M.

B. WHEREAS, to advance the supply of Affordable rental housing within the City of Fresno, the CITY desires, among other things, to encourage investment in the affordable rental housing market by providing Section 108 Program fund for the land acquisition cost of the ______________Project at __________Avenue and ______ Avenue in _________ Fresno.

C. WHEREAS, the DEVELOPER desires to act as the owner/developer exercising effective project control, as to the Property Acquisition and subsequent construction of a ###-unit apartment complex of which ## units (# at the 50% rent lime and # at 60% rent limit).

D. WHEREAS, the Project Property Acquisition is Section 108 Program eligible as identified in EXHIBIT "A" – Legal Property Description, to be owned by the DEVELOPER.

E. WHEREAS, to further its goal to increase the supply of Affordable Housing within the City of Fresno, the CITY desires to assist the DEVELOPER by providing a $____________dollars and 00/100 ($$$) as a Section 108 Program Forgivable Loan to the Project Exhibit B – Property Description and Schedule for eligible Project Property acquisition costs, as identified in EXHIBIT "C" – Budget, to be secured by the underlying Property and the Affordable Housing covenants attached as EXHIBIT "D" – Exemplar Declaration of Restriction, and Note, Exemplar Notes attached as EXHIBIT "E" – Promissory Note loan and Exhibit F – Deed of Trust, upon the terms and conditions in this Agreement.

F. WHEREAS, the CITY conducted an environmental review of the Project pursuant to the California Environmental Quality Act ("CEQA") guidelines on _____________, 201_, which resulted in a ___________. Additionally, an environmental review of the Project pursuant to the National Environmental Policy Act ("NEPA") guidelines was completed on June 28, 2017, that resulted in a Finding Of No Significant Impact.

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

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

I. WHEREAS, the parties acknowledge and agree that the obligations and liabilities of the DEVELOPER hereunder shall be joint and several unless and except to any extent expressly provided otherwise.

J. WHEREAS, on April #, 20XX, the DEVELOPER's Board reviewed and approved the development of the Project and on ____, 2019, approved this Section 108 Program Agreement.

ARTICLE 1. DEFINITIONS

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

1.1 Acquisition means vesting of the Property in fee title to the DEVELOPER for the subsequent construction of ### affordable housing units for households age ## year of age and over.

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

1.3 Affordable Housing means _______ (##) of the ________ (###) Housing units required to meet the affordability requirements of 24 C.F.R. 92.252.

1.4 Budget means the Budget for the development of the Project, as may be amended upon the approval of the CITY's Community Development Division Manager provided any increase in Section 108 Program Loan Funds hereunder requires City Council Approval, attached hereto as EXHIBIT "C".

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

1.6 CFR means the Code of Federal Regulations.

1.7 Commencement of Construction means the time the DEVELOPER or the DEVELOPER's construction contractor begins substantial physical work on the Property, including, without limitation, delivery of materials and any work, beyond maintenance of the Property in its status quo condition, which shall take place in accordance with the Project Schedule.

1.8 Declaration of Restrictions means the Declaration of Restrictions in the form attached hereto as EXHIBIT "D", which contains the Affordability covenants and requirements of this Agreement which shall run with the land and which the DEVELOPER shall record or cause to be recorded against the Property upon acquisition of the property.

1.10 Deed of Trust means that standard form Deed of Trust (including the security agreement) given by the DEVELOPER as Trustor, to the CITY as beneficiary, through escrow established by the DEVELOPER at its sole cost and expense with _______ Title Company, and recorded against the Property to ensure the Note, together with the Deed of Trust attached as EXHIBIT "F" and acceptable to the City Attorney, as well as any amendments to, modification of and restatements of said Deed of Trust, which Deed of Trust shall be subordinated to Project lenders per the Budget attached as EXHIBIT "C". There terms of any such Deed of Trust are hereby incorporated into this Agreement by this reference.

1.11 Eligible Costs means the Section 108 Program eligible acquisition costs funded by the Loan, consistent with the Project Budget attached as EXHIBIT "C", allowable under 24 C.F.R. 570.

1.12 Event of Default shall have the meaning assigned to such term under Section 7.1 hereunder.

1.13 Federal Funds means the Section 108 Program monies consisting of the Loan, in an amount not to exceed the sum of _______________ dollars and 00/100 ($$$) to be used for eligible Project Property acquisition costs.

1.14 Funding Sources means the CITY's Section 108 Program Funds, Deferred Developer Fee, Low Income Housing Tax Credits, Infill Infrastructure Grant and any other funds that may become available to the Project.

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

1.16 Household means one or more persons occupying the Units within the Project.

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

1.18 Loan means the Project Loan of Section 108 Program Funds, in the total amount of $_____________dollars and 00/100 ($$$), as more specifically described in the Budget and in the Promissory Note attached as EXHIBIT "C" and "E". The Loan shall be payable in accordance with the terms of the Note, shall be secured by a deed of trust on each parcel constituting the Property, and shall be subject to the Deed of Trust attached as EXHIBIT "F".

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

1.20 Low-Income Household means families whose annual income does not exceed eighty percent (80%) of the median income for the Fresno, California area as determined by HUD, except as HUD may establish income ceilings higher or lower than eighty (80) percent of the median for the area on the basis of HUD finding that such variations are necessary.

1.21 Note means that certain assumable, Section 108 Program Loan Note in a principal amount of $________________dollars and 00/100 ($$$), given by the DEVELOPER as promissor, in favor of the CITY as promisee, evidencing the Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement, secured by the Deed of Trust as 3rd position lien upon the Property, naming the CITY as beneficiary and provided to the CITY, no later than the date of the Affordable Project funding hereunder, an exemplar of which is attached hereto as EXHIBIT "F", and incorporated herein, as well as any amendments to, modifications of and restatements of said Note consented to by the CITY.

1.22 Project Schedule means the schedule for commencement and completion of the Project included in EXHIBIT "B".

1.23 Project Units means the acquisition and subsequent construction of ________ (###) affordable rental units of which _____ (##) units will be preserved as Affordable Units.

1.24 Property Acquisition means the acquisition of the existing vacant property and located at _______________ Avenue, Fresno, CA 937XX (APN: ###-##-###) specifically described in the Property Description attached to EXHIBIT "A" – Legal Property Description.

1.25 Senior Financing means the financing for the Project set forth on the Budget and Finance Plan which shall be senior to the Loan.

1.26 Senior Lender means one or more lenders providing the Senior Financing for the subsequent construction of the affordable housing project.

1.27 Unit means the _________ (###) Affordable Housing Units to be constructed upon the Property and preserved as Affordable Housing Units for the duration of the fifty-five (55) year Affordability Period.

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

ARTICLE 2. TERMS OF THE LOAN

2.1 Loan of Section 108 Program Funds. The CITY agrees to provide a loan of Section 108 Program Funds to the DEVELOPER, in an amount not to exceed $________________dollars and 00/100 ($$$), all under the terms and condition provided in this Agreement. The Section 108 Program funds shall be used for payment of eligible acquisition costs.

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

2.3 Term of Agreement. This Agreement is effective upon the date of execution and shall remain in force with respect to the Project for the duration of the Affordability Period unless earlier terminated as provided herein. After the fifty-five (55) year Affordability Period, this Agreement will expire. It is understood and agreed upon, however, that if for any reason this Agreement should be terminated in whole or in part as provided hereunder, without default, the CITY agrees to record a Notice of Cancellation regarding this Agreement upon the written request of the DEVELOPER.

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

2.5 Incorporation of Documents. The CITY Council approved Minutes of ______, 20XX, approving this Agreement, the Loan Documents, the Act and HUD regulations at 24 CRF 570 and all exhibits, attachments, documents and instruments referenced herein, as now in effect and as may be amended from time to time, constitute part of this Agreement and are incorporated herein by reference. All such documents have been provided to the parties herewith or have been otherwise provided to/procured by the parties and reviewed by each of them prior to execution hereof.

2.6 Covenants of DEVELOPER. The DEVELOPER for itself and its agents/assigns covenants and agrees to comply with all the terms and conditions of this Agreement and the requirements of 24 CFR 570.

2.7 Subordination. This Agreement, the Declaration of Restrictions and the Deed of Trust may be subordinated to certain approved financing (in each case, a “Senior Lender”), to no worse than 3nd position, but only on condition that all of the following conditions are satisfied: (a) all of the proceeds of the proposed Senior Loan, less any transaction costs, must be used to provide construction financing for the Project consistent with an approved financing plan; (b) the subordination agreement must provide the CITY with adequate rights to cure any defaults by the DEVELOPER including providing the CITY or its successor with copies of any notices of default; (c) upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement, inter-creditor agreements, standstill agreements, and/or other documents as may be reasonably requested by the Lender to evidence subordination to the Project financing, without the necessity of any further action or approval provided that such agreements contain written provisions that are no more onerous and which are consistent with the customary standard requirements imposed by the financing source(s), on subordinate cash flow obligations under their then existing senior financing policies, and further provided that the City Attorney approves such document(s) as to form.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

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

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

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

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

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

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

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

ARTICLE 4. UNIFORM ADMINISTRATIVE REQUIREMENTS

The DEVELOPER, for itself and its development team represents shall adhere to the following Uniform Administrative Requirements found in the U.S. federal regulations at 2 CFR Part 200:

4.1 Establish and maintain effective internal control over Section 108 Program funds made available through this Agreement to provide reasonable assurance that the funds are administered in compliance with applicable federal statutes, regulations, and the terms and conditions of this Agreement. This includes evaluation and internal monitoring of the Project and prompt, appropriate action when instances of noncompliance are identified.

4.2 Follow a written procurement policy that allows for full and open competition that meets the minimum standards of the U.S. federal regulations at 2 CFR 200.317 through 200.326.

4.3 Take reasonable measures to safeguard protected personally identified information and other information the CITY designates as sensitive consistent with applicable federal, state and local laws regarding privacy and obligations of confidentiality.

4.4 Use its best effort to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in the Agreement, the terms, "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise' means a business that is at least 51% owned and controlled by minority group members or women.

4.5 Prohibit the use of Section 108 Program funds for personnel employed in the administration of the Project for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

4.6 Comply with the requirements of the Secretary of Labor in accordance the Davis-Bacon Act, as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other federal, state and local laws and regulations pertaining to the labor standards insofar as those acts apply to the performance of this Agreement.

4.7 Comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 C.F.R. Part 5 and maintain documentation that demonstrates compliance with hour and wage requirements of this part.

4.8 Warrant and Covenant that no Section 108 Program funds provided, nor persons employed as a result of this Agreement shall be in any way or to any extent engaged in the conduct of political activities.

4.9 Maintain a financial management system that identifies all federal awards received and expended and the federal programs under which they were received, including: Catalog of Federal Domestic Assistance number, federal award identification number and year, name of the federal agency and name of the pass-through entity, if any.

4.10 Determine allowable costs in accordance with the terms and conditions of this Agreement and the federal cost principles published in the U.S. federal regulations at 2 CFR 200 subpart E, and maintain effective control over, and accountability for, all funds, property, and other assets to ensure all assets are safeguarded and they are used for the authorized use of this Agreement, and maintain accurate financial reporting on federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

4.11 Maintain written standards of conduct covering conflict of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. The standards of conduct must provide for disciplinary actions to the applied for violations of such standards by officers, employees, or agents of the DEVELOPER. If the DEVELOPER has a parent, affiliate, of subsidiary organization, the standards of conduct must cover organizational conflict of interest to ensure the DEVELOPER is able to be impartial in conducting a procurement action involving a related organization. At a minimum, the standard of conduct shall include any person who is an employee, agent, consultant, officer, or elected official or appointed official the DEVELOPER. No covered persons who exercise of have exercised any functions or responsibilities with respect to activities assisted under this Agreement, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from an assisted activity, or with respect to the proceeds of the assisted activity, either for themselves or those whom they have business or immediate family ties, during their tenure or for one year thereafter.

ARTICLE 5. OTHER PROGRAM REQUIREMENTS

5.1 Availability of Section 108 Program Funds. The DEVELOPER understands and agrees that the availability of Section 108 Program Funds is subject to the control of HUD, or other federal agencies, and should said Funds be encumbered, withdrawn or otherwise made unavailable to the CITY, whether earned by or promised to the DEVELOPER, and/or should the CITY in any fiscal year hereunder fail to allocate said Funds, the CITY shall not provide said Funds unless and until they are made available for payment to the CITY by HUD and the CITY receives and allocates said Funds. No other funds owned or controlled by the CITY shall be obligated under this Agreement.

5.2 Compliance with Agreement. The DEVELOPER warrants, covenants and agrees that upon any uncured default by the DEVELOPER within the meaning of Article 7.1 of this Agreement, the CITY may suspend or terminate this Agreement and all other agreements with the DEVELOPER without waiver or limitation of rights/remedies otherwise available to the CITY.

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

5.4 Covenants and Restrictions to Run with the Land. The CITY and the DEVELOPER expressly warrant, covenant and agree to ensure that the covenants and restrictions set forth in this Agreement are recorded and will run with the land, provided, however, that, on expiration of this Agreement such covenants and restrictions shall expire, provided that such agreements contain written provisions that are no more onerous and which are consistent with the customary standard requirements imposed by the financing source(s), on subordinate cash flow obligations under their then existing senior financing policies, and further provided that City Attorney approves such document(s) as to form.

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

B. The DEVELOPER covenants and agrees with the CITY that after issuance of a recorded certification of completion for the Project until the expiration of the Affordability Period it shall cause _______ (##) of the Units to be rented as Affordable Housing for Very Low- to Low-Income Senior households.

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

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

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

5.5 Displacement of Persons. The DEVELOPER covenants and agrees with the CITY that pursuant to 24 C.F.R 570.606, it will take all reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations and farms). The parties acknowledge and agree that the Property site is currently vacant land and is not occupied.

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

5.7 Other Laws and Regulations. The DEVELOPER covenants and agrees with the CITY that, in addition to complying with the federal laws and regulations already cited in this Agreement, the DEVELOPER has reviewed, and shall comply with and require all its contractors and subcontractors on the Project to comply with, all other federal laws and regulations that apply to the Section 108 Program, including, without limitation:

A. Requirements of 24 C.F.R. 58.6 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128).

B. The DEVELOPER does not intend to use any financing that is secured by a mortgage insured by HUD in connection with the Project as part of its land acquisition costs of the Project.

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

D. Equal Opportunity requirements as described in Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107.

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

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

G. Section 109 of the Housing and Community Development Act of 1974 requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibition against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to program or activities receiving federal financial assistance under Title I programs.

H. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR 135.

I. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at par 35, subparts, A, B, J, K and R of this part apply.

J. Exclusion of Debarred and Suspended Contractor requirements as described in 2 CFR Part 180.

K. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for benefits, including financial assistance, public services, jobs and access to housing and other facilities made available with Section 108 Program funds. Benefits do not include relocation services and payments to which persons displaced are entitled by law (24 CFR 570.613).

L. A building or facility designed, constructed, or altered with Section 108 Program funds governed by this Agreement that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR Part 40 for residential structures, and appendix A to 41 CFR Part 101-19. subpart 101-19.6, for general type buildings).

M. The Americans with Disabilities Act 942 U.S.C. 12131; 47

U.S.C 155, 201, 2085 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

N. The DEVELOPER understands and agrees that, if the Project is terminated before completion, either voluntarily or otherwise, such constitutes an ineligible activity and the CITY will not be required to provide any further Section 108 Program assistance funding to the Project Units.

ARTICLE 6. DISBURSEMENT OF FUNDS

Without waiver of limitation, the parties agree as follows, regarding Section 108 Program Funds:

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

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

6.3 Use of Section 108 Program Funds. The DEVELOPER warrants, covenants and agrees that it shall request Section 108 Program Funds only for reimbursement of eligible acquisition costs incurred as identified in the attached Budget, attached hereto as EXHIBIT "C". The CITY's obligations shall in no event exceed the Section 108 Program Funds amount specified in this Agreement.

A. If any such Funds shall be determined to have been requested and/or used by the DEVELOPER for costs other than for eligible costs, and subject to the notice and cure provisions of Section 7.1 hereunder, an equal amount from nonpublic funds shall become immediately due and payable by the DEVELOPER to the CITY; provided, however, that the DEVELOPER shall, subject to its full cooperation with the CITY, be entitled to participate in any opportunity to remedy, contest, or appeal such determination.

B. In the event Section 108 Program Funds are requested to reimburse Eligible Property Acquisition Costs which subsequently lose eligibility as Eligible Costs, the

DEVELOPER shall immediately return such Section 108 Program Funds to the CITY.

C. The CITY will disburse Section 108 Program Funds, only to the DEVELOPER through proper invoicing, for eligible acquisition costs as provided in this Article 5.

6.4 Conditions Precedent to Disbursement. The CITY shall not be obligated to make or authorize any disbursements of Section 108 Program Funds unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 7, nor any act, failure, omission or condition that with the passage of time or the giving of notice or both would constitute an Event of Default.

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

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

D. The DEVELOPER has obtained insurance coverage and delivered to the City evidence of insurance as required in Article 6.

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

F. The DEVELOPER has provided the CITY with a written request for Section 108 Program Funds (provided by the CITY), for reimbursement of eligible Project Property Acquisition costs, and detailing such Eligible Costs applicable to the request.

G. The CITY has received certification required by Section 5.6 of this Agreement.

H. The CITY has received, and continues to the have the right to disburse, Section 108 Program Funds.

6.5 Requests for Reimbursement of Section 108 Program Funds. The DEVELOPER shall request that the CITY reimburse funds for eligible Project Property Acquisition cost using the CITY's Request for Disbursement of Funds form. The DEVELOPER shall only request a maximum of $_______________ dollars and 00/100 ($$$) in Section 108 Program assistance. All requests should provide in detail such Eligible Costs applicable to the request. All requests for Section 108 Program Funds disbursement shall be accompanied with the Certification required by Section 5.6 of this Agreement.

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

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

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

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

D. The Disbursement requested will be used solely for reimbursement of Eligible Property Acquisition Costs identified in this Agreement and must be supported by the itemized obligations that have been properly incurred, expended and are properly chargeable in connection with acquisition of the property and subsequent construction of the Project.

6.7 Disbursement of Funds. The disbursement of Section 108 Program Loan Funds shall occur within the normal course of CITY business after the CITY receives the Certification and to the extent of annually allocated and available Section 108 Program Funds.

ARTICLE 7. INSURANCE AND INDEMNITY AND BONDS

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

7.1 Insurance and Indemnity Requirements

(a) Throughout the life of the Agreement, the DEVELOPER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, the DEVELOPER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to the developer shall be withheld until notice is received by the CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate the Agreement. No action taken by the CITY pursuant to this section shall in any way relieve the developer of its responsibilities under the Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by the DEVELOPER shall not be deemed to release or diminish the liability of the developer, including, without limitation, liability under the indemnity provisions of the Agreement. The duty to indemnify the CITY 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 the DEVELOPER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the DEVELOPER, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

7.2 Minimum Limits of Insurance

The DEVELOPER, or General Contractor if DEVELOPER subcontracts with such, shall procure and maintain for the duration of the contract, and for five years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to the CITY, its, officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. Commercial General Liability

(i) $1,000,000 per occurrence for bodily injury and property damage;
(ii) $1,000,000 per occurrence for personal and advertising injury;

(iii) $2,000,000 aggregate for products and completed operations; and,
(iv) $2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. Commercial Automobile Liability

$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and employer's liability with limits of liability not less than:

(i) $1,000,000 each accident for bodily injury;
(ii) $1,000,000 disease each employee; and,
(iii) $1,000,000 disease policy limit.

4. Builders Risk (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. (Only required if the project includes new construction of a building, or renovation of, or addition to, an existing building.)

5. Contractors' Pollution Legal Liability (limits of liability of not less than the following:

(i) $1,000,000 per occurrence or claim; and,
(ii) $2,000,000 general aggregate per annual policy period.

In the event the Agreement involves any lead based, mold or asbestos environmental hazard, either the Commercial Auto policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering

(a) materials to be transported by the applicant pursuant to the Agreement.

(b) In the event the Agreement involves any lead-based environmental hazard (e.g., lead based paint), and/or asbestos environmental hazard (e.g. asbestos remediation), and/or mold environmental hazard (e.g. mold remediation) the Commercial Pollution Liability insurance policy or other appropriate policy shall be endorsed to include coverage for lead based environmental hazards and/or asbestos environmental hazards and/or mold environmental hazards and "microbial matter including mold".

7.3 Umbrella or Excess Insurance

In the event the DEVELOPER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

7.4 Deductibles and Self-Insured Retentions

The DEVELOPER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and the DEVELOPER shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY's Risk Manager or his/her designee. At the option of the CITY's Risk Manager or his/her designee, either:

(i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or

(ii) The DEVELOPER shall provide a financial guarantee, satisfactory to the CITY's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the CITY be responsible for the payment of any deductibles or self-insured retentions.

7.5 Other Insurance Provisions/Endorsements

(i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days written notice has been given to the CITY, except ten days for nonpayment of premium. The DEVELOPER is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, the DEVELOPER shall furnish the CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the CITY, the DEVELOPER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.

(ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form. The Contractors Pollution Liability insurance policy shall be written on either an occurrence form, or a claims-made form.

(iii) The Commercial General, Automobile and Contractors Pollution Liability insurance policies shall be endorsed to name CITY, its officers, officials, agents, employees and volunteers as an additional insured. The DEVELOPER shall establish additional insured status for the CITY and for all ongoing and completed operations under both Commercial General and Commercial Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: CG 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) All such policies of insurance shall be endorsed so the DEVELOPER's insurance shall be primary and no contribution shall be required of the CITY. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents and volunteers. If the DEVELOPER maintains higher limits of liability than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits of liability maintained by the DEVELOPER.

(v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these polices will be twice the above stated minimum limits.

(vi) For any claims related to the Agreement, the DEVELOPER's insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the DEVELOPER's insurance and shall not contribute with it.

(vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to the CITY, its officers, officials, agents, employees and volunteers.

(viii) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as Loss Payee.

Providing of documents – The DEVELOPER shall furnish the CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY's Risk Manager or his/her designee prior to work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of the CITY, the DEVELOPER shall immediately furnish the CITY with a complete copy of any insurance policy required under the 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 the Agreement. All subcontractors working under the direction of the DEVELOPER shall also be required to provide all documents noted herein.

7.6 Claims-Made Policies

If any coverage required is written on a claims-made coverage form:

(i) The retroactive date must be shown and must be before the effective date of the Agreement or the commencement of work by the DEVELOPER.

(ii) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work or termination of the Agreement, whichever first occurs.

(iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, the DEVELOPER must purchase "extended reporting" period coverage for a minimum of five years after completion of the work or termination of the Agreement, whichever first occurs.

(iv) A copy of the claims reporting requirements must be submitted to CITY for review.

(v) These requirements shall survive expiration or termination of the Agreement.

7.7 Maintenance of Coverage

If at any time during the life of the Agreement or any extension, the DEVELOPER or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under the Agreement shall be discontinued immediately until notice is received by the CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate the Agreement. No action taken by the CITY hereunder shall in any way relieve the DEVELOPER of its responsibilities under the Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by the CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by the DEVELOPER shall not be deemed to release or diminish the liability of the developer, including, without limitation, liability under the indemnity provisions of the Agreement. The duty to indemnify the CITY 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 the DEVELOPER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the DEVELOPER, its principals, officers, agents, employees, persons under the supervision of the developer, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

7.8 Subcontractors

If the DEVELOPER subcontracts any or all of the services to be performed under this Agreement, the DEVELOPER shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by the CITY Risk Manager or designee. If no Side Agreement is required, the DEVELOPER shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and the DEVELOPER shall ensure that the CITY, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with the DEVELOPER, and the CITY, prior to commencement of any work by the subcontractor.

7.9 Indemnity

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

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

7.10 Property Insurance

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

7.11 Bond Obligations

The DEVELOPER or its General Contractor shall obtain, pay for and deliver good and sufficient payment and performance bonds along with a Primary Obligee, Co-Obligee or Multiple Obligee Rider in a form acceptable to the CITY from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California and Treasury-listed, in a form satisfactory to the CITY and naming the CITY as Obligee.

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

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

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

ARTICLE 8. DEFAULT AND REMEDIES

8.1 Events of Default. The parties agree that each of the following shall constitute an "Event of Default" by the DEVELOPER for purposes of this Agreement after the cure period in Section 7.2 has expired without a cure:

A. The DEVELOPER's use of Section 108 Program funds for costs other than Eligible Property Acquisition Costs or for uses not permitted by the terms of this Agreement;

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

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

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

E. The DEVELOPER shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within ninety (90) days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within ninety (90) days;

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

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

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

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

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

8.3 Remedies Upon an Event of Default. Upon the happening of an Event of Default and a failure to cure said Event of Default within the time specified, the CITY's obligation to disburse Section 108 Program funds shall terminate. The CITY may also at its option and without notice institute any action, suit, or other proceeding in law, in equity or otherwise, which it shall deem necessary or proper for the protection of its interests and may without limitation proceed with any or all of the following remedies in any order or combination that the CITY may choose in its sole discretion:

A. Terminate this Agreement immediately upon written notice;

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

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

ARTICLE 9. GENERAL PROVISIONS.

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

9.1 Amendments. No modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by the parties hereto. The CITY recognizes that other Project funders and equity investors may require revisions to the Loan Documents to be consistent with their funding and investing requirements. The CITY agrees to reasonably consider and negotiate as to any reasonable amendments to this Agreement to address such requirements, subject to any necessary City Council approval and approval as to form by the City Attorney.

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

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

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

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

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

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

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

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

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

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

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

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

9.14 No Assignment or Succession. The DEVELOPER shall not sell, transfer, assign or otherwise dispose of all or a material part of any interest it might hold in the Property without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, upon prior written notice to the CITY, the DEVELOPER shall be permitted to assign its rights and obligation under this Agreement with respect to the Project and to the Partnership without the CITY's consent.

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

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

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

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

If to the CITY: City of Fresno
Planning and Development Department
Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721-3605

If to DEVELOPER: ________________________LP
Attn: ____________________
Address
Fresno, CA 937XX

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

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

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

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

///

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

CITY OF FRESNO, a Municipal Corporation

By:______________________________ Date: ____________________________
City Manager
(Attach notary certificate of acknowledgment)

ATTEST: APPROVED AS TO FORM:

_________________________________ _________________________________
City Clerk City Attorney

By:______________________________ By:______________________________
________________________Deputy _______________Deputy City Attorney

Date:____________________________ Date:____________________________

__________________________LP, a
California limited partnership

By:______________________________ Date: ____________________________
Name: ___________________________
Title: ____________________________
(Attach notary certificate of acknowledgment)

Attachments:

EXHIBIT A: LEGAL PROPERTY DESCRIPTION

EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE

EXHIBIT C: PROJECT BUDGET

EXHIBIT D: EXEMPLAR DECLARATION OF RESTRICTIONS

EXHIBIT E: EXEPLAR PROMISSORY NOTE

EXHIBIT F: EXEMPLAR DEED OF TRUST

EXHIBIT “A”
LEGAL DESCRIPTION

Insert Legal Description here

EXHIBIT "B"
PROJECT DESCRIPTION AND SCHEDULE

I. PROJECT DESCRIPTION

(Project Name) will consist of a ##-unit multifamily residential development on ## acres within a gated community and include on- and off-site improvements. All Project Units will be # bedroom/#bath units ranging from ### to #### square feet. The project site will offer on-site parking, bicycle racks/lockers, and landscaping and irrigation. Security for the site will be provided through a combination of gate-controlled access, walls and fences, and exterior lighting. The development will also be equipped with comprehensive video surveillance cameras.

The project site is located at ADDRESS, Fresno, CA 937##, in Fresno (APN: ###-###-##).

FUNDED FLOATING UNITS

% of Median	Unit
50% or less	##
80% or less	##
Totals	

The City will provide $$$$$$$$ Dollars and 00/100 ($0,000,000.00) to the development for Eligible Costs as outlined in the project budget Exhibit C – Project Budget.

II. PROJECT SCHEDULE

A. Commencement of Rehabilitation/Construction: ____________

B. Completion of Rehabilitation/Construction: _____________

C. Lease Up: ___________________

EXHIBIT “C”
PROJECT BUDGET

Insert Project Budget here

EXHIBIT "D"
EXEMPLAR DECLARATION OF RESTRICTIONS

Recorded at the Request of
and When Recorded Return to:

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

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

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

APN: Need an APN here

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS ("Declaration") is executed as of this _____ day of ______, 20XX, by __________________, LP, a California limited partnership ("DECLARANT"), in favor of the CITY OF FRESNO, a California municipal corporation ("CITY").

WHEREAS, the DECLARANT is the owner of the real estate in the county of Fresno California, located at _________Drive, Fresno, CA 937XX (APN: ###-##-###), which is more particularly described in EXHIBIT "A" – Property Description, attached hereto and made a part hereof, including the improvements thereon (the "Property"); and

WHEREAS, pursuant to a certain City of Fresno Section 108 Program Agreement dated _______, 20XX, incorporated herein by reference ("Agreement") and instruments referenced therein, DECLARANT agrees to utilize, the CITY agrees to provide, certain HOME funds from the United States Department of Housing and Urban Development ("HUD"), to DECLARANT and DECLARANT agrees to construct ________ (###) rental housing units of which ___ (##) will be Section 108-assisted units and reserved as Affordable Housing units available as Very Low- and Low-Income units, subject to the terms and conditions set forth in the Agreement for Low-Income households earning fifty (50) percent to eighty (80) percent, or below, of the area median income for the Fresno Metropolitan Statistical Area ("FMSA").

WHEREAS, the regulations promulgated by HUD, including without limitation 24 C.F.R. 92.252; 24 and the Agreement impose certain affordability requirements upon property owned by the DECLARANT, which affordability restrictions shall be enforceable for a fifty-five (55) year period; and

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

NOW THEREFORE, DECLARANT declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the Project. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, will inure to the benefit of the CITY, and will be enforceable by it. Any purchaser under a contract of sale covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration commencing on the date the DECLARANT is notified by the CITY that the Affordable Unit Household information has been entered into HUD's System as provided in the Agreement, constituting the commencement of the fifty-five (55) year Affordability Period.

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

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

a. The DECLARANT for itself and its successor(s) on title covenants and agrees that from the date the Project is entered into HUD's System as complete, until the expiration of the Affordability Period, it shall cause the Affordable housing units to be used as rental affordable housing to Very Low- to Low-Income Households with an income of fifty (50) percent to eighty (80) percent, or less, of area median income. The DECLARANT further agrees to file a recordable document setting forth the Project Completion Date when determined by the CITY. Unless otherwise provided in the Agreement, the term Affordable Housing shall include, without limitation, compliance with the following requirements:

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

ii. Principal Residence. The Housing Units constituting the Affordable Units upon the Project Property shall be leased only to eligible natural persons, who shall occupy the Affordable housing units as the tenants' principal place of residence. The forgoing requirement that the tenant of unit occupy the unit as their principal residence does not apply to (i) persons, other than natural persons, who acquire the Project Property or portion thereof by foreclosure or deed in lieu of foreclosure; or HUD qualified entities that acquire the Property or portion thereof with the consent of the CITY.

iii. Household Income Requirements. The _________ (##) Affordable housing units constituting the Project Property may be conveyed only to a natural person(s) whose annual Household income at the time of rental is not greater than fifty (50) percent to eighty (80) percent of the most recent annual median income calculated and published by HUD for the FMSA applicable to such household's size.

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

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

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

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

5. Benefit. This Declaration shall run with and bind the Property for a term commencing on the date Project information is entered into IDIS as complete, until the expiration of the fifty-five (55) year Affordability Period. The failure or delay at any time of CITY and/or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

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

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

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

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

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

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

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

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

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

15. DECLARANT LIABILITY. The DECLARANT shall not have any personal liability for the obligations under this Declaration. The sole recourse of the CITY shall be exercised by its rights against the Property pursuant to the Deed of Trust and Lender shall have no right to seek or recover any deficiency amount from DECLARANT.

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

DECLARANT:

______________________, LP

By:___________________________________ Date: _________________

Name: _____________________________________

Title: _________________________________

(Attach notary certificate of acknowledgment)

EXHIBIT “A”
Legal Description
To Declaration of Restrictions

Insert Legal Description here

EXHIBIT "F" - PROMISSORY NOTE

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

PROMISSORY NOTE
Secured by Deed of Trust

Loan Amount: $$$_____ Date: ________________
Fresno, California

For value received, the undersigned, _______________, LP, a California limited partnership ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation, ("Lender"), the sum of _______________dollars and 00/100 ($$$), to the extent that such funds are loaned to Borrower in accordance with the Section 108 Program Agreement dated _______, 20XX, entered into between the Lender and BORROWER, ("Agreement"), with the balance of principal forgiven at the fifty-five (55) year Maturity Date.

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

> Business Day means any day other than Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day.
>
> Note Maturity Date means fifty-five (55) years from the Note date.

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust and Assignment of Rents, on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note, and executed in favor of and delivered to the Lender ("Deed of Trust"), insured as a 3rd position lien on the Property.

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

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

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

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

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

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

The Deed of Trust provides as follows:

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

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

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

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

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

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

______________________________, LP,
a California limited partnership

By: ______________________________
______________________, President
(Attach notary certificate of acknowledgment)

Date: ____________________________

EXHIBIT “G”
EXEMPLAR DEED OF TRUST

Recorded at the Request of
and When Recorded Return to:

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

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

TITLE ORDER NO.__________________ ESCROW NO.________________________
A.P.N. : insert the number here

DEED OF TRUST

THIS DEED OF TRUST (“Deed of Trust”) made this __ day of ______, 2017, by and between ____________, LP, a California limited partnership (herein "Borrower"), __________ Title Company, a California Corporation (herein "Trustee"), and the City of Fresno, a Municipal Corporation organized and existing under the laws of the State of California whose address is 2600 Fresno Street, Fresno, California 93721 (herein “Beneficiary” and "Lender").

Borrower, in consideration of the indebtedness herein recited and the trust herein created, does irrevocably grant and convey to Trustee, in trust, with power of sale, all Borrower’s right, title, and interest now owned or hereafter acquired in the real property (“Land”) known as _________ located at Avenue, Fresno, CA 937XX (APN: ###-##-###), located in Fresno County, California and more particularly described in the Attached Exhibit A, incorporated by reference (Borrower agrees that any greater to the Land later acquired during the term of this Deed of Trust will be subject to this Deed of Trust), together with the rents, issues, and profits, subject however, to the right, power, and authority granted and conferred on Borrower in this Deed of Trust to collect and apply the rents, issues, and profits; and

Borrower also irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all of Borrower’s right, title and interest now owned or later acquired to the following property (including the rights or interests pertaining to the property) located at the Property:

(1) All buildings (“Buildings”) and improvements now or later on the land and all easements, rights, appurtenances, water and water rights, minerals and mineral rights; all machinery, equipment, appliances, and fixtures for the generation or distribution of air, water, heat, electricity, light, fuel, or refrigeration or for ventilating or sanitary purposes or for the exclusion of vermin or insects or for the removal of dust, refuse, or garbage; all wall safes, built-in furniture, and installations, window shades and blinds, light fixtures, fire hoses and brackets, screens, linoleum, carpets, furniture, furnishings, fixtures, plumbing, laundry tubs and trays, refrigerators, heating units, stoves, water heaters, incinerators, and communication systems and installations for which any Building is specially designed; all of these item, whether now or later installed, being declared to be for all purposes of this

Deed of Trust a part of the Land, the specific enumerations in this Deed of Trust not excluding the general;

(2) The rents, issues, profits, and proceeds relating to the foregoing; and

(3) The Property to the extent not included on clauses (1) and (2) above.

TO SECURE, in order of priority that Beneficiary determines:

(1) Payment of the indebtedness evidenced by a note of Borrower of even date with this Deed of Trust in the principal amount of Two Million Two Hundred Fifty-Nine Thousand Seven Hundred Eighty-Four dollars and 43/100 ($2,259,784.43) (“Note”), payable to Beneficiary or order, and all extensions, modifications, or renewals of that note;

(2) Payment of the interest on that indebtedness according to the terms of the Note;

(3) Payment of all other sums (with interest as provided herein) becoming due and payable to Beneficiary or Trustee pursuant to the terms of this Deed of Trust;

(4) Performance of every obligation contained in this Deed of Trust, the Note, the Section 108 Program Agreement dated the ______ day of _______, 20XX, and its related documents, the Declaration of Restrictions dated the ___ day of ______, 20XX, any instrument now or later evidencing or securing any indebtedness secured by this Deed of Trust, and any agreements, supplemental agreements, or other instruments of security executed by Borrower as of the same date of this Deed of Trust or at any time subsequent to the date of this Deed of Trust for the purpose of further securing any indebtedness amending this Deed of Trust or any instrument secured by this Deed of Trust (collectively the “Loan Documents”); and

(5) Payment of all other obligations owed by Borrower to Beneficiary that by their terms recite that they are secured by this Deed of Trust, including those incurred as primary obligor or as guarantor.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered except for encumbrances of record. Borrower covenants that Borrower will forever warrant and will defend the grant made in this Deed of Trust against all claims and demands, subject to encumbrances of record. Borrower covenants that Borrower will maintain and preserve the lien of this Deed of Trust until all the indebtedness under the Note is paid in full.

Borrower represents and warrants to Beneficiary that as of the date of this Deed of Trust Borrower is a validly existing, and in good standing under the laws of the State of California and is qualified to do business in California; that Borrower has the requisite power and authority to own, develop, and operate the property; and that Borrower is in compliance with all laws, regulations, ordinances, and orders of public authorities applicable to it.

Borrower represents and warrants to Beneficiary that as of the date of this Deed of Trust the execution, delivery, and performance by the Borrower and the borrowings evidenced by the Note are within the power of the Borrower; have been duly authorized by all requisite corporate or partnership actions, as appropriate; has received all necessary governmental approvals; and will not violate any provision of law, any order of any court or agency of government, the charter documents of Borrower, or any indenture, agreement, or any other instrument to which Borrower is a party or by which Borrower or any of it property is bound, nor will they conflict with, result in a breach of, or constitute (with due notice and lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge, or encumbrance of any nature on any of the property or assets of Borrower, except as contemplated by the provisions of the Loan Documents; and each of the Loan Documents, when executed and delivered to Beneficiary, will constitute a valid obligation, enforceable in accordance with its terms.

Borrower represents and warrants to Beneficiary that as of the date of this Deed of Trust that the Property is not used principally for agricultural or grazing purposes; that Borrower is engaged in the development and operation of Improvements to the Property; and that the principal purpose of the Loan is the construction, development and/or the operation of the Improvements to the Property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal. Borrower shall promptly pay when due the principal indebtedness evidenced by the Note.

2. Hazard Insurance. Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Beneficiary, shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require as set forth in the Agreement referenced above.

   The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

   In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

   If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

3. Preservation and Maintenance of Property. Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. Borrower shall not permit overcrowded conditions to exist as defined by the U.S. Department of Housing and Urban Development.

4. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect Lender's interest. If Lender requires mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable laws.

   Any amounts disbursed by Lender pursuant to this Paragraph 4 shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 4 shall require Lender to incur any expense or take any action hereunder.

5. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall provide Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

7. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust be reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be waiver of or preclude the exercise of any such right of remedy.

8. Successors and Assignees Bound; Joint and Several Liability; Co-Signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assignees of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. Any borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property of Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust or the Note, without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

9. Transferability. One of the inducements to Beneficiary for making the Loan is the identity of Borrower. The existence of any interest in the Property other than the interests of Borrower and Beneficiary and any encumbrance permitted in this Deed of Trust, even though subordinate to the

security interest of Beneficiary, and the existence of any interest in Borrower other than those of the present owners, would impair the Property and the security interest of Beneficiary, and, therefore, except as provided herein or in the Loan Documents, Borrower will not sell, convey, assign, transfer, alienate, or otherwise dispose of its interest in the Property, either voluntarily or by operation of law, or agree to do so, without the prior written consent of Beneficiary. Consent to one transaction by Beneficiary will not be deemed a waiver of the right to require consent to further or successive transactions. If Borrower is a corporation, any sale, transfer, or disposition of fifty (50) percent or more of the voting interest of Borrower or of any entity that directly or indirectly owns or controls Borrower, including, without limitation, the parent company of Borrower, and the parent company of the parent company of Borrower, will constitute a sale of the Property for purposes of this article. If Borrower is a partnership any change or addition of a general partner of Borrower, change of a partnership interest of Borrower, or sale, transfer, or disposition of fifty (50) percent or more of the voting interest or partnership interest of any partner of Borrower or of any corporation, partnership or entity that directly or indirectly owns or controls any partner of Borrower, including, without limitation, each parent company of a partner of Borrower and each parent company of any parent company of a partner of Borrower, will constitute a sale of the Property for purposes of this section. If Borrower is a limited liability company, any change of the manager or any sale, transfer or disposition of fifty (50) percent or more of the partnership interests of Borrower, or disposition of fifty (50) percent or more of the voting interest of Borrower or of any corporation, partnership or entity that directly or indirectly owns or controls any member of Borrower, including without limitations, each parent company of Borrower and each parent company of any parent company of a member of Borrower, will constitute a sale of the Property for purposes of this section. Any transaction in violation of this section will cause all Indebtedness, irrespective of the maturity dates, at the option of the Beneficiary and without demand or notice, immediately to become due, together with any prepayment premium in accordance with the terms of the Note except as prohibited by law.

10. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

11. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust or if the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses", and "attorney's fees" include all sums to the extent not prohibited by applicable law or limited herein.

12. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation thereof.

NON-CONFORMING COVENANTS. Borrower and Lender further covenant and agree as follows:

13. Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust,

the Note or the Program restrictions, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 10 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 13, including, but not limited to, reasonable attorney's fees. If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine.

Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

14. <u>Borrower's Right to Reinstate.</u> Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower in paragraph 13 hereof, including but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

15. Nonrecourse. Borrower shall not have any personal liability for repayment of the loan. The sole recourse of the Lender under the Loan Documents for repayment of the Loan shall be the exercise of its rights against the Property.

16. Withdrawal, Removal and/or Replacement. General partner of the Borrower pursuant to the terms of a partnership agreement due to violation by a general partner of the terms of a partnership agreement, or a voluntary withdrawal from a partnership by a general partner, and any transfer of limited partnership interest or interests in the same, shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the loan.

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

18. Assignment of Rent; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 13 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

    Upon acceleration under paragraph 13 hereunder or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

19. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust, and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

20. Substitute Trustee. Lender at lender's option, may from time to time, appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the Fresno County Recorder's Office. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Instrument is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

21. Statement of Obligation. Lender may collect a fee not to exceed fifty dollars ($50.00) for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

22. Event of Default. Prior to declaring or taking any remedy permitted under Loan Documents, (where applicable) Borrower's limited partners shall have an additional period of not less than thirty (30) days to cure such alleged default. Notwithstanding the foregoing, in the case of a default that cannot with reasonable diligence be remedied or cured within thirty (30) days, Borrower's limited partners shall have such additional time as reasonably necessary to remedy or cure such default, but in no event more than ninety (90) days from the expiration of the initial thirty (30) day period above, and if the Borrower's limited partners reasonably believe that in order to cure such default, Borrower's limited partners must remove one or both of Borrower's general partners in order to cure such default, Borrower's limited partners shall have an additional (30) days following the effective date of such removal to cure such default. To the extent that there is a conflict between this paragraph 22 and any remedy permitted by the Agreement, Loan Documents, or Loan, the terms of this paragraph 22 shall control.

The following events are each an "Event of Default":

(a) Default in the payment of any sum of principal or interest when due under the Note or any other sum due under the Loan Documents.

(b) Failure to maintain insurance as provided in Section 2 hereof.

(c) The failure (without cure during the applicable period, if any, for cure) of any Borrower to observe, perform, or discharge any obligation, term, covenant, or condition of any of the Loan Documents, any agreement relating to the Property, or any agreement or instrument between any Loan Party and Beneficiary.

(d) The assignment by Borrower, as lessor or sublessor, as the case may be, of the rents or the income of the Property or any part of it (other than to Beneficiary) without first obtaining the written consent of Beneficiary.

(e) The following events:

(i) the filing of any claim or lien against the Property or any party of it, whether or not the lien is prior to this Deed of Trust, and the continued maintenance of the claim or lien for a period of thirty (30) days without discharge, satisfaction, or adequate bonding in accordance with the terms of this Deed of Trust;

(ii) the existence of any interest in the Property other than those of Borrower, Beneficiary, any tenants of Borrower, and any one listed in a title exception approved by Beneficiary in writing; or

(iii) the sale, hypothecation, conveyance, or other disposition of the Property except with the express written approval of Beneficiary, any of which will be an Event of Default because Borrower's obligation to own and operate the Property is one of the inducements to Beneficiary to make the Loan;

(f) Default under any agreement to which Borrower is a party, which agreement relates to the borrowing of money by Borrower from Beneficiary.

(g) Any presentation or warranty made by any Loan Party or any other Person under this Deed of Trust or in, under, or pursuant to the Loan Documents, is false or misleading in any material respect as of the date on which the representation or warranty was made.

(h) Any of the Loan Documents, at any time after their respective execution and delivery and for any reason, cease to be in full force or are declared null and void, or the validity or enforceability is contested by Borrower or any stockholder or partner of Borrower, or Borrower denies that it has any or further liability or obligation under any of the Loan Documents to which it is a party.

If one or more Event of Default occurs and is continuing, then Beneficiary may declare all the Indebtedness to be due and the Indebtedness will become due without any further presentment, demand, protest, or notice of any kind, and Beneficiary may:

(i) in person, by agent, or by a receiver, and without regard to the adequacy of security, the solvency of Borrower, or the existence of waste, enter on and take possession of the Property or any party of it in its own name or in the name of Trustee, sue for or otherwise collect the rents, issues, and profits, and apply them, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon the Indebtedness, all in any order that Beneficiary many determine. The entering on and taking possession of the Property, the collection of rents, issues, and profits, and the application of them will not cure or waive any default or notice of default or invalidate any act done pursuant to the notice;

(ii) commence an action to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages of real property;

(iii) deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause the Property to be sold, which notice Trustee or Beneficiary will cause to be filed for record;

(iv) with respect to any Personalty, proceed as to both the real and personal property in accordance with Beneficiary's rights and remedies in respect of the Land, or proceed to sell the Personalty separately and without regard to the Land in accordance with Beneficiary's rights and remedies; or

(v) exercise any of these remedies in combination or any other remedy at law or in equity.

24. Protection of Security.

If an Event of Default occurs and is continuing, Beneficiary or Trustee, without notice to or demand upon Borrower, and without releasing Borrower from any obligations or defaults may:

(a) enter on the Property in any manner and to any extent that either deems necessary to protect the security of this Deed of Trust;

(b) appear in and defend any action or proceeding purporting to affect, in any manner, the Obligations or the Indebtedness, the security of this Deed of Trust, or the rights or powers of Beneficiary or Trustee;

(c) pay, purchase, or compromise any encumbrance, charge, or lien that in the judgment of Beneficiary or Trustee is prior or superior to this deed of Trust; and

(d) pay expenses relating to the Property and its sale, employ counsel, and pay reasonable attorneys' fees.

Borrower agrees to repay on demand all sums expended by Trustee or Beneficiary pursuant to this section with interest at the Note Rate of Interest, and those sums, with interest, will be secured by this Deed of Trust.

25. Effect of Assignment.

The assignment rents as provided herein will not impose on Beneficiary any duty to produce rents, issues, or profits from the Property, or cause Beneficiary to be:

(a) a "mortgage-in-possession" for any purpose;

(b) responsible for performing any of the obligations of the lessor under any of the Leases; or

(c) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property.

Beneficiary will not be liable to Borrower or any other party as a consequence of the exercise of the rights granted to Beneficiary under this assignment or the failure of Beneficiary to perform any obligation of Borrower arising under Leases.

///

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust on the day and year set forth above. By signing below, Borrower agrees to the terms and conditions as set forth above.

BORROWER

_______________________________, LP,
a California limited partnership

By:_______________________________ Date:_______________________

Name:_____________________________

Title: _____________________________

(Attach notary certificate of acknowledgment)

EXHIBIT "A"
Legal Description
To Deed of Trust

Insert Legal Description here

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

To Protect the Security of This Deed of Trust, Trustor (herein “Borrower”) Agrees:

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

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

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

(4) To pay at least ten (10) days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto, all costs, fees and expenses of this Trust.

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

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

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

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

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

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

(10) That as additional security, Borrower hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Borrower the right, prior to any default by Borrower in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect the rents, issues and profits of said property, reserving unto Borrower the right, prior to any default by Borrower in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees. Upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of

such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Borrower, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Borrower, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

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

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

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

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

DO NOT RECORD
REQUEST FOR FULL RECONVEYANCE
To be used only when note has been paid:
To _______________ Title Company, Trustee: Dated
____
The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.
MAIL RECONVEYANCE TO: By ____

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

City of FRESNO

2025-2026 Annual Action Plan Substantial Amendment 2025-02

U.S. Department of Housing and Urban Development
Community Planning and Development Programs

Public Review Document
Comment Period: August 30, 2026 – September 30, 2026 (5:00 P.M.)

Planning and Development Department
Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721
559-621-8300
HCDD@fresno.gov

This is a draft document that has been made available for public review and comment.

The Public Comment Period will begin August 30, 2026, and conclude on September 30, 2026, at 5:00 P.M. Residents are encouraged to submit comments by one of the following methods:

Submit Comments by Mail:
City of Fresno
Planning and Development Department
Attn: Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721

Submit Comments by Email:
HCDD@fresno.gov
Please include "Sub Amend 2025-02" in the subject line

Submit Comments by Phone:
559-621-8300

Submit Comments by TTY:
559-621-8721

Submit Comments by Fax:
559-457-1579

Submit Comments Online:
https://forms.cloud.microsoft/g/CU3w190csU

The Substantial Amendment is scheduled for consideration by the Council of the City of Fresno at its October 8, 2026, meeting. For more information on the City Council meeting, visit www.fresno.gov/calendar.aspx and select the agenda for the meeting. The agenda will be posted at least 72 hours in advance. Accommodations are available upon request by contacting the office of the City Clerk at (559) 621-7650 or clerk@fresno.gov at least three business days prior to the meeting.

Summary

The City of Fresno (City) is a federal entitlement community that receives an annual allocation of Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD). As an entitlement community, the City is required to prepare an Annual Action Plan detailing the uses of CDBG funds to meet its affordable housing and community development goals as outlined in its Consolidated Plan. For Program Year 2025-2026, the city is proposing a substantial amendment to the Action Plan to include a $15 million Section 108 Loan to fund a loan pool for non-profit developers of affordable housing for land acquisition and acquisition of manufactured homes to support the development of affordable housing. This effort is in alignment with the City's goals as stated in the 2025-2029 Consolidated Plan to provide access to safe and affordable housing through development and acquisition.

The City will accept comments on the proposed substantial amendment for a period of 30 days from August 30, 2026, through September 30, 2026, at 5 PM.

Source and Use of Program Funds

TOTAL SOURCES TO BE PROGRAMED	$15,00,000.00

The City of Fresno will allocate $15,000,000 of CDBG Section 108 Loan funding for Program Year 2025 to fund an Affordable Housing Development Loan Pool. Funds will be made available to eligible non-profit developers through a Notice of Funding Availability (NOFA) that will request applications for affordable housing development projects in need of support for land acquisition and/or acquisition of manufactured housing units.

USE OF PROGRAMMED CDBG FUNDS				
FFY	**Project #**	**IDIS Activity ID**	**Activity Name**	**Proposed Substantial Amendment 2025-02 Award**
2025	17	TBD	Affordable Housing Development Loan Pool	$15,000,000.00
TOTAL USES TO BE REPROGRAMMED:				**$15,000,000.00**

Integrated Data and Information System (IDIS) Project Information

IDIS Field	IDIS Entry
IDIS Project ID Number	17
Project Name	Affordable Housing Development Loan Pool
Target Area	Citywide
Goals Supported	Improve Housing Access and Quality
Needs Addressed	Expand Access to Affordable Housing
Funding	CDBG: $15,000,000
Description	Funds will be used for an Affordable Housing Development Loan Pool for land acquisition and/or acquisition of manufactured housing units.
Target Date	6/30/2027
Goal Indicators	Unknown
Location Description	Citywide
Planned Activity	01: Acquisition of Real Property (24 CFR 570.201(a))