

## CLOVIS CITY COUNCIL MEETING

January 16, 2024

6:00 P.M.

Council Chamber

Meeting called to order by Mayor Ashbeck at 6:00  
Flag Salute led by Councilmember Bessinger

Roll Call: Present: Councilmembers, Basgall, Bessinger, Mouanoutoua, Pearce  
Mayor Ashbeck

### PUBLIC COMMENTS – 6:02

Jeni-Ann Kren commended the City of Clovis on the Martin Luther King Jr. Breakfast event.

### CONSENT CALENDAR – 6:05

Motion by Councilmember Mouanoutoua, seconded by Councilmember Bessinger, that the items on the Consent Calendar be approved. Motion carried by unanimous vote.

1. Administration - Approved - Minutes from the January 8, 2024, Council Meeting.
2. Administration - Approved - Authorize the City Manager, or designee, to execute a Permanent Local Housing Allocation Program funding agreement with Central California Housing Corporation (doing business as Affordable Housing Development Corporation (AHDC)), and Better Opportunities Builder, Inc. (BOB), in the amount of up to \$1,481,281, and any amendments thereto, for the development of a 51-unit affordable senior rental housing project at 135 Osmun Avenue.
3. Finance – Received and Filed – Investment Report for the Month of August 2023.
4. Finance – Received and Filed – Treasurer’s Report for the Month of August 2023.
5. Finance – Received and Filed – Status Report of Development Fee Funds for the fiscal year ended June 30, 2023.
6. General Services – Approved - **Res. 24-11**, Adopting Amendments to the Deputy Police Chief Salary Schedule.
7. General Services – Approved – **Res. 24-12**, Authorizing Amendments to the City’s Classification Plan by Revising the Police Officer Recruit/Lateral Classification in the Police Department.
8. General Services – Approved – **Res. 24-13**, Authorizing Amendments to the City’s Classification Plan by Revising the Transit Dispatcher Classification in the General Services Department.
9. General Services – Approved - **Res. 24-14**, Approving a Side Letter Agreement with Clovis Employees Association to Add a 401(a) Plan.
10. General Services – Approved - Claim Rejection of the General Liability Claim on behalf of Maria Guadalupe Madrigal, Maria Isabel Madrigal, Miguel Madrigal, The Estate of Melchor Madrigal by Maria Isabel Madrigal, Eleazar Madrigal, and Jose Madrigal.

**PUBLIC HEARINGS – 6:06**

6:06 ITEM 11 - CONTINUED ITEMS ASSOCIATED WITH APPROXIMATELY 155 ACRES OF LAND LOCATED ON THE NORTH SIDE OF SHEPHERD AVENUE, BETWEEN N. SUNNYSIDE AND N. FOWLER AVENUES. GREAT BIGLAND, LP., OWNER/APPLICANT; HARBOUR AND ASSOCIATES, REPRESENTATIVE. (CONTINUED FROM THE DECEMBER 11, 2023, COUNCIL MEETING AND TO BE CONTINUED TO A DATE UNCERTAIN.)

9A. CONSIDER APPROVAL - RES. 23-XX, A RESOLUTION OF THE CLOVIS CITY COUNCIL: (1) CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE SHEPHERD NORTH PROJECT; (2) ADOPTING CEQA FINDINGS OF FACT AND A STATEMENT OF OVERRIDING CONSIDERATION; AND (3) ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM.

9B. CONSIDER APPROVAL – RES. 23-XX, A RESOLUTION OF THE CLOVIS CITY COUNCIL APPROVING A REQUEST TO EXPAND THE CITY’S SPHERE OF INFLUENCE TO INCLUDE APPROXIMATELY 155 ACRES OF LAND.

9C. CONSIDER APPROVAL - RES. 23-XX, GPA2021-006, A RESOLUTION OF THE CLOVIS CITY COUNCIL APPROVING A REQUEST TO AMEND THE CIRCULATION ELEMENT OF THE GENERAL PLAN TO ALLOW FOR THE PLACEMENT OF A SHEPHERD AVENUE ACCESS POINT ON THE NORTH SIDE OF SHEPHERD AVENUE, BETWEEN N. SUNNYSIDE AND N. FOWLER AVENUES.

9D. CONSIDER APPROVAL - RES. 23-XX, GPA2021-005, A RESOLUTION OF THE CLOVIS CITY COUNCIL APPROVING A REQUEST TO AMEND THE LAND USE ELEMENT OF THE GENERAL PLAN FOR THE DEVELOPMENT AREA (APPROXIMATELY 77 ACRES) FROM THE RURAL RESIDENTIAL LAND USE DESIGNATION TO THE MEDIUM-HIGH DENSITY RESIDENTIAL LAND USE DESIGNATION.

9E. CONSIDER INTRODUCTION - ORD. 23-XX, R2021-009, AN ORDINANCE OF THE CLOVIS CITY COUNCIL APPROVING A REQUEST TO PREZONE PROPERTY WITHIN THE DEVELOPMENT AREA (APPROXIMATELY 77 ACRES) OF THE PROJECT SITE FROM THE FRESNO COUNTY AL20 ZONE DISTRICT TO THE CLOVIS R-1-PRD ZONE DISTRICT.

9F. CONSIDER APPROVAL - RES. 23-XX, TM6205, A RESOLUTION OF THE CLOVIS CITY COUNCIL APPROVING A REQUEST TO APPROVE A VESTING TENTATIVE TRACT MAP FOR A 605-LOT SINGLE-FAMILY PLANNED RESIDENTIAL DEVELOPMENT.

9G. CONSIDER APPROVAL - RES. 23-XX, PDP2021-004, A RESOLUTION OF THE CLOVIS CITY COUNCIL APPROVING A REQUEST TO APPROVE A PLANNED DEVELOPMENT PERMIT FOR A 605-LOT SINGLE-FAMILY RESIDENTIAL DEVELOPMENT.

9H. CONSIDER APPROVAL - RES. 23-XX, R0307, A RESOLUTION OF THE CLOVIS CITY COUNCIL APPROVING APPLICATION FOR THE ANNEXATION OF THE TERRITORY KNOWN AS THE SHEPHERD-SUNNYSIDE NORTHEAST REORGANIZATION FOR THE DEVELOPMENT AREA (APPROXIMATELY 77 ACRES).

9I. CONSIDER APPROVAL - RES. 23-XX, A RESOLUTION OF THE CLOVIS CITY COUNCIL APPROVING AN AMENDMENT TO THE 2017 AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF FRESNO AND CITY OF CLOVIS REGARDING A SPHERE OF INFLUENCE EXPANSION TO ADD APPROXIMATELY 155 ACRES AND THE STANDARDS OF ANNEXATION TO ADDRESS THE ANNEXATION OF APPROXIMATELY 77 ACRES OF PROPERTY (SHEPHERD-SUNNYSIDE NORTHEAST REORGANIZATION).

Motion to continue to a date uncertain by Councilmember Bessinger, seconded by Councilmember Basgall. Motion carried by unanimous vote.

#### **ADMINISTRATIVE ITEMS – 6:10**

6:10 ITEM 12 - APPROVED – ENTER INTO A COOPERATIVE AGREEMENT AND AGREEMENT FOR THE EXCHANGE OF REAL PROPERTY (CLOVIS REGIONAL LIBRARY PROJECT) WITH THE COUNTY OF FRESNO, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY.

Judith Preuss spoke in support of the action.

Bernard Jimenez represented the County of Fresno in support of the item.

Motion for approval by Councilmember Mouanoutoua, seconded by Councilmember Bessinger. Motion carried by unanimous vote.

6:22 ITEM 13 - DENIED – A REQUEST FROM THE COUNTY OF FRESNO FOR THE CITY OF CLOVIS TO PERMANENTLY SUPPLY A WATER SERVICE CONNECTION TO COUNTY SERVICE AREA (CSA) 10A.

Chris Bump spoke on behalf of the County of Fresno on the item.

Motion to deny by Councilmember Bessinger, seconded by Councilmember Basgall. Motion carried by unanimous vote.

6:41 ITEM 14 - RECEIVED AND FILED – REPORT ON THE NATIONAL COMMUNITY SURVEY RESULTS.

Jeni-Ann Kren asked for details on the methodology of the survey.

Supervisor Magsig spoke on the historical data of the survey.

**CITY MANAGER COMMENTS – 7:19**

**COUNCIL COMMENTS – 7:20**

**CLOSED SESSION – 7:29**

ITEM 15 - GOVERNMENT CODE SECTION 54956.9(D)(1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION CASE NAME: DESIREE MARTINEZ V. CITY OF CLOVIS, ET AL., CASE NO. F082914


**RECONVENE INTO OPEN SESSION AND REPORT FROM CLOSED SESSION – 8:04**

No action was taken by the City Council during the closed session.

**ADJOURNMENT**

Mayor Ashbeck adjourned the meeting of the Council to February 5, 2024

Meeting adjourned: 8:05 p.m.



\_\_\_\_\_  
Mayor



\_\_\_\_\_  
City Clerk







# CITY *of* CLOVIS

PLANNING & DEVELOPMENT

1033 FIFTH STREET • CLOVIS, CA 93612

**TO:** Clovis City Council

**FROM:** Claudia Cazares, Housing Program Manager

**DATE:** January 16, 2024

**SUBJECT:** Osmun/Barron PLHA Development Agreement Changes

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The January 16, 2024 City Council Meeting Agenda, includes Item #2 under Consent Items: approval of the PLHA Program Development Agreement between the City of Clovis and AHDC/Better Opportunities Builder (BOB), for \$1,481,241, for the development of a 51 unit affordable housing project at 135 Osmun.

The Development Agreement as included in the Agenda Support Material has been revised, as approved by our City Attorney, as follows:

- The Revised Agreement, attached hereto, now identifies the developer/ownership partnership, which was formed by AHDC and BOB, for this project. The new ownership is called "Clovis 135 Osmun, LP". AHDC and BOB are the only general partners. This is common practice in similar projects.
- The Revised Agreement also identifies the set aside of 6 units as "PLHA Units" targeted to households earning 60% or less of AMI. The draft agreement did not identify the "PLHA Units" specifically. The remaining units will all be low-income, at income ranges that will be contingent on the requirements of future senior funding sources of the project. The change enables the project to be competitive at the state-wide level for development financing programs.

**RECORDING REQUESTED BY AND WHEN  
RECORDED, RETURN TO:**

City of Clovis  
Attn: Housing Program Manager  
1033 Fifth Street  
Clovis, California 93612

SPACE ABOVE THIS LINE PROVIDED FOR RECORDER'S USE

No recording or filing fee required. This document exempt from fees pursuant to California Government Code sections 6103 and 27383.

**CITY OF CLOVIS**

**PERMANENT LOCAL HOUSING ALLOCATION PROGRAM AGREEMENT**

**BY AND BETWEEN**

**CITY OF CLOVIS, a municipal corporation,**

**and**

**CLOVIS 135 OSMUN, LP, a California Limited Partnership**

**regarding**

**135 Osmun Senior Apartments, at**

**135 Osmun Avenue, Clovis, CA 93612**

**APNs: 492-080-74, 492-080-85, 492-080-86, and 492-080-08 (portion)**

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## **PERMANENT LOCAL HOUSING ALLOCATION PROGRAM AGREEMENT**

This Permanent Local Housing Allocation Program Agreement (“Agreement”) is entered into effective on January \_\_\_\_, 2024, by and between the City of Clovis, a municipal corporation (“CITY”) and Clovis 135 Osmun, LP, a California limited partnership (“DEVELOPER”).

### **RECITALS**

A. WHEREAS, the CITY has received a Permanent Local Housing Allocation Program (“PLHA Program”) grant from the State of California as authorized by applicable provisions of the Health and Safety Code (Section 50470, et seq.) which created the Building Homes and Jobs Trust Fund and the PLHA Program, and which is designed to provide a permanent source of funding to help cities and counties implement plans to increase the affordable housing stock.

B. WHEREAS, to advance the supply of affordable rental housing within the City of Clovis, the CITY desires, among other things, to provide PLHA Program funds for affordable housing development.

C. WHEREAS, DEVELOPER is a California limited partnership consisting of Central California Housing Corporation, a California corporation and Better Opportunities Builder, Inc., a California non-profit public benefit corporation, each owning one-half interest as general partners of DEVELOPER.

D. WHEREAS, the DEVELOPER desires to act as the owner/developer exercising effective project control as to the construction of a fifty-one (51) unit rental housing apartment project of which six (6) units will be preserved as low-income units for households earning sixty percent (60%) or less of the Area Median Income as defined by the PLHA Program, and forty-four (44) units will be preserved as low-income housing units for households earning eighty percent (80%) or less of the Area Median Income, including related on-site and off-site improvements (“Project”) as more particularly described in EXHIBIT “B” – Project Description and Schedule, attached hereto and incorporated herein.

E. WHEREAS, the DEVELOPER and CITY agree PLHA Program funds are provided to encourage and support supplementary financing for the completion of financing needed for the Project, and the entirety of the project shall assist the CITY in meeting its PLHA Program goals.

F. WHEREAS, the Project will be constructed upon PLHA Program eligible real property located at 135 Osmun Avenue, Clovis, CA 93612, as more particularly described in EXHIBIT “A” – Property Description, attached hereto and incorporated herein, which Property is to be owned and controlled by DEVELOPER.

G. WHEREAS, to further its goal to increase the supply of affordable housing within the City of Clovis, the CITY desires to assist the DEVELOPER by providing a One Million Four Hundred Eighty One Thousand, Two Hundred Eighty One Dollar



(\$1,481,281.00) residual receipts PLHA Program loan to the Project ("Loan") at 3% interest, due and payable in full no later than at the 55-year maturity date, for eligible PLHA Project Property development costs, including property acquisition, upon the terms and conditions in this Agreement and any exhibits attached hereto and incorporated herein, as further identified in EXHIBIT "C" – Budget, attached hereto and incorporated herein, to be secured by the underlying Property and the affordable housing covenants attached as EXHIBIT "D" – Exemplar Declaration of Restrictions, and Note, Exemplar Note attached as EXHIBIT "E" – Promissory Note loan, upon the terms and conditions in this Agreement.

H. WHEREAS, the CITY has determined that this Agreement is in the best interest of, and will materially contribute to, the Housing Element of the City's General Plan. Further, the CITY has determined that the Project: (i) will have a positive influence in the neighborhood and surrounding environs, (ii) is in the vital and best interest of the CITY, and the health, safety, and welfare of CITY residents, (iii) will comply with applicable State and local laws and requirements, (iv) will increase, improve, and preserve the community's supply of Very Low- to Low-Income Housing available at an affordable cost to Very Low- to Low-Income households, 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.

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

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

## **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.

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

1.3 Affirmatively Furthering Fair Housing (Affirmative Marketing) means a good faith effort to attract eligible persons of all racial, ethnic and gender groups, in the housing market area, to rent the Affordable Housing Units proposed for construction on the Property.

1.4 Affordability Period means the minimum period of fifty-five (55) years commencing from the date DEVELOPER records a Notice of Completion for the Project.

1.5 Affordable Housing Units means the six (6) housing units of the fifty-one (51) Project housing units funded by the PLHA Program Loan which shall be available at a gross rent, including utility allowance, that does not exceed 60% of the applicable income eligibility level, and complies with the definition of Low-Income as outlined in the PLHA guidelines and Council-Approved PLHA Five-Year Plan, as amended, including the remaining forty-four (44) units which will be preserved as low-income housing units for households earning eighty percent (80%) or less of the Area Median Income. If other Project funding sources require lower levels of income, then the lower income levels shall apply. The remaining one (1) housing unit of the fifty-one (51) Project housing units shall be maintained as an on-site manager unit and shall not be required to be maintained as an Affordable Housing Unit in accordance with any income eligibility level.

1.6 Budget means the Budget for the development of the Project attached hereto as EXHIBIT "C" and incorporated herein by reference, as may be amended from time to time with the approval of the CITY's City Manager, or designee, provided any increase in PLHA Program funds for the Project shall require City Council approval.

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, site clearing, grading, delivery of materials, or any work beyond maintenance of the Property in its current condition, which shall take place in accordance with the Project Schedule.

1.8 Completion Date means the date the DEVELOPER has recorded a Notice of Completion for the Project.

1.9 City of Clovis PLHA Five Year Plan means that PLHA Five Year Plan approved by the Council on June 21, 2021, as may be amended from time to time.

1.10 Debt Service means payments made in a calendar year pursuant to the financing obtained for the acquisition, construction, operation and/or ownership of the Project, but excluding residual receipt payments made pursuant to the Note (defined below).

1.11 Declaration of Restrictions means the Declaration of Restrictions in substantially the form attached hereto as EXHIBIT "D", which shall contain the affordability covenants and income-level restrictions of this Agreement and the Project which shall run with the Property and which the DEVELOPER shall record or cause to be recorded against the Property no later than the date of Commencement of Construction.

1.12 Deed of Trust means that standard form Deed of Trust in substantially the form attached hereto as EXHIBIT "F" (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 with Placer Title Company, and recorded against the Property as security for the repayment of the Loan and Note, and approved as to form by

the City Attorney, as well as any amendments to, modification of and restatements of said Deed of Trust as approved by the City Manager and City Attorney, which Deed of Trust may be subordinated to Project Senior Lenders per the Budget attached as EXHIBIT "C" with the approval of the City Manager. The terms of any such Deed of Trust are hereby incorporated into this Agreement by this reference.

1.13 Eligible Costs means the PLHA eligible development costs funded by the Loan, consistent with the Project Budget attached as EXHIBIT "C", allowable under the PLHA Final Guidelines dated October 2019 and Council-approved PLHA Five Year Plan.

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

1.15 Funding Sources means the CITY's PLHA Funds, conventional permanent loan, DEVELOPER's contribution, and any other funds that may become available to the Project.

1.16 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.

1.17 Household means persons related or unrelated, who are occupying the Affordable Housing Units within the Project.

1.18 Loan means the residual receipts Loan of PLHA Funds, in the total amount not to exceed One Million Four Hundred Eighty-One Thousand, Two Hundred Eighty-One Dollars (\$1,481,281.00), as more specifically described in the Budget and in the Note evidencing the Loan to be in substantially the form attached hereto as EXHIBIT "E". The Loan shall be payable in accordance with the terms of the Note and shall be secured by and subject to the Deed of Trust recorded against the Property.

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

1.20 Low or Lower-Income Household means households whose annual income does not exceed 80% of the area median income for the County of Fresno, California as determined by HUD.

1.21 Note means that certain One Million Four Hundred Eighty-One Thousand, Two Hundred Eighty-One Dollar (\$1,481,281.00), PLHA Loan Promissory Note 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 recorded against the Property as no worse than fourth (4<sup>th</sup>) position encumbrance upon the Property behind only the Senior Financing (defined below) for the Project as described in the Budget, naming the CITY as beneficiary and provided to the CITY no later than the date of the Project funding hereunder, including any amendments to, modifications of and restatements of said Note consented to in writing by the CITY. An exemplar of the Note is attached hereto as EXHIBIT "E," and incorporated herein.

1.22 Notice of Completion shall mean that Notice of Completion under California Civil Code Section 8182. The Notice of Completion shall be recorded at the Fresno County Recorder's Office with a conformed copy delivered to the CITY in the same manner as notice is to be provided pursuant to this Agreement.

1.23 Operating Expenses means actual, reasonable and customary costs, fees and expenses directly incurred, paid and attributable to the operation, maintenance and management of the completed Project in a calendar year, including, without limitation; painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certifications, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchasing, 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 tenant services, repayment of any completion of operating loans including any and all deferred contractor's fees per the Budget, made to the DEVELOPER, its successors or assignees, and other actual operating costs and capital costs which are incurred and paid by the Property, but which are not paid from reserve accounts.

1.24 PLHA means the Permanent Local Housing Allocation.

1.25 Project means the construction of fifty-one (51) rental units of which fifty (50) units shall be preserved and maintained as Affordable Housing Units, with one (1) unit for an on-site manager.

1.26 PLHA Guidelines means the State of California Housing and Community Development 2019 PLHA Final Guidelines.

1.27 Project Schedule means the schedule for commencement and completion of the Project included in EXHIBIT "B" attached hereto and incorporated herein.

1.28 Project Unit means the fifty-one (51) rental units to be constructed for the Project.



1.29 Property means the real property located at APNs: 492-080-74, 492-080-85, 492-080-86, and 492-080-08 (portion) as more specifically described in the Property Description attached hereto as EXHIBIT "A".

1.30 Rent means the total monthly payment a tenant pays for an Affordable Housing Unit including the following: use and occupancy of the unit and land and associated facilities, including parking, provided by the DEVELOPER (other than parking services acquired by tenants on an optional basis), any separately charged fees or service charges assessed by the DEVELOPER which are required of all tenants (other than security deposits), the cost of an adequate level of service for utilities paid by the tenants (including garbage collection, sewer, water, common area electricity, but not telephone or internet service), any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the DEVELOPER, and paid by the tenant. Rent does not include payments for any optional services provided by the Project.

1.31 Residual Receipts means Residual Receipts as defined in the Note.

1.32 Senior Financing means the financing for the Project provided by Senior Lenders as set forth in the Budget which shall be senior to the Loan.

1.33 Senior Lender means lenders providing the Senior Financing for the Project.

1.34 State of California means the State of California's Department of Housing and Community Development.

## ARTICLE 2. TERMS OF THE LOAN

2.1 Loan of PLHA Funds. The CITY agrees to provide a loan of PLHA Funds to the DEVELOPER in an amount not to exceed One Million Four Hundred Eighty-One Thousand Two Hundred Eighty-One Dollars (\$1,481,281.00), all under the terms and conditions provided in this Agreement.

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 Placer Title Company in recordable form, 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. This Agreement shall expire upon the end of the 55-year Affordability Period. 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 accrue interest commencing on the date provided for in the Note and shall be due and payable in accordance with the Note in full not later than the maturity date provided in the Note.

2.5 Incorporation of Documents. The DEVELOPER's PLHA proposal, the approved minutes of the Clovis City Council meeting of January 16, 2024, approving this Agreement, the Loan Documents, PLHA Guidelines, City of Clovis PLHA Five Year Plan, 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 or made available to the parties herewith or have been otherwise provided to/procured by the parties and reviewed or made available for review 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 the PLHA Guidelines, as amended.

2.7 Subordination. This Agreement, the Declaration of Restrictions, and the Deed of Trust may be subordinated to certain approved financing for the Project (in each case, a "Senior Lender") to no worse than fourth (4<sup>th</sup>) position, but only on condition that all of the following are satisfied: (a) all of the proceeds of the proposed Senior Financing, less any transaction costs, must be used to provide construction financing for the Project consistent with an approved Budget; (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 is 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 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.

2.8 Reversion of Land. Property will revert to CITY ownership on December 31, 2028, in the event that DEVELOPER is unsuccessful in obtaining other necessary Affordable Housing Financing for development of the Project as of that date, and the project remains undeveloped. This date may be modified if required by the State of California and/or CITY.

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

3.1 Existence and Qualification. DEVELOPER represents and warrants to the CITY as of the date hereof, that DEVELOPER is a duly organized California corporation in good standing with the State of California; and the DEVELOPER has the requisite power, right, and legal authority to execute, deliver, and perform its obligations under the Agreement and has taken all actions necessary to authorize the execution, delivery, performance, and observance of its obligations under this Agreement. This Agreement, when executed and delivered by the DEVELOPER is 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. WARRANTIES AND COVENANTS OF THE DEVELOPER**

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

4.1 Affirmative Marketing and Tenant Selection. The DEVELOPER warrants, covenants and agrees with the CITY that it shall comply with all affirmatively furthering fair housing and marketing requirements in order to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market in the rental of the Project Units. The DEVELOPER shall maintain records of actions taken to affirmatively market units constructed in the future, and to assess the results of these actions. In addition, the Project shall implement a Tenant Selection process outlining selection and screening criteria of eligible tenants.

4.2 Availability of PLHA Funds. The DEVELOPER understands and agrees that the availability of PLHA Program Funds is subject to the control of the State of California, or other, and should said PLHA Program 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 PLHA Program Funds unless and until they are made available for payment to the CITY by the State of California and the CITY receives and allocates said PLHA Program Funds. No other funds owned or controlled by the CITY shall be obligated under this Agreement.

4.3 Compliance with PLHA Agreement. The DEVELOPER warrants, covenants and agrees that, in accordance with the requirements of the PLHA Guidelines, upon any uncured default by the DEVELOPER within the meaning of Article 10.1 of this Agreement, the CITY may suspend or terminate this Agreement and all other agreements with the DEVELOPER without waiver or limitation of rights/remedies otherwise available to the CITY.

4.4 Conflict of Interest. The DEVELOPER warrants, covenants and agrees that it shall comply with the Conflict-of-Interest requirements as set forth in the PLHA Final Guidelines, without limitation, that no officer, employee, agent, or consultant of the DEVELOPER may occupy a Project Unit. The DEVELOPER understands and acknowledges that no employee, agent, consultant, officer or elected official or appointed official of the CITY, who exercises any functions or responsibilities with respect to the Project, or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect



thereto, or the proceeds thereunder, either for him or herself or for anyone with which that person has family or business ties, during his or her tenure or for one year thereafter.

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

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

A. The CITY and the DEVELOPER hereby declare their understanding and intent that the covenants and restrictions set forth herein directly benefit the land by: (a) enhancing and increasing the enjoyment and rental of the proposed Project by certain Low-Income Households, and (b) making possible the obtaining of advantageous financing for 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 six (6) of the Project Units to be rented as Affordable Housing Units for Low Income Households, earning no more than 60% of the Area Median Income; the remaining forty-four (44) units which will be preserved as low-income housing units for households earning eighty percent (80%) or less of the Area Median Income.

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

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

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

4.7 Displacement of Persons. The DEVELOPER covenants and agrees with the CITY that it will take all reasonable steps to minimize the displacement of any persons (families, households, individuals, businesses, nonprofit organizations, and farms) from the Property. The parties acknowledge and agree that the Property is vacant.

4.8 Initial and Annual Income Certification and Reporting. The DEVELOPER covenants and agrees with the CITY that it shall comply with the procedures for annual income determination. The DEVELOPER, shall obtain, complete, and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from the Project Unit Household members. The DEVELOPER, shall make a good faith effort to verify that the income provided by an applicant or occupying Household in an income certification is accurate by taking one or more of the following steps as part of the verification process: (1) obtain a pay stub for the most recent three pay periods; (2) obtain an income verification form from the applicant's current employer; (3) obtain an income verification form from the Social Security Administration and California Department of Social Services if the applicant receives assistance from either of such agencies; (4) obtain income tax return for the most recent three years; (5) obtain checking and/or savings account statements for the most recent six months; or (6) if the applicant is unemployed, obtain another form of independent verification. Copies of Household income certification and verification must be available for review and approval by the CITY prior to initial lease up. The DEVELOPER further warrants, covenants and agrees that it will cooperate with the CITY in the CITY's income certification/affordability monitoring activities.

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

4.10 Minority Outreach Activities. The DEVELOPER covenants and agrees that it shall comply with any applicable federal laws and regulations pertaining to minority outreach for the Project.

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

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

A. The Project is not located in an area identified by the Federal Emergency Management Agency as having special flood requirements.

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

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

D. 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").

4.12 Reporting Requirements. The DEVELOPER warrants, covenants and agrees with the CITY that it shall submit performance reports to the CITY as detailed in Section 7.17. Furthermore, commencing the calendar year after the Project's conversion to permanent financing, the DEVELOPER agrees to provide, at the sole cost of the DEVELOPER, annual audited Financial Statements and residual receipts calculations for the Project expenses and ongoing financial transactions which occur as a result of this Agreement as detailed in Section 5.6. The DEVELOPER agrees to account for the expenditure of PLHA Program Funds using generally accepted accounting principles, which financial documentation shall be made available to the CITY and the State of California upon their respective written request(s).

4.13 Housing Affordability. The DEVELOPER covenants and agrees with the CITY that fifty (50) Project Units will be affordable to Low-Income Households during the Affordability Period. Six (6) Project Units, shall be designated as "PLHA Units". The PLHA Units, at a minimum, shall be rented to and occupied by, or, if vacant, available for rental and occupancy by person(s) whose annual household income at the time of initial occupancy is at or below 60% of the area median income for the Affordability Period except upon foreclosure or other transfer in lieu of foreclosure following default under a Deed of Trust. Forty-Four (44) Project Units, at a minimum, shall be rented to and occupied by, or, if vacant, available for rental and occupancy by person(s) whose annual household income at the time of initial occupancy is not greater than 80% of the area median income for the Affordability Period except upon foreclosure or other transfer in lieu of foreclosure following default under a Deed of Trust. However, if at any time

following a transfer by foreclosure or transfer in lieu of foreclosure, but still during the Affordability Period, the DEVELOPER or either of its general partners thereafter obtains an ownership interest in the Project or the Property, the Affordability Period shall be revived according to its original terms. In the event the DEVELOPER fails to comply with this Section 4.13 or the Affordability Period is not revived following transfer by foreclosure or transfer in lieu of foreclosure, the DEVELOPER shall return to the CITY all PLHA Program Funds disbursed to the DEVELOPER by the CITY under this Agreement.

4.14 Terminated Projects. 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 PLHA Program assistance to the Project.

## **ARTICLE 5. PROPERTY MAINTENANCE**

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

5.1 Adequate Repair and Maintenance. The DEVELOPER, during its time on title to the Property, shall cause the maintenance of the Project and Property to be in compliance with all applicable codes, laws, and ordinances. The CITY reserves the right to require the DEVELOPER to change the property management company for the Property if it is determined through annual property monitoring that the property management company is not performing satisfactorily.

5.2 Affordable Rental Housing. The DEVELOPER covenants and agrees that the Project shall constitute fifty-one (51) Project Units (including one manager's unit) with fifty (50) Affordable Housing Units for rent during the entire Affordability Period. This covenant shall remain in effect and run with and restrict the Property during the entirety of the Affordability Period. In the event the DEVELOPER fails to comply with the time period in which the Affordable Housing Units constitute affordable housing, the CITY shall without waiver or limitation, be entitled to injunctive relief, as the DEVELOPER acknowledges that damages are not adequate remedy at law for such breach.

5.3 Compliance with Environmental Laws. The DEVELOPER shall cause the Project Units to be in compliance with, and not to cause or permit the Project to be in violation of, any Hazardous Materials law, rule, regulation, ordinance, or statute. Although the CITY will utilize its employees and agents for regular inspection and testing of the eligible Property, the DEVELOPER agrees that, if the CITY has reasonable grounds to suspect any such violation, the DEVELOPER shall be entitled to thirty (30) days' written notice and opportunity to cure such violation. If the suspected violation is not cured, the CITY shall have the right to retain an independent consultant to inspect and test the eligible Property for such violation. If a violation is discovered by the independent consultant, the DEVELOPER shall pay for (including reimbursing the CITY upon written demand) the reasonable cost of the independent consultant.



Additionally, the DEVELOPER agrees:

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

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

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

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

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

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

D. To indemnify, defend, and hold the CITY harmless from any and all claims, actions, causes of action, demands, judgments, damages, injuries, administrative orders, consent agreements, orders, liabilities, penalties, costs, expenses (including attorney's fees and expenses), and disputes of any kind whatsoever arising out of or relating to the DEVELOPER or any other party's, except to the extent caused by CITY, use of release of any hazardous or toxic chemicals, materials, substance, or waste on the Property regardless of cause or origin, including any and all liability arising out of or relating to any investigation, site monitoring, containment, cleanup, removal, restoration, or related remedial work of any kind or nature.

5.4 Compliance with Laws. The DEVELOPER shall promptly and faithfully comply with, conform to, and obey all present and future federal, State, and local statutes, regulations, rules, ordinances, and other legal requirements applicable by reason of this Agreement or otherwise to the Project including without limitation prevailing wage requirements. The DEVELOPER acknowledges that the use of PLHA Program Funds subjects the Project to State of California regulations and covenants and agrees that it shall comply with, conform to, and obey (and take steps as are required of the

DEVELOPER to enable the CITY to comply with, conform to and obey) all State of California regulations and laws applicable to the Project. DEVELOPER shall also comply with all mitigation measures and conditions identified in any environmental assessment for the Project.

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

5.6 Financial Statements and Audits. Commencing the year after the Project's conversion to permanent financing, the DEVELOPER, at its sole cost and expense shall submit to the CITY:

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

B. Audited financial statements with the management notes covering the income and expenses, and the financial transactions for the Project during the prior fiscal year.

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

A. The DEVELOPER will maintain books and records for the Project using generally accepted accounting principles. The DEVELOPER agrees to maintain books and records that accurately and fully show the date, amount, purpose, and payee of all expenditures financed with PLHA Program Funds and to keep all invoices, receipts and other documents related to expenditures financed with PLHA Program Funds for not less than five (5) years after the expiration or termination of the Agreement. Books and records must be kept accurate and current. For purposes of this section, "books, records and documents" include, without limitation; plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, funding applications, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda, and electronically stored versions of the foregoing. This section shall survive the termination of this Agreement.

B. The CITY may audit any conditions relating to this Agreement at the CITY's expense, unless such audit shows a significant discrepancy in information reported by the DEVELOPER in which case the DEVELOPER shall bear the cost of such

audit. The DEVELOPER shall also comply with any applicable audit requirements of the PLHA Guidelines. This section shall survive the termination of this Agreement.

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

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

5.9 No Other Liens. The DEVELOPER shall not create or incur, or suffer to be created or incurred, or to exist, any additional mortgage, pledge, lien, charge, or other security interest of any kind on the Property, other than those related to the Project's construction loans in relation to the Project, consistent with the attached Budget, without the prior written consent of the CITY. Notwithstanding the foregoing, the CITY agrees to provide its reasonable consent to any request by the DEVELOPER for the refinancing of debt on the Project, and further agrees to subordinate its deed of trust to any refinanced loan that was senior in priority to the CITY's Loan prior to such refinancing.

5.10 Nondiscrimination. The DEVELOPER shall comply with and cause any and all contractors and subcontractors to comply with any and all federal, State, and local laws with regard to illegal discrimination, and the DEVELOPER shall not illegally discriminate against any persons on account of race, religion, sex, family status, age, handicap, or place of national origin in its performance of this Agreement and the completion of the Project.

5.11 Ownership. Except as required in pursuit hereof, the DEVELOPER shall not sell, lease, transfer, assign or otherwise dispose of all or any material part of any interest it might hold in the Property or the Project without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed. "Transfer" shall exclude the leasing of any single Project Unit. The DEVELOPER shall request CITY's written approval of the granting of the security interests in the Property described in Section 5.11 above.

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

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

## **ARTICLE 6. DISBURSEMENT OF PLHA PROGRAM FUNDS**

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

6.1 Loan Commitments and Financing Plan. The DEVELOPER shall submit its most current finance plan for the Project, including Funding Sources (Finance Plan) to the CITY prior to City Council approval and as other funding sources become part of the Project Budget. The City shall approve the Finance Plan so long as the Finance Plan is consistent with the Budget contained in EXHIBIT "C". The CITY shall accept the Finance Plan and supporting documentation such as commitment letters, letters of credit, agreements, and resolutions for proposed funding to the Project. 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 parties agree and acknowledge that this Agreement does not constitute a commitment of loan funds, and that such Loan Commitment or approval of Loan may occur only upon satisfactory completion of the environmental review of the Project. In addition, no Loan Commitment shall be made until all requirements contained in this Agreement or another other loan, security or other related documents are met by the Developer, as determined by the CITY.

6.2 Finance Plan Content. The Finance Plan shall contain all Project pre-construction, post-construction, and permanent loans or letters of commitment 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 PLHA Program Funds. The DEVELOPER warrants, covenants and agrees that it shall request PLHA Program Funds only for land acquisition and/or eligible construction costs incurred as identified in the itemized Budget, attached hereto as EXHIBIT "C", aggregating not more than One Million Four Hundred Eighty-One Thousand, Two Hundred Eighty-One Dollars (\$1,481,281.00). DEVELOPER may not incur costs to be paid with Loan funds for this Project until the CITY notifies the DEVELOPER that DEVELOPER is authorized to use Loan funds. The CITY's obligations shall in no event exceed the PLHA 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 development costs, and subject to the notice and cure provisions of Section 10.2 hereunder, an equal amount from nonpublic funds shall become immediately due and payable by the DEVELOPER to the CITY; provided, however, that the DEVELOPER shall, subject to its full cooperation with the CITY, be entitled to participate in any opportunity to remedy, contest, or appeal such determination.

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

C. The CITY will disburse PLHA Program Funds, to the DEVELOPER through proper invoicing for eligible development costs of the Project Units as provided in this Article 6.

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

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

B. The DEVELOPER has delivered to City a copy of the Purchase and Sale Agreement for the DEVELOPER's purchase of the Property, along with escrow instructions, estimated settlement statement, and other escrow and title documents as may be necessary to effectuate City's wire of PLHA Program Funds into escrow, and the DEVELOPER's purchase of the Property.

C. The CITY has approved the eligible acquisition and/or development costs.

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

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 PLHA Program Funds, for reimbursement of eligible Project costs and detailing such eligible costs applicable to the request on a City provided form.

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

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

I. The Developer has received environmental clearance for the Project on the Property.

6.5 Requests for PLHA Funds. The DEVELOPER shall request that the CITY deposit PLHA Program Funds into escrow as described above. The DEVELOPER shall only request a maximum of One Million Four Hundred Eighty-One Thousand Two Hundred Eighty-One Dollars (\$1,481,281.00) in PLHA Program assistance for the Project Units. All requests should provide in detail such eligible costs applicable to the request. All requests for PLHA Funds shall be accompanied with the Certification required by Section 6.6 of this Agreement.

6.6 DEVELOPER Certification. The DEVELOPER shall submit to the CITY a written certification that, as of the date of submitting the Request for PLHA Program Funds (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; and

B. The DEVELOPER has carried out 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 PLHA Program Funds; and

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 of funds shall be used solely for eligible property acquisition and/or construction 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 construction of the Project.

6.7 Disbursement of Funds. The disbursement of PLHA Program Funds shall occur within the normal course of CITY business (approximately 30 days) after the CITY receives the Certification and Request for PLHA Program Funds with correct supporting documentation and to the extent of annually allocated and available PLHA Program Funds.

## **ARTICLE 7. CONSTRUCTION OF THE PROJECT**

Without waiver of limitation, the parties agree as follows:

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

7.2 Commencement and Completion of Project. The DEVELOPER shall commence construction of the Project, and when completed, record a Notice of Completion of construction of the Project in accordance with the Project Schedule as identified in EXHIBIT "B" and provide the CITY with a copy of the recordation.

7.3 Contracts and Subcontracts. Consistent with Section 5.3, all hazardous waste abatement, construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise legally authorized to perform the applicable work or service in the State of California and the City of Clovis. The DEVELOPER shall provide the CITY with copies of all agreements it has entered into with

any and all general contractors or subcontractors for this Project. The DEVELOPER shall require that each such general contractor agreement contain a provision whereby the party(ies) to the agreement, other than the DEVELOPER, agree to: (i) notify the CITY immediately of any event of default by the DEVELOPER thereunder, (ii) notify the CITY immediately of the filing of a mechanic's lien, (iii) notify the CITY immediately of termination or cancellation of the construction agreement on the Project, and (iv) provide the CITY, upon the CITY's request, an Estoppel Certificate certifying that the agreement is in full force and effect and the DEVELOPER is not in default thereunder. The DEVELOPER agrees to notify the CITY immediately of termination or cancellation of any such agreement(s), notice of filing of a mechanic's lien, or breach or default by other party(ies) thereto.

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

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

7.6 Financing. The DEVELOPER shall promptly inform the CITY of any new financing or funding not included in the Budget for the Project, and the DEVELOPER shall provide the CITY with copies of all agreements with Funding Sources for the Project. The DEVELOPER shall require each agreement with all Funding Sources not included in the Budget to contain a provision whereby the party(ies) to the agreement other than the DEVELOPER, if permitted by the party(ies) applicable rules and regulations, agree to notify the CITY immediately of any event of default by the DEVELOPER thereunder. Should the DEVELOPER not comply with all the obligations of this section, the Loan shall become immediately due and payable as provided for in this Agreement. This Section shall survive expiration or termination of this Agreement.



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

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

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

7.10 Mechanic's Liens and Stop Notices. If any claim of lien is filed against the Property or a stop notice affecting any financing, PLHA Program Funds or funding sources for the Project is served on the CITY or any other third party in connection with the Project, the DEVELOPER shall, within twenty (20) days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the CITY a surety bond in sufficient form and amount, or provide the CITY with other assurance satisfactory to the CITY that the claim of lien or stop notice will be paid or discharged.

A. If the DEVELOPER fails to discharge, bond, or otherwise satisfy the CITY with respect to any lien, encumbrance, charge, or claim referred to in Section 7.10 above, then, in addition to any other right or remedy, the CITY may, but shall not be obligated to, discharge such lien, encumbrance, charge, or claim at the DEVELOPER's expense. Alternatively, the CITY may require the DEVELOPER to immediately deposit with the CITY, the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The CITY may use such deposit to satisfy any claim or lien that is adversely determined against the DEVELOPER. The DEVELOPER hereby agrees to indemnify and hold the CITY harmless from liability for such liens, encumbrances, charges or claims together with all related costs and expenses.

7.11 Permits and Licenses. The DEVELOPER shall submit, for CITY approval, all the necessary permits and licenses required for commencement of construction. As the CITY may reasonably request, the DEVELOPER, at its sole cost and expense, shall provide to the CITY copies of any and all permit approvals and authorizations including plot plan, plat, zoning variances, sewer, building, grading, demolition, and other permits required by governmental authorities other than the CITY in pursuit of the Project, and for its stated purposes in accordance with all applicable building, environmental, ecological, landmark, subdivision, zoning codes, laws, and regulations.

7.12 Plans and Specifications. The DEVELOPER has submitted to the CITY preliminary plans and specifications for the Project.

A. This Agreement shall contain by reference the design and site plan of the Project; such design must be approved by the City.

B. Before commencement of construction, the DEVELOPER shall submit to the CITY, for its review and approval, the final plans and specifications for the Project. The DEVELOPER shall construct the Project in full conformance with the plans and specifications and modifications thereto approved by the CITY. The DEVELOPER shall obtain the CITY's prior written approval for any modifications to the Project plans and specifications.

7.13 Project Responsibilities/Public Work-Prevailing Wage Requirements. The DEVELOPER shall be solely responsible for all aspects of the DEVELOPER's conduct in connection with the Project, including but not limited to, compliance with all local, State and federal laws including without limitation, as to prevailing wage and public bidding requirements. Without limiting the foregoing, the DEVELOPER shall be solely responsible for the quality and suitability of the work completed and the supervision of all contracted work, qualifications and financial conditions of and performance of all contracts, subcontractors, consultants and suppliers. Any review or inspection undertaken by the CITY with reference to the Project and/or payroll monitoring/auditing is solely for the purpose of determining whether the DEVELOPER is properly discharging its obligation to the CITY and shall not be relied upon by the DEVELOPER or by any third parties as a warranty or representation by the CITY as to governmental compliance and/or the quality of work completed for the Project.

7.14 Property Condition. The DEVELOPER shall maintain the Project and all improvements on site in a reasonably good condition and repair (and, as to landscaping, in a healthy condition), all according to the basic design and related plans, as amended from time to time. The DEVELOPER and those taking direction under the DEVELOPER shall: (i) maintain all on-site improvements according to all other applicable law, rules, governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the improvements free from graffiti; (iii) keep the Project Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to on-site improvements; (iv) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials, and (v) enforce tenant lease terms.

7.15 Quality of Work. The DEVELOPER shall ensure that construction of the Project employs building materials of a quality suitable for the requirements of the Project. The DEVELOPER shall cause completion of the construction of the Project on the Property in full conformance with applicable local, State, and federal laws, statutes, regulations, and building and safety codes.

7.16 Relocation. If and to the extent that the proposed Project results in the permanent or temporary displacement of residential tenants, the DEVELOPER shall comply with all applicable local, State, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. The DEVELOPER shall be solely responsible for payment of any relocation benefits to any

displaced persons and any other obligations associated with complying with said relocation laws.

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

A. Project Development Quarterly Reports: From the date of execution of this Agreement, until the DEVELOPER records a Notice of Completion, the DEVELOPER shall submit a Quarterly Report, in a form approved by the CITY, which will include, at a minimum, the following information: progress of the Project and affirmative marketing efforts. The Quarterly Reports are due 15 days after each March 31st, June 30th, September 30th, and December 31st, during said period.

B. Annual Project Rental Reports: Annually, beginning on the first day of the month following the recording of the Project Notice of Completion, and continuing until the termination of the Agreement, the DEVELOPER shall submit an Annual Rent Roll Report to the CITY, in a form approved by the CITY. The Annual Report shall include, at a minimum, the following information: occupancy of each Project Unit including the annual income and the household size, the date occupancy commenced, certification from an officer of the DEVELOPER that the Project is in compliance with the Affordability requirements, and such other information the CITY may be required by law to obtain. The DEVELOPER shall provide any additional information reasonably requested by the CITY upon request and at the annual monitoring of the property.

C. The DEVELOPER shall pay to the CITY an annual fee to cover the CITY's actual costs of monitoring the Project during the Affordability Period. The annual fee shall be in an amount reflecting the CITY's estimated costs of monitoring, oversight, and physical inspection of the Project. Monitoring fees shall be paid in an amount not to exceed \$5,000 per calendar year, beginning on the date the Project receives its certificate of occupancy, and may increase each year thereafter by up to 3%.

D. Annually, beginning on the first day of the month following the recording of the Notice of Completion for the Project, the DEVELOPER shall submit proof of property and liability insurance, as required in Article 9, listing the CITY as loss payee.

7.18 Scheduling and Extension of Time; Unavoidable Delay in Performance. It shall be the responsibility of the DEVELOPER to coordinate and schedule the work to be performed so that the commencement of the construction and issuance of the Notice of Completion will take place in accordance with the provisions of the Agreement and Project Schedule. The time for performance contained in the Project Schedule shall be automatically extended upon the following:

A. The time for performance of provisions of the Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by: war, insurrection, strike or other labor disputes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of

transportation, suits filed by third parties concerning or arising out of this Agreement, or unseasonable weather conditions (force majeure). An extension of time for any of the above specified causes will be granted only if written notice by the party claiming such extension is sent to the other party within ten calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is accepted by the other party in writing. In any event, the Project must be completed no later than 180 calendar days after the scheduled completion date specified in this Agreement, notwithstanding any delay caused by that included in this section.

B. Any and all extensions hereunder shall be by mutual written agreement of the CITY's City Manager or designee and the DEVELOPER, which shall not cumulatively exceed 180 days. Any extension beyond 180 days shall require City Council Approval.

7.19 Project Completion. Upon completion of the construction of the Project, the DEVELOPER shall submit to the CITY: 1) certification in writing to that the Project has been substantially constructed in accordance with the plans and specifications, approved by the CITY; 2) a conformed copy of the recorded Notice of Completion; 3) a cost-certifying final budget where the DEVELOPER shall identify the actual costs of construction of the Project. This final cost- certification shall identify costs in line-item format, consistent with the Project Budget. Upon a determination by the CITY that the DEVELOPER is in compliance with all of the DEVELOPER's construction obligations, as specified in this Agreement. Upon the DEVELOPER taking the specified measures and meeting the specified standards, the DEVELOPER will certify to the CITY in writing.

## **ARTICLE 8. OPERATIONS OF THE PROJECT**

8.1 Operation of the Project. The DEVELOPER or its contracted property management company shall lease, operate, and manage the Project in full conformity with the terms of this Agreement.

8.2 Occupancy Requirements. The PLHA Units shall be rented and occupied by, or if vacant, available for rental occupancy by Low-Income households whose income at the time of initial occupancy is not greater than 60% of the most recent annual median income, calculated and published by the State for the Fresno Metropolitan Statistical Area, applicable to such household's size, and at an affordable rent consistent with PLHA Program Guidelines. Forty-four (44) of the Project Units shall be rented and occupied by, or if vacant, available for rental occupancy by those whose annual household income at the time of initial occupancy is not greater than 80% of the most recent annual median income, calculated and published by the State for the Fresno Metropolitan Statistical Area, applicable to such household's size, and at an affordable rent consistent with PLHA Program Guidelines.

8.3 Leasing the PLHA Units. Before leasing any Project Units, the DEVELOPER or authorized property management company shall submit its proposed form of lease agreement for the CITY's review and approval by the City Manager or

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

8.4 Lease of Project Unit Provisions. In addition to the PLHA requirements, the leases are subject to the following:

A. The leases for the Affordable Housing Units shall authorize DEVELOPER or its authorized property management company to immediately terminate the tenancy of any Household of which one or more of its members misrepresented any fact material to the Household's qualification as a Low-Income Household. Each such lease agreement shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for Low-Income, such Household's rent may be subject to increase to 30% of the Household's actual adjusted monthly income.

8.5 Final Management Plan. Before leasing any Project Units, and at least sixty (60) calendar days prior to the construction Completion Date, the DEVELOPER shall submit to the CITY, for review and approval by the City Manager or designee, a plan for marketing and managing the proposed Affordable Housing Units (Property Management Plan). The Property Management Plan shall address in detail how the DEVELOPER or its designated management company plans to market the availability of the Affordable Housing Units to prospective tenants and how the DEVELOPER or its authorized property management company plans to certify the eligibility of potential tenants. The Property Management Plan shall also address how the DEVELOPER and/or the authorized property management company plan to manage and maintain the Affordable Housing Units in accordance with PLHA Program Guidelines and shall include appropriate financial information and documentation. The Property Management Plan shall contain detailed descriptions of policies and procedures with respect to tenant selections and evictions. Topics to be covered in these procedures shall include at a minimum the following:

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

- Criminal background checks;
- Deposit amounts, purpose, use and refund policy;
- Employment/Income verification;
- Occupancy restrictions;
- Income Limits;
- Equal Housing Opportunity Statement;
- Restrictions on use of the premises; and
- Tenant/Landlord dispute resolution procedures.

A. The Property Management Plan shall contain copies of all standardized forms associated with the above listed topics. The Property Management Plan shall include a form lease agreement that the DEVELOPER proposes to enter into with the Low-Income tenants. The DEVELOPER and/or its authorized property management company shall abide by the terms of this Property Management Plan, approved by the CITY, in marketing, managing, and maintaining the Affordable Housing Units.

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

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

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

8.7 Maintenance and Security. The DEVELOPER shall (i) at its own expense maintain the Project in good condition, in good repair and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of the Project Unit occupants. The DEVELOPER shall not commit or permit any waste on or to the Project and shall prevent and/or rectify any physical deterioration of the Project. The DEVELOPER shall maintain the Units in conformance with all applicable federal, State, and local laws, ordinances, codes and regulations, the Property Management Plan, and this Agreement.

8.8 Nondiscrimination. Fifty (50) of the Project Units shall be available for occupancy on a continuous basis to Households who are income eligible. The DEVELOPER shall not illegally discriminate or segregate in the constructed complex, the use, enjoyment, occupancy or conveyance of any part of the Project or Property on the

basis of race, color, ancestry, national origin, religion, sex, marital status, family status, source of income/rental assistance subsidy, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), sexual orientation, or any other arbitrary basis. The DEVELOPER shall otherwise comply with all applicable local, State, and federal laws concerning nondiscrimination in housing. Neither the DEVELOPER nor any person claiming under or through the DEVELOPER, shall establish or permit any such practice or practices of illegal discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants or vendees of any Project Unit or in connection with employment of persons for the construction of any Project Unit. All deeds or contracts made or entered into by the DEVELOPER as to the Project or portion thereof, shall contain covenants concerning nondiscrimination consistent with this section. The DEVELOPER shall include a statement in all advertisements, notices, and signs for availability of Affordable Housing Units for rent to the effect that the DEVELOPER is an Equal Housing Opportunity Provider.

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

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

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

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

9.1 Insurance Requirements. (a) Throughout the life of this Agreement, 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, 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 until notice is received by 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 CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve DEVELOPER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by 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 DEVELOPER shall not be deemed to release or diminish the liability of DEVELOPER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify 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 DEVELOPER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of 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:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance 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 of not less than the following:

\$2,000,000 per occurrence for bodily injury and property damage

\$2,000,000 per occurrence for personal and advertising injury

\$4,000,000 aggregate for products and completed operations

\$4,000,000 general aggregate applying separately to work performed under the Agreement

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto) with limits

of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) **WORKERS' COMPENSATION** insurance as required under the California Labor Code.

(iv) **EMPLOYEE LIABILITY** insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 diseased each employee.

(v) **BUILDERS RISK (Course of Construction)** insurance, obtained by the DEVELOPER or subcontractor in an amount equal to the completion 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.)

(vi) **CONTRACTOR POLLUTION** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

\$1,000,000 per occurrence

\$2,000,000 general aggregate per annual policy period

In the event the work involves any lead-based, mold or asbestos environmental hazard, either the Automobile Liability insurance policy or the Pollution Liability insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by the DEVELOPER pursuant to this Agreement.

In the event the work involves any lead-based environmental hazard (e.g., lead-based paint), the DEVELOPER's Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event the DEVELOPER involves any asbestos environmental hazard (e.g., asbestos remediation), the DEVELOPER's Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event this Agreement involves any mold environmental hazard (e.g., mold remediation), the Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and "microbial matter including mold" within the definition of "Pollution" under the policy.

### **UMBRELLA OR EXCESS INSURANCE**

In the event 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.

## **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR shall also be responsible for payment of any self-insured retentions.

## **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice has been given to the CITY. 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 (15) calendar days prior to the expiration date of the expiring policy.

The General Liability, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.

The General Liability, Automobile Liability and Pollution Liability insurance policies shall name the CITY, its officers, officials, agents, employees, and volunteers as an additional insured for ongoing and completed operations. 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.

The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the CITY as loss payee.

All insurance policies required including the Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City, its officers, officials, agents, employees, and volunteers.

The DEVELOPER shall furnish the CITY with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the CITY's Risk Manager or his/her designee before work commences. Upon request of the CITY, the DEVELOPER shall immediately furnish the CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to

be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Agreement and the final acceptance by the CITY of the work or materials to be performed or supplied thereunder, the DEVELOPER shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the DEVELOPER or his/her insurance company from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of this Agreement.9.2

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

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

This section shall survive termination or expiration of this Agreement.

9.3 Property Insurance. The DEVELOPER shall maintain in full force and effect, throughout the remaining life of this Agreement, a policy or policies 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 Occupancy or substantial completion of the Project referenced in this Agreement, including fire and Extended Comprehensive Exposure (ECE) coverage in an amount, form, substance, and quality as acceptable to the CITY's Risk Manager. The CITY shall be added by endorsement as a loss payee thereon.

9.4 Bond Obligations. 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 100% of the DEVELOPER's estimated construction costs as reflected in the Budget attached hereto as EXHIBIT "C" 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" or "Material and Labor Bond" shall be at least equal to 100% of construction costs approved by the CITY to satisfy claims of material suppliers 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 the California Civil Code.

## **ARTICLE 10. DEFAULT AND REMEDIES**

10.1 Events of Default. The parties agree that each of the following shall constitute an "Event of Default" by the DEVELOPER for purposes of this Agreement after the cure period in Section 10.2 has expired without a cure:

A. The DEVELOPER's use of PLHA Program Funds for costs other than eligible 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, unless delay is permitted under Section 7.18 of this Agreement;

(4) cessation of the Project for a period of more than fifteen (15) consecutive days (other than as provided at Section 7.18 of this Agreement) prior to submitting to the CITY certification that the Project is complete;

(5) any material adverse change in the condition of the DEVELOPER or its development team, or the Project that gives the CITY reasonable cause to believe that the Project cannot be completed by the scheduled completion date according to the terms of this Agreement;

(6) the DEVELOPER's failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY's request; and

(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 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 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 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.

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

10.3 Remedies Upon an Event of Default. Upon the happening of an Event of Default and a failure to cure said Event of Default within the time specified, the CITY's obligation to disburse PLHA 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; and
- C. Pursue any other remedy allowed by law or in equity or under this Agreement.

## **ARTICLE 11. GENERAL PROVISIONS**

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

11.1 Amendments. No modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by the parties hereto. The City recognizes that Senior Lenders and equity investors may request revisions to the Loan Documents to be consistent with their funding and investing requirements. Therefore, the CITY agrees to consider and negotiate as to any reasonable changes to this Agreement to address such requests, subject to approval as to form by the City Manager or designee and the City Attorney's Office. Any material changes, however, shall require further City Council approval.

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



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

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

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

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

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

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

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

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

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

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

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

11.14 No Assignment or Succession. The DEVELOPER shall not sell, 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.

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

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

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

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

If to the CITY:

City of Clovis  
Affordable Housing Programs  
1033 Fifth Street  
Clovis, CA 93612

If to DEVELOPER:

Clovis 135 Osmun, LP, a California Limited Partnership,

AHDC, its Managing General Partner  
Attention: Laurie Doyle, Executive Vice President  
3128 Willow Ave., Suite 101  
Clovis, CA 93612

BOB, its Administrative General Partner  
Attention: Michael Duarte, CEO  
1331 Fulton Street  
Fresno, CA 93721

And

Baker Manock & Jensen, PC  
Attn: Kenneth J. Price  
5260 N. Palm Avenue, Suite 201  
Fresno, CA 93704

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

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

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date appearing in the opening paragraph of this Agreement.

DEVELOPER:  
Clovis 135 Osmun, LP  
A California Limited Partnership

Managing General Partner:  
Central California Housing Corporation, a  
California Corporation (dba Affordable  
Housing Development Corporation)

By: \_\_\_\_\_  
Austin Herzog, President

Administrative General Partner:  
Better Opportunities Builder, Inc., a  
California non-profit public benefit corporation

By: \_\_\_\_\_  
Michael Duarte, Chief Executive Officer

CITY:  
  
City of Clovis,  
A California Municipal Corporation

By: \_\_\_\_\_  
John Holt, City Manager

ATTEST:

By: \_\_\_\_\_  
Karey Cha, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Scott Cross, City Attorney

(Attach notary certificate of acknowledgement for each signature)

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

## Legal Description

The land described herein is situated in the State of California, County of Fresno, City of Clovis, described as follows:

### PARCEL 1:

That portion of the South half of the North half of the Northwest quarter of the Southwest quarter of Section 4, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, lying East of the center-line of Osmun Street produced Northerly and West of the center-line of the Alley in Block 11 of East Clovis according to the map thereof recorded in Book 2 of Record of Surveys at Page 47, Fresno County Records, when said center-line of alley is produced Northerly.

EXCEPTING THEREFROM the North 173 feet thereof.

APN: 492-080-85

### PARCEL 2:

The South 150 feet of the East 475.73 feet of the South half of the North half of the Northwest quarter of the Southwest quarter of Section 4, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats;

EXCEPTING THEREFROM the East 275.73 feet thereof.

ALSO EXCEPTING THEREFROM the following described parcel for street purposes; Beginning at the Southwest corner of the TRACT NO. 2860, according to the map thereof recorded in Book 32 Page 40 of Plats, records of Fresno County, also being a point on the centerline of Baron Avenue; thence North 00° 35' 42" East, a distance of 150 feet; thence Westerly a distance of 16.00 feet along a line parallel to South line of the North half of the Northwest quarter of the Southwest quarter of Section 4, Township 13 South, Range 21 East, according to the United States Government Township Plats approved by the Surveyor General on July 15, 1854; thence Southwesterly a distance of 152 feet, to an Intersecting point on the South line of the North half of the Northwest quarter of the Southwest quarter of said Section 4, being 31.00 feet West of the Southwest corner of Tract No. 3860; thence Easterly on said South line a distance of 31.00 feet to the point of beginning.

TOGETHER WITH that certain real property located in the East 475.73 feet of the South half of the North half of the Northwest quarter of the Southwest quarter of Section 4, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats approved by the Surveyor General on July 15, 1854.

Excepting the East 275.73 feet; being more particularly described as follows:

The South 17 feet of the North 180 feet of the East 475.73 feet of the South half of the North half of the Northwest quarter of said Section 4, excepting the East 275.73 feet.

APN: 492-080-74

### PARCEL 3:

Lots 21 and 22 of Block 11 of East Clovis, according to the map thereof recorded in Book 2, page 47 of Records of Surveys, records of said County

TOGETHER WITH, that portion of an unnamed public street as abandoned by and pursuant to the provisions as disclosed Resolution no. 96-65, recorded August 23, 1996, as Instrument No. 96104979, described as follows:

A parcel of land in the South half of the Northwest quarter of the Southwest quarter of Section 4, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to Official Plat thereof, described as follows:

Beginning at the Northwest corner of Lot 22, Block 11, of The Town of East Clovis as shown on Map thereof Recorded in Book 2 of Record of Surveys, at Page 47, Fresno County Records; thence Easterly along the Northerly line of said lot 22 to the Northeast corner of said Lot 22; thence Northerly along the Northerly prolongation of the Easterly line of said Lot 22, said Easterly line also being the Westerly line of the alley in said Block 11, to the Southerly line of that certain parcel of land described in deed to International Church of the Foursquare Gospel, Recorded June 29, 1960, in Book 4407 at Page 465, Official Records of said County, said Southerly line also being the Northerly line of said South half; thence Westerly along said Southerly line to its intersection with the Northerly prolongation of the Westerly line of said Lot 22, last said Westerly line also being the Easterly line of Osmun Street as shown on said Map of the Town of East Clovis; thence Southerly along last said Northerly prolongation to the Point of Beginning.

APN: 492-080-86

**PARCEL 4:**

The South 9.06 feet of the North 173.00 feet of South half of the North half of the Northwest quarter of the Southwest quarter of Section 4, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, lying East of the center-line of Osmun Street produced Northerly and West of the center-line of the alley in Block 11 of East Clovis according to the map thereof recorded in Book 2 of Record of Surveys at Page 47, Fresno County Records, when said centerline of alley is produced Northerly.

Excepting therefrom the West 35.00 feet thereof.

APN: 492-080-08 (portion)

APN: 492-080-85, 492-080-86, 492-080-74, 492-080-08 (ptr)

**EXHIBIT B**

**PROJECT DESCRIPTION AND SCHEDULE**



## **PROJECT DESCRIPTION**

135 Osmun Apartments is a three-story affordable, senior (age restricted) apartment community that is comprised of 51 dwelling units consisting of 48 one-bedrooms units, 2 two-bedrooms units, and 1 three-bedroom manager unit on approximately 1.73 acres.

One-bedroom units are approximately 628 sq. ft., two-bedroom units are approximately 884 sq. ft and the three-bedroom manager's unit is approximately 1,179 sq. ft.

The building is proposed to be a 3-story, type V-A wood framed building in a C-shape around a central courtyard including two elevators and interior and exterior amenity space. Proposed additional amenities include: a community center, managerial/leasing offices, library room, laundry facilities, a courtyard, and a dog run.

The target population will be senior residents of Clovis and the surrounding areas that are income qualified.

Six (6) units will be preserved as low-income units for households earning sixty percent (60%) or less of the Area Median Income as defined by the PLHA Program, and forty-four (44) units will be preserved as low-income housing units for households earning eighty percent (80%) or less of the Area Median Income. Project will include related on-site and off-site improvements.

## **PROJECT SCHEDULE**

<b>TASK</b>	<b>PROJECTED COMPLETION DATE</b>
Signed LOI	11/10/2023
Sign Purchase & Sale Agreement	11/28/2023
DRC Submission to City of Clovis	12/15/2023
1 <sup>st</sup> Neighborhood Meeting	1/31/2024
2 <sup>nd</sup> Neighborhood Meeting	2/29/2024
Submission for GPA, Rezone, Site Plan Review to City of Clovis	1/31/2024
Approval of Entitlements	5/31/2024
Application for State Funding	Summer 2024
Construction/Permanent Loan Commitments	Summer 2024
Application & Allocation for LIHTC Funding	Summer 2024 – Fall 2024
Property Acquisition	Spring 2025, or sooner if applicable
Construction Commencement	Spring 2025
Construction Completion	Spring 2026

EXHIBIT C

BUDGET

<b>CONSTRUCTION SOURCES</b>	
<b>Source</b>	<b>Funding Amount</b>
Construction Loan	\$23,018,719
Tax Credit Equity	\$2,684,375
Deferred Costs	\$2,414,114
City of Clovis PLHA	\$1,481,281
<b>Total</b>	<b>\$29,598,489</b>
<b>PERMANENT SOURCES</b>	
<b>Source</b>	<b>Funding Amount</b>
Tax Credit Equity	\$26,843,749
Deferred Developer Fee	\$1,100,000
Other	\$173,459
City of Clovis PLHA	\$1,481,281
<b>Total</b>	<b>\$29,598,489</b>
<b>TOTAL DEVELOPMENT COST:</b>	
	<b>\$29,598,489</b>

**EXHIBIT D**

**EXEMPLAR DECLARATION OF RESTRICTIONS**

**Recording requested by and on behalf of:**

**CITY OF CLOVIS**

**WHEN RECORDED MAIL TO:**

City of Clovis  
Attn: Housing Program Manager  
1033 Fifth Street  
Clovis, California 93612

(Space above this line for Recorder's Use only)  
No recording or filing fee required. This document is exempt from fees pursuant to California Government Code §§ 6103, 27383.

APNs: 492-080-74, 492-080-85, 492-080-86, and 492-080-08 (portion)

### **DECLARATION OF RESTRICTIONS**

THIS DECLARATION OF RESTRICTIONS ("Declaration") is executed as of \_\_\_\_\_, 2024, by Clovis 135 Osmun, LP, a California limited partnership, ("DECLARANT"), in favor of the CITY OF CLOVIS, a California municipal corporation ("CITY").

WHEREAS, DECLARANT is a California limited partnership consisting of Central California Housing Corporation, a California corporation and Better Opportunities Builder, Inc., a California non-profit public benefit corporation, each owning one-half interest as general partners of DECLARANT.

WHEREAS, the DECLARANT is the owner of the real property in the City of Clovis, County of Clovis, California, located at 135 Osmun Avenue, Clovis, CA 93612 (APNs: 492-080-74, 492-080-85, 492-080-86, and 492-080-08 (portion), which is more particularly described in EXHIBIT "A" attached hereto and incorporated herein by reference, including the improvements thereon ("Property"); and

WHEREAS, pursuant to a certain Permanent Local Housing Allocation Agreement between DECLARANT and CITY dated \_\_\_\_\_, 2024 ("PLHA Agreement"), incorporated herein by reference and instruments referenced therein, the DECLARANT agree to utilize, and the CITY agrees to provide, certain PLHA funds from the State of California to the DECLARANT and the DECLARANT agree to construct a fifty-one (51) unit affordable senior rental housing project subject to the terms and conditions in the PLHA Agreement, with fifty (50) units restricted to qualified low to very low income households and one (1) on-site manager unit ("Project").

WHEREAS, the PLHA regulations promulgated by the State of California and the PLHA Agreement impose certain affordability requirements upon property owned by the DECLARANTS 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 and successors-in-interest of the Property and DECLARANT.

NOW THEREFORE, the DECLARANT declare 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 shall 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 has provided the CITY with a recorded Notice of Completion, constituting the commencement of the 55-year Affordability Period.

1. Declarations. The DECLARANT hereby declare 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 PLHA 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 PLHA 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 owners 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 themselves and their respective successor(s) on title covenant and agree that from the date the Project is complete, until the expiration of the Affordability Period, shall cause Fifty (50) Affordable Housing Units to be used as affordable rental housing to Low Income Households with an income of 80%, or below, of area median income. Six (6) units, referred to as the PLHA units will be available as affordable rental housing for households earning 60% or below, of the area median income. The DECLARANT further agree 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 Unit 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 the DECLARANT establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Project and/or Property.

ii. Principal Residence. The PLHA-Assisted Units constituting the Affordable Housing 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 eligible tenant 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 (ii) State qualified entities that acquire the Property or portion thereof with the consent of the CITY.

iii. Household Income Requirements. The Fifty (50) Affordable Housing Units constructed on the Project Property may be rented only to a natural person(s) whose annual Household income at the time of rental is not greater 80% of the most recent annual median income as provided for on the State of California website for Fresno County and applicable to such household's size. Six (6) units, referred to as the PLHA units will be available as affordable rental housing for households earning 60% or below, of the area median income.

Section 2(a) above is hereinafter referred to as the Covenants and Restrictions.

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

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 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 any future owners, tenant, or occupant, and such Covenants and Restrictions shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Covenants and Restrictions were 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, 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 Housing 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.

5. Benefit. This Declaration shall run with and bind the Property for a term commencing on the date the Notice of Completion is recorded and provided to the CITY, 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 the DECLARANT or any future owner of the Property to comply with the Covenants and Restrictions required by this Declaration, as may be amended from time to time, the prevailing party shall be entitled to recover its respective costs and reasonable attorney's fees incurred in connection with such proceeding, including default or failure.

7. Waiver. Neither the DECLARANT nor any future owner of the Property may exempt itself from liability for failure to comply with the Covenants and Restrictions 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 Covenants and Restrictions or any other covenant, restriction, condition, limitation, or other provision of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration and each shall be enforceable to the greatest extent permitted by law.

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

10. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall

not be used as an aid in interpreting or construing this Declaration or any provision hereof.

11. Amendments or Modifications. No amendments or modifications shall be permitted without the prior written consent of the CITY and the DECLARANT

12. Recordation. The DECLARANTS acknowledge that this Declaration will be filed with and recorded by the County of Fresno Recorder's Office.

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

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

**DECLARANT:**

Clovis 135 Osmun, LP  
A California limited partnership

Managing General Partner  
Central California Housing Corporation, a  
California Corporation (dba Affordable  
Housing Development Corporation)

By: \_\_\_\_\_  
Austin Herzog, President

Administrative General Partner  
Better Opportunities Building, Inc., a  
California non-profit public benefit corporation

By: \_\_\_\_\_  
Michael Duarte, Chief Executive Officer

(Attach notary certificate of acknowledgement for each signature)



**EXHIBIT E**

**EXEMPLAR PROMISSORY NOTE**

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

---

PROMISSORY NOTE  
Secured by Deed of Trust

Loan Amount: \$1,481,281.00

Date: \_\_\_\_\_, 2024

Clovis, California

For value received, the undersigned, collectively referred to as Borrower (BORROWER) jointly and severally, promise to pay to the order of the City of Clovis, a California municipal corporation (Lender), the sum of One Million Four Hundred Eighty-One Thousand Two Hundred Eighty-One Dollars (\$1,481,281.00), to the extent that such funds are loaned to the BORROWER, with interest on the unpaid principal balance running from the date of disbursement with simple interest at the rate of three percent (3.0%) annually in accordance with the Permanent Local Housing Allocation Agreement dated \_\_\_\_\_, 2024, entered into between the Lender and the BORROWER, (Agreement), which is incorporated herein by reference, with the balance of principal and interest due and payable on or before the earlier of (i) the BORROWER's uncured default under the Agreement with respect to the Project, and (ii) 55-years from the date of this Note (Maturity Date), on which date the unpaid balance of principal with unpaid interest thereon shall be due and payable, along with reasonable attorney's fees and costs of collection incurred by Lender, if any, and without relief from valuation and appraisal laws.

1. This is a Residual Receipts Note. Principal and interest payments will be paid on a *peri passu* basis to the extent that Residual Receipts exist and are itemized in annual audited financial statements supplied to Lender with each payment hereunder, shall be due 180 days following the end of the year in which the Project is completed, and said payment shall continue each successive year thereafter until the Maturity Date, upon which all principal and interest shall be due and payable (prorated amounts to be paid for the first and last year of the Note). Any failure to make a payment required hereunder within ten (10) days after such payment is due shall constitute a default under the Agreement with respect to the Project and this Note. It shall not be a default hereunder if no payment was made because the Project Residual Receipts did not exist for any particular year. Additionally, any failure to timely submit to Lender annual audited financial statements with the management notes and residual receipts calculation within thirty (30) days after such financial statements are due shall constitute a default under the Agreement with respect to the Project and Note.

2. Residual Receipts means in each operating year 100% of the sum of: (i) all cash received by the Project from rents, lease payments, and all sources generally considered in the apartment industry to be "other income" (which does not include payments for optional services provided by BORROWER), (ii) payments under a Housing Assistance Program Section 8 Contract (or tenant vouchers) or Section 811 Contract, if any, excluding tenant security or other deposits required by law to be segregated and

restricted, and interest on reserves not available for distribution, and the net proceeds of any insurance (including rental interruption insurance), other than fire and extended coverage and title insurance, to the extent not reinvested, less the sum of: (i) all payments on account of any loans (including unpaid principal and accrued reasonable interest) made for the benefit of the Project by the BORROWER, (ii) loans made by the general partner of BORROWER to fund operating deficits or Project construction cost overages; (iii) loans made by the general partner of BORROWER to fund any loan shortfall; (iv) loans made by the investor limited partner or the developer to the Project; (v) asset management fees payable to the investor limited partner and/or general partner of BORROWER; (vi) deferred developer fees and “lease-up fees” ; (vii) any other fees payable to BORROWER or the general or limited partners of BORROWER; (iii) contributions to any prudent and reasonable cash reserves for working capital, operating expenses, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as may be reasonably required by the lenders to the Project for the operation of the Project not to exceed the amount required by the Project’s permanent lender, annually adjusted in proportion to the average increase of the following indices (a) the United States Bureau of Labor Statistics for Hourly Wage Rates of all workers in manufacturing, and (b) of all Commodity Wholesale Prices, said indices shall be re-defined to the mutual satisfaction of the parties in the event of change in form and basis of indices, all increases shall use the indices for calendar year 2010 as their base; and (iv) the payment of principal and interest, and any associated fees, expenses, and costs, with respect to any Senior Financing.

3. Operating Expenses means actual, reasonable and customary (for comparable quality, rehabilitated rental housing developments in Fresno County) costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the Project in a calendar year, including, without limitation: painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certificates, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings which are not paid from the capital replacement reserve, fees and expenses of property management and common area expenses, fees and expenses of accountants, attorneys and other professionals, the cost of social services, repayment of any completion or operating loans including any and all deferred fees (including developer fees and contractor fees) per the Budget, made to the BORROWER, its successors or assigns, and other actual operating costs and capital costs which are incurred and paid by the BORROWER, but which are not eligible for payment from reserve accounts.

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

5. 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.

6. Note Maturity Date means 55 years from the Note date.

7. 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 fourth (4<sup>th</sup>) position lien/encumbrance on the Property.

8. Time is of the essence. It will be a default under this Note if the 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 the 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 percent (2.0%) 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 the BORROWER and shall accept any cure offered by such limited partners on the same basis as it would accept a cure from Borrower.

9. 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.

10. 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.

11. The 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 Lender or 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 Lender or holder of this Note of its rights and remedies under this Note. All costs incurred by the Lender or 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 the BORROWER.

12. 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.

13. No delay or omission of the 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. The Lender may waive any of the conditions in this Note and no waiver shall be deemed to be a waiver of the 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 shall be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

14. 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.

15. The 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 the Lender; and the Lender will then be forever relieved from any liability or responsibility in the matter, but the Lender will retain all rights and powers given by this Note with respect to Property not transferred.

16. 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 shall be binding on and inure to the benefit of the BORROWER, Lender, and their respective successors and assigns.

17. The 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 the Lender and BORROWER may consent to in a writing duly signed by the BORROWER or Lender or its authorized agents.

18. This Note shall be nonrecourse to the BORROWER and all its constituent members and may be prepaid at any time without penalty. Neither the 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 the Lender shall have no right to seek or recover any deficiency amount from the BORROWER or any partner of the BORROWER.

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

**BORROWER**

Clovis 135 Osmun, LP  
A California limited partnership

Managing General Partner  
Central California Housing Corporation, a  
California Corporation (dba Affordable  
Housing Development Corporation)

By: \_\_\_\_\_  
Austin Herzog, President

Administrative General Partner  
Better Opportunities Building, Inc., a  
California non-profit public benefit corporation

By: \_\_\_\_\_  
Michael Duarte, Chief Executive Officer

(Attach notary certificate of acknowledgement for each signature)

**EXHIBIT F**

**EXEMPLAR DEED OF TRUST**

**Recording requested by and on behalf of:**

**CITY OF CLOVIS**

**WHEN RECORDED MAIL TO:**

City of Clovis  
Attn: Housing Program Manager  
1033 Fifth Street  
Clovis, California 93612

(Space above this line for Recorder's Use only)  
No recording or filing fee required. This document is exempt from  
fees pursuant to California Government Code §§ 6103, 27383.

APNs: 492-080-74, 492-080-85, 492-080-86, and 492-080-08 (portion)

### **DEED OF TRUST ASSIGNMENT OF RENTS**

THIS DEED OF TRUST (Deed of Trust) made this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between Clovis 135 Osmun, LP, a California limited partnership, ("Borrower"), \_\_\_\_\_ Title Company, a California Corporation ("Trustee"), and the City of Clovis, a California municipal corporation organized and existing under the laws of the State of California and whose address is 1033 Fifth Street, Clovis, California 93612 ("Beneficiary" or "Lender").

The 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 the Borrower's right, title, and interest now owned or hereafter acquired in the real property (Property) known as 135 Osmun, Clovis, CA 93612, located in Fresno County, California and more particularly described in EXHIBIT "A," attached hereto and incorporated herein by reference (the Borrower agrees that any greater interest to the Property 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 the Borrower in this Deed of Trust to collect and apply the rents, issues, and profits; and

The Borrower also irrevocably grants, transfers, and assigns to the Trustee, in trust, with power of sale, all of the Borrower's right, title and interest now owned or later for and 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; and

- (2) The rents, issues, profits, and proceeds relating to the foregoing; and
- (3) The Property to the extent not included in clauses (1) and (2) above.

TO SECURE, in order of priority that the Beneficiary determines:

- (1) Payment of the indebtedness evidenced by a note of the Borrower of even date with this Deed of Trust in the principal amount of One Million Four Hundred Eighty-One Thousand Two Hundred Eighty-One Dollars (\$1,481,281.00) (Note), payable to the 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 the Beneficiary or the Trustee pursuant to the terms of this Deed of Trust;
- (4) Performance of every obligation contained in this Deed of Trust, the Note, the Permanent Local Housing Allocator Program Agreement ("Program Agreement") ("PLHA Agreement") dated \_\_\_\_\_, 2024, and its related documents, the Declaration of Restrictions dated \_\_\_\_\_, 2024, 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.

The Borrower covenants that the 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. The Borrower covenants that the 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. The Borrower covenants that the Borrower will maintain and preserve the lien of this Deed of Trust until all the indebtedness under the Note is paid in full.

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

The Borrower represents and warrants to the 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 the Borrower, or any indenture, agreement, or any other instrument to which the Borrower is a party or by which the Borrower or any of its 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 the Borrower, except as contemplated by the provisions of the Loan Documents; and each of the Loan Documents, when executed and delivered to the Beneficiary, will constitute a valid obligation, enforceable in accordance with its terms.

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

**UNIFORM COVENANTS.** The Borrower and the Lender covenant and agree as follows:

1. Payment of Principal. The Borrower shall promptly pay when due the principal indebtedness evidenced by the Note. The Lender shall reuse repayments consistent with the PLHA guidelines.
2. Hazard Insurance. The Borrower, at its sole cost and expense, for the mutual benefit of the 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 the Lender may require and in such amounts and for such periods as the Lender may require as set forth in the PLHA Agreement referenced above. The insurance carrier providing the insurance shall be chosen by the Borrower subject to approval by the Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to the Lender and shall include a standard mortgage clause in favor of and in a form acceptable to the Lender. The 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, the Borrower shall give prompt notice to the insurance carrier and the Lender. The Lender may make proof of loss if not made promptly by the Borrower. If the Property is abandoned by the Borrower, or if the Borrower fails to respond to the Lender within thirty (30) days from the date notice is mailed by the Lender to the Borrower that the insurance carrier offers to settle a claim for insurance benefits, the Lender is authorized to collect and apply the insurance proceeds at the 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. The 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, the Borrower shall perform all of the 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.
4. Protection of Lender's Security. If the 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 the Lender's interest in the Property, then the Lender, at the Lender's option, upon notice to the Borrower, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect the Lender's interest. If the 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 the Borrower's and Lender's written agreement or applicable laws. Any amounts disbursed by the Lender pursuant to this section 4 shall become additional indebtedness of the Borrower secured by this Deed of Trust. Unless the Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from the Lender to the Borrower requesting payment thereof. Nothing contained in this section 4 shall require the Lender to incur any expense or take any action hereunder.
5. Inspection. The Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that the Lender shall provide the Borrower notice prior to any such inspection specifying reasonable cause therefore related to the 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 the 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. The extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by the Lender to any successor in interest of the Borrower shall not operate to release, in any manner, the liability of the original Borrower and the Borrower's successors in interest. The 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 the Borrower's successors in interest. Any forbearance by the 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 the Lender and the Borrower. All covenants and agreements of the Borrower shall be joint and several. Any borrower who co-signs this Deed of Trust, but does not execute the Note is: (a) co-signing this Deed of Trust only to grant and convey that the Borrower's interest in the Property of Trustee under the terms of this Deed of Trust, and (b) 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 the Beneficiary for making the Loan is the identity of the Borrower. The existence of any interest in the Property other than the interests of the Borrower and Beneficiary and any encumbrance permitted in this Deed of Trust, even though subordinate to the security interest of the Beneficiary, and the existence of any interest in the Borrower other than those of the present owners, would impair the Property and the security interest of the Beneficiary, and, therefore, except as provided herein or in the Loan Documents, the 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 the Beneficiary. The consent to one transaction by the Beneficiary shall not be deemed a waiver of the right to require consent to further or successive transactions. If the Borrower is a corporation, any sale, transfer, or disposition of fifty percent (50%) or more of the voting interest of the Borrower or of any entity that directly or indirectly owns or controls the Borrower, including, without limitation, the parent company of the Borrower, and the parent company of the parent company of the Borrower, will constitute a sale of the Property for purposes of this section. If the Borrower is a partnership any change or addition of a general partner of the Borrower, change of a partnership

interest of the Borrower with the exception of a limited partner transfer, which shall not require the Beneficiary's consent, or sale, transfer, or disposition of fifty percent (50%) or more of the voting interest or partnership interest of any general partner of the Borrower or of any corporation, partnership or entity that directly or indirectly owns or controls any general partner of the Borrower, including, without limitation, each parent company of a general partner of the Borrower and each parent company of any parent company of a general partner of the Borrower, will constitute a sale of the Property for purposes of this section. If the Borrower is a limited liability company, any change of the manager or any sale, transfer or disposition of fifty percent (50%) or more of the partnership interests of the Borrower, or disposition of fifty percent (50%) or more of the voting interest of the Borrower or of any corporation, partnership or entity that directly or indirectly owns or controls any member of the Borrower, including without limitations, each parent company of the Borrower and each parent company of any parent company of a member of the 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 the Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to the Borrower at the Property address or at such other address as the Borrower may designate by notice to the Lender as provided herein, and (b) any notice to the lender shall be given by certified mail to the Lender's address stated herein or to such other address as the Lender may designate by notice to the Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to the Borrower or Lender when given in the manner designated herein.
11. **Governing Law; Venue; 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. Venue for any judicial actions shall be in the Fresno County Superior Court or the United States District Court, Eastern District of California, as the case may be. 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.** The Borrower shall be furnished a copy of the Note and a conformed copy of the recorded Deed of Trust at the time of execution or after recordation thereof.

13. Acceleration; Remedies. Upon the Borrower's breach of any covenant or agreement of the 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 PLHA Program restrictions, the Lender prior to acceleration shall give notice to the Borrower as provided in section 10 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than ten (10) days from the date notice is mailed to the Borrower, by which such breach must be cured or thirty (30) days for a non-monetary default; 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 the 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 the Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the Lender, at the 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. The Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this section 13, including, but not limited to, reasonable attorney's fees. If the Lender invokes the power of sale, the Lender shall execute or cause the Trustee to execute a written notice of the occurrence of an event of default and of the 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. The Lender or the Trustee shall mail copies of such notice in the manner prescribed by applicable law. The 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, the Trustee, without demand on the 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. The 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. The Lender or the Lender's designee may purchase the Property at any sale. The Trustee shall deliver to the purchaser the 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. The 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, persons, or entities legally entitled thereto.
14. Borrower's Right to Reinstate. Notwithstanding the Lender's acceleration of the sums secured by this Deed of Trust due to the Borrower's breach, the Borrower shall have the right to have any proceedings begun by the Lender to enforce this Deed of Trust discontinued at any time prior to five 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) the Borrower pays the Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) the Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) the Borrower pays all reasonable expenses incurred by the Lender and Trustee in enforcing the covenants and agreements of Borrower in section 13 hereof, including but not limited to, reasonable attorney's fees; and (d) the Borrower takes such action as the Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and the Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by the 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. The sole recourse of the Lender under the Loan Documents for repayment of the Note shall be the exercise of its rights against the Property.
16. Withdrawal, Removal and/or Replacement. If applicable, the removal or replacement of any 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. The Beneficiary agrees that the lien of this Deed of Trust shall be subordinated to any senior lender 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, the Borrower hereby assigns to the Lender the rents of the Property, provided that the Borrower shall, prior to acceleration under section 13 or abandonment of the Property, have the right to collect and retain such rents as they become due and payable. Upon acceleration under section 13 hereunder or abandonment of the Property, the 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 the 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. The Lender and the receiver shall be liable to account only for those rents actually received.

19. Release of Deed and Note. Upon payment of all sums secured by this Deed of Trust, the Lender shall request the Trustee to surrender this Deed of Trust, and the notes evidencing indebtedness secured by this Deed of Trust to Trustee.
20. Substitute Trustee. At the Lender's option, the Lender may from time to time, appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by the Lender and recorded in the Fresno County Recorder's Office. The instrument shall contain the name of the original the 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. The 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) the 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, the 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, the Borrower's limited partners must remove one or both of the Borrower's general partners in order to cure such default, the Borrower's limited partners shall have an additional thirty (30) days following the effective date of such removal to cure such default. To the extent that there is a conflict between this section 22 and any remedy permitted by the PLHA Agreement, Loan Documents, or Loan, the terms of this section 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 the 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 Borrower and the Beneficiary.



- (d) The assignment by the 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 the Beneficiary.
- (e) Any of the following events:
  - (i) the filing of any claim or lien against the Property or any part 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 the Borrower, Beneficiary, any tenants of the Borrower, and any one listed in a title exception approved by the Beneficiary in writing; or
  - (iii) the sale, hypothecation, conveyance, or other disposition of the Property except with the express written approval of the Beneficiary, any of which will be an Event of Default because the Borrower's obligation to own and operate the Property is one of the inducements to the Beneficiary to make the Loan;
- (f) Default under any agreement to which the Borrower is a party, which agreement relates to the borrowing of money by the 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 the Borrower or any stockholder or partner of the Borrower, or the 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 the 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 the Beneficiary may:
  - (i) in person, by agent, or by a receiver, and without regard to the adequacy of security, the solvency of the Borrower, or the existence of waste, enter on and take possession of the Property or any part 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 the Beneficiary may 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 the 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 the Trustee or the Beneficiary will cause to be filed for record;
- (iv) with respect to any personal property, proceed as to both the real and personal property in accordance with the Beneficiary's rights and remedies in respect of the Property, or proceed to sell the personal property separately and without regard to the Property in accordance with the Beneficiary's rights and remedies; or
- (v) exercise any of these remedies in combination or any other remedy at law or in equity.

23. Protection of Security. If an Event of Default occurs and is continuing, the Beneficiary or Trustee, without notice to or demand upon the Borrower, and without releasing the 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 senior to this deed of Trust; and
- (d) pay expenses relating to the Property and its sale, employ counsel, and pay reasonable attorneys' fees.

The Borrower agrees to repay on demand all sums expended by the Trustee or the 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.

24. Effect of Assignment. The assignment of rents as provided herein will not impose on the Beneficiary any duty to produce rents, issues, or profits from the Property, or cause the 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.

The Beneficiary shall not be liable to the Borrower as a consequence of the exercise of the rights granted to the Beneficiary under this assignment or the failure of the Beneficiary to perform any obligation of the 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**

Clovis 135 Osmun, LP  
A California limited partnership

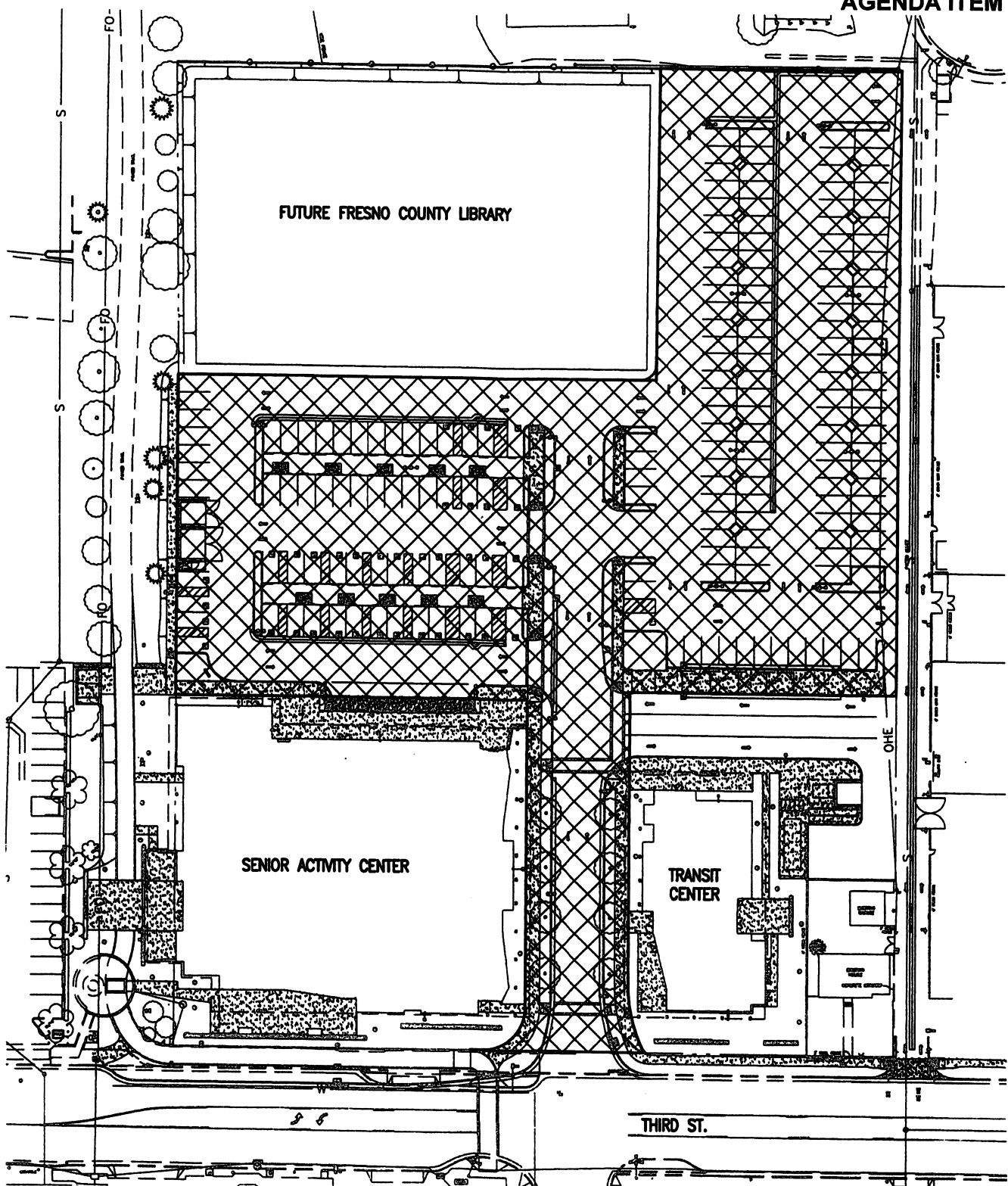
Managing General Partner  
Central California Housing Corporation, a  
California Corporation (dba Affordable  
Housing Development Corporation)

By: \_\_\_\_\_  
Austin Herzog, President

Administrative General Partner  
Better Opportunities Building, Inc., a  
California non-profit public benefit corporation

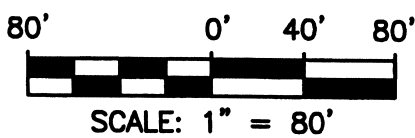
By: \_\_\_\_\_  
Michael Duarte, Chief Executive Officer

(Attach notary certificate of acknowledgement for each signature)



LEGEND

 ACCESS EASEMENT AREA IN LANDMARK SQUARE



<b>CITY of CLOVIS</b>	
PROJECT TITLE LANDMARK SQUARE ACCESS EASEMENT	PROJECT NO. <b>15-03</b>
SHEET DESCRIPTION EXHIBIT "A"	SHEET NO. <b>1 of 1</b>