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9/29/11

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

By: Mark Scott

Mark Scott

It's: City Manager

Date: 9-29-11

CITY OF FRESNO  
DISPOSITION AND DEVELOPMENT AGREEMENT  
AND  
HOME PROGRAM AGREEMENT

by and between

CITY OF FRESNO,  
a municipal corporation

and

AMCAL ALLIED FUND, L.P.  
a California limited partnership

regarding

"Allied Plaza Senior Apartments, Phase I"  
(APN: 470-052-02T Portion)  
717 South Seventh Street, Fresno, CA 93702

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**EXHIBITS**

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

**DISPOSITION AND DEVELOPMENT AGREEMENT  
AND  
HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT**

This Disposition and Development Agreement and HOME Investment Partnerships Program Agreement (hereinafter referred to as the "Agreement") dated for convenience this, Sept. 29, 2011, is entered by and between the CITY OF FRESNO, a municipal corporation, acting through its Development and Resource Management Department - Housing and Community Development Division (hereinafter referred to as the "CITY"), and AMCAL ALLIED FUND, L.P., a California limited partnership, in good standing with its principal office in Agoura Hills, California, (hereinafter referred to as "ALLIED").

**RECITALS**

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

B. The CITY and AMCAL Multi-Housing, Inc., are parties to an August 17, 2010 Exclusive Negotiation Agreement (herein referred to as "ENA"), pursuant to which AMCAL Multi-Housing, Inc., created a limited partnership to construct the proposed Allied Plaza Senior Apartments, Phase I, a fifty-one (51) unit apartment housing complex for seniors, and related improvements, of which eleven (11) units will be HOME-assisted Extremely Low- to Low Income Senior rental housing units, and one (1) manager's unit on the Property conveyed by the CITY more specifically identified in EXHIBIT "A" which will be owned in fee by ALLIED.

C. The Affordable Project will further the City's goal to increase the supply of Affordable Rental Senior Housing within the City of Fresno, the CITY desires, among other things, to assist ALLIED by providing a total of up to Eight Hundred Eighteen Thousand Thirty Four dollars and 00/100 (\$818,034.00) in annually allocated and available fiscal year 2012 funds for a residual receipts HOME Program Loan (hereinafter referred to as "Loan"), for the term of fifty-five (55) years, for payment of HOME eligible Project costs, as further identified in the Project Budget and Cash Flow Statement EXHIBIT "C", to be secured by the Affordable Project Property, the Affordable Rental Housing covenants, and upon the terms and conditions in this Agreement. The loan interest will be at three percent (3%) annually. Principal and interest will be payable from Residual Receipts at times prior to the Maturity Date and in full upon the Maturity Date, as provided in EXHIBIT "F" hereto.

D. ALLIED desires to act as owner and developer exercising effective project control, as to the construction of the fifty-two (52) unit apartment complex of which eleven (11) units shall be constructed and preserved as Extremely Low- to Low-Income Senior Rental Housing as defined by the HOME Investment Partnerships Program and related on-site and off-site improvements, hereinafter referred to as the "Project", as more particularly described in the Project Description and Schedule attached hereto as EXHIBIT "B", incorporated herein.

E. On April 26, 2007, the CITY completed an environmental review of the Project pursuant to the National Environmental Policy Act ("NEPA") resulting in a Finding of No Significant Impact. On July 11, 2007, the CITY received related federal approval for release of HOME funds pursuant to 24 CFR Part 58. Additionally, this Project has been assessed under the California Environmental Quality Act (CEQA) as provided through escrow.

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

G. The CITY and ALLIED have determined that the HOME Assisted Units constitutes routine programmatic/grantee lender activities utilizing available and allocated program/grantee funding, outside the reach of California Constitution Article XXXIV and enabling legislation.

H. On August 15, 2011, the Housing and Community Development Commission of the City of Fresno reviewed this Agreement and recommended approval.

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

## ARTICLE 1 DEFINITIONS

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

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

1.2 Acquisition means vesting of the Property in fee title.

1.3 Affirmative Marketing means a good faith effort to attract eligible persons of all racial, ethnic and gender groups, in the housing market area, to rent the proposed Affordable Rental Housing Project units that are proposed for construction on the eligible Property, as hereinafter defined.

1.4 Affordability Period means the minimum period of fifty-five (55) years commencing from the date the CITY has entered project and tenant information into HUD's

Integrated Disbursement and Information System (IDIS), as more fully described in the Declaration of Restrictions, attached hereto as EXHIBIT "D".

1.5 Affordable Project. means the construction of a fifty-one (51) unit apartment complex and related on-site and off-site improvements, all as described in the Project Description and Schedule attached here to and incorporated herein as EXHIBIT "B", to be located upon the Affordable Project Property. Eleven (11) of the Units shall be floating HOME-units and rented to Extremely Low- to Low-Income Seniors in accordance with the HOME Program requirements.

1.6 Affordable Project Property. means the HOME Program eligible property located at 717 S. Seventh Street (APN: 470-052-02T portion), Fresno, California, more specifically described in the attached EXHIBIT "A", to be acquired by ALLIED, and developed for Affordable Senior Rental Housing

1.7 Affordable Senior Rental Housing. means the rental housing units to be constructed on the Affordable Project Property of which eleven (11) floating units will be required to meet the affordability requirements of 24 CFR 92.252.

1.8 Budget means the pro-forma Project Budget and Cash Flow Statement, attached hereto as EXHIBIT "C", as may be amended upon the approval of the CITY's Housing and Community Development Division Manager, provided, any increase in HOME Funds hereunder requires City Council Approval.

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

1.10 CFR means the Code of Federal Regulations.

1.11 Commencement of Construction. means the time ALLIED's construction contractor begins substantial physical work on the Affordable Project Property, including, without limitation, delivery of materials and any work, beyond maintenance of the Property in its status quo condition, and not later than sixty (60) calendar days following the CITY's approval of commencement of construction.

1.12 Completion Date. means the date the CITY issues a Certificate of Completion for the Affordable Project. The Completion Date for the Affordable Project is identified in EXHIBIT "B".

1.13 Debt Service. means payments made in a calendar year pursuant to the financing obtained for the acquisition, construction, operation and/or ownership of the Affordable Project, but excluding payments made pursuant to the Note.

1.14 Declaration of Restrictions. means the Declaration of Restrictions in the form attached hereto as EXHIBIT "D", which shall be recorded against the Property no later than the date of disbursement of Loan proceeds, setting out the requirements of this Agreement which shall run with the land.

1.15 Deed of Trust means that standard, subordinate no worse than third (3<sup>rd</sup>) position Deed of Trust including assignment of rents and security agreement given by ALLIED, as Trustor, to the CITY as beneficiary, issued through an escrow established by ALLIED at its sole cost and expense with a title company acceptable to CITY, recorded against the Property, insured in the full amount of the Loan and acceptable to the City Attorney, as well as any amendments to, modifications of and restatements of said Deed of Trust. The terms of any such Deed of Trust are hereby incorporated into this Agreement by this reference.

1.16 Eligible Costs means any and all HOME Program eligible Project costs as may be reimbursed/paid by the Loan, consistent with the Budget, attached as EXHIBIT "C", allowable under 24 CFR Part 92, as specified in 24 CFR 92.205 and 92.206, and not disallowed by 24 CFR 92.214, provided, however, that costs incurred in connection with any activity that is determined to be ineligible under the Program by HUD or the CITY shall not constitute Eligible Costs.

1.17 Event of Default shall have the meaning assigned to such term under Section 11.1 hereunder.

1.18 Extremely Low Income means families whose annual income does not exceed thirty percent (30%) of the median income as established by HUD for the Fresno, California area, except as HUD may establish income ceilings higher or lower than thirty percent (30%) of the median for the area on the basis of HUD findings that such variations are necessary.

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

1.20 Funding Sources means (i) Equity raised from the syndication of State or Federal Low Income Housing Tax Credits, (ii) the CITY's HOME Funds, (iii) any other financing sources described in the Project Budget.

1.21 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.

1.22 HOME Investment Partnerships Funds (also referred to in this Agreement as HOME Funds or HOME Program Funds) means the HOME Program monies including the Loan, in an amount not to exceed the sum of Eight Hundred Eighteen Thousand Thirty Four dollars and 00/100 (\$818,034.00) to be used for HOME Program eligible Project costs.

1.23 Household. means one or more persons occupying a Unit in the proposed Affordable Rental Senior Housing Project.

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

1.25 Loan. means the non-assumable (except as set forth in Section 6.11 below) loan of HOME Funds, in an amount not to exceed the sum of Eight Hundred Eighteen Thousand Thirty Four dollars and 00/100 (\$818,034.00) made available by the CITY to the Project pursuant to this Agreement, as more specifically described in the Budget and in the Promissory Note attached hereto as EXHIBITS "C" and "F" respectively.

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

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

1.28 Note. means the non-assumable (except as set forth in Section 6.11 below) Project Note in a principal amount not to exceed the HOME Program per unit cap (24 C.F.R. 92.250) as determined by the CITY, given by ALLIED as promissor, in favor of the CITY as promisee, evidencing the Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement, secured by a standard Deed of Trust as 3<sup>rd</sup> position lien upon the Property, naming the CITY as beneficiary and provided to the CITY no later than the date of Project funding hereunder, an exemplar of which Note is attached hereto as EXHIBIT "F", and incorporated herein, as well as any amendments to, modifications of and restatements of said Note consented to by CITY.

1.29 Program Income. has the meaning provided in the HOME program including 24 CFR 92.503.

1.30 Project Schedule. means the schedule for completion of the Project included within the EXHIBIT "B" Project Description and Schedule, consistent with the above Project Completion Date.

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

1.32 Residual Receipts. means Residual Receipts as defined in EXHIBIT "F".

1.33 Senior. means a person age fifty-five (55) years or older or other qualified permanent resident as defined in California Civil Code Section 51.3.

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

1.35 Senior Lender. means one or more lenders providing the Senior Financing for the Affordable Project.

1.36 Unit. means a dwelling unit of the Rental Housing.

1.37 Very Low. means families whose annual income does not exceed fifty percent (50%) of the median income as established by HUD for the Fresno, California area, except as HUD may establish income ceilings higher or lower than fifty percent (50%) of the median for the area on the basis of HUD findings that such variations are necessary.

## ARTICLE 2 TRANSFER OF PROPERTY

2.1 Purchase and Sale. The CITY agrees to sell the Affordable Project Property to ALLIED and ALLIED agrees to purchase the Affordable Project Property from the CITY upon the terms and conditions set forth in this Agreement.

2.2 Purchase Price. The purchase price for the Affordable Project Property shall be Three Hundred Sixty One Thousand One Hundred dollars and 00/100 (\$361,100.00) ("Purchase Price"). ALLIED and the CITY agree that the Purchase Price is based on an October 2, 2006 fair market value.

The purchase price shall be paid as follows:

A. ALLIED and the CITY, shall open escrow (the "Escrow") with Chicago Title Company, 7330 N. Palm Avenue, Suite 101, Fresno, CA 93711 (Cherie Zuniga, Senior Escrow Officer at 559-451-3700). At the close of escrow, ALLIED shall deliver the Note to the CITY in the full amount of the Eight Hundred Eighteen Thousand Thirty Four dollars and 00/100 (\$818,034.00) for full satisfaction of the Property Purchase Price and remaining Loan amount.

B. ALLIED shall pay all escrow fees and closing costs, including document preparation fees and recording fees, and the premium for the buyer's policy of title insurance.

2.3 Closing. Closing means the exchange of documents as described in this Article 2, and that Escrow is otherwise able to close in accordance with the parties' instructions, and the Escrow Holder holds and can record the documents described in this Agreement, and the Title Company is irrevocably and unconditionally committed to issue the Title Policy, and ALLIED has delivered the duly executed Note and Deed of Trust to the Escrow Holder.

2.4 Condition of Title. Upon the Closing, the CITY shall convey to ALLIED marketable and insurable fee simple title to the Property by duly executing and acknowledged standard Title Company form grant deed(s) ("Deed"). Evidence of delivery of marketable and insurable fee simple title shall be the issuance by Chicago Title Company (the "Title Company") to ALLIED an ALTA Owner's Policy of Title Insurance insuring fee simple title to the Property, ALLIED will accept title with exceptions one through eleven as shown on that certain Preliminary Title Report prepared by the Chicago Title Company under Order Number 11-45032307-A-CW, dated April 25, 2011 (the "Title Policy").

2.5 Conditions Precedent to Closing. The following are conditions precedent to Escrow close, and performance of obligation under this Agreement (the "Project Conditions Precedent"). The Project Conditions Precedent are intended for the benefit of both parties and may be waived only by both parties in writing. In the event of the failure of the satisfaction of any of the Project Conditions Precedent, either party shall have the right, but not the obligation, in its sole and absolute discretion to terminate the Escrow and documents therein, i.e., a "no project option", with respect to the Project without liability for breach or otherwise.

A. The City Council shall have reviewed the California Environmental Quality Act (CEQA) assessment including any mitigated measures therein, adopted the CEQA findings based upon Council's independent review and approved Project entitlements and based thereon made through supplemental instructions in Escrow any modifications to the documents in Escrow in Council's discretion and consented close of escrow in writing to the Escrow Officer.

B. ALLIED shall have received the unconditional commitment of Title Company to issue the Title Policy upon the Closing in the form approved by ALLIED as buyer.

C. ALLIED shall have approved the amount of the construction financing required for the development of the Housing Project.

D. ALLIED shall have given written notice to the CITY within ninety days (90) after the effective date of this Agreement that it has inspected the Property and shall accept the Property in AS IS condition. If ALLIED, after its inspection of the Property and review of an environmental reports disapproves of the Property's environmental or other conditions or aspect of the Property or Project in its sole and absolute discretion, then ALLIED may terminate the Escrow by written notice to the Escrow Officer without liability for breach or otherwise.

E. ALLIED shall confirm that the CITY has received all necessary approvals from HUD, received the HOME funds and be irrevocably committed to fund the Loan at Closing.

F. ALLIED has submitted the Project Finance Plan to the CITY and the CITY has approved the Project Finance Plan.

G. ALLIED shall concurrently close the construction period financing contemplated in the Budget in form and substance acceptable to ALLIED.

2.6 Access to the Property. ALLIED shall be permitted to enter the Property during reasonable daylight hours, upon ALLIED's satisfaction of liability insurance requirements of this Agreement. ALLIED will give the CITY 24 hours' written notice of its intent to enter onto the Property.

2.7 Joint Escrow Instructions. This Agreement, when signed by both parties and deposited with the Escrow Holder will be the parties' initial joint escrow instructions. ALLIED and the CITY shall sign any other form instructions required by the Escrow Holder. The CITY and ALLIED will deposit all instruments, documents, money, and other items with the Escrow Holder that are: (i) identified in this Agreement, or (ii) required by the Escrow Holder to effect the closing. Either party may tender supplemental escrow instructions consistent with this agreement.

2.8 Escrow Closing. The parties intend for the Closing to take place not later than one hundred and seventy-five (175) days after ALLIED's receipt of Low Income Housing Tax Credits (the "Closing Date").

A. At or before the Closing, the CITY shall deliver to the Escrow Holder or ALLIED the following:

- (i) A duly executed and acknowledged Deed(s); and
- (ii) CITY's written consent to close Escrow and any other instrument, records or correspondence called for hereunder which have not previously been delivered.

B. At or before Closing, ALLIED shall deliver to the Escrow Holder or the CITY the following:

- (i) A duly executed (and acknowledged where required) Loan Documents; and
- (ii) Any other instrument, records or correspondence called for hereunder which have not previously been delivered.

C. As further condition to closing, ALLIED shall have received the unconditional commitment of Title Company to issue the Title Policy upon the Closing in the form approved by ALLIED as buyer.

2.9 Possession. Possession of the Property shall be delivered to ALLIED on the Closing Date free of any and all other tenancies and/or occupancy rights. The parties acknowledge and agree that each has inspected the Property and determined it is vacant and unoccupied.

## ARTICLE 3 TERMS

3.1 Loan of HOME Funds. The CITY agrees to provide the Loan of HOME Funds to ALLIED in an amount not to exceed Eight Hundred Eighteen Thousand Thirty Four dollars and 00/100 (\$818,034.00) under the terms and conditions provided in this Agreement. The HOME Funds shall only be used for payment of HOME eligible costs. The Loan shall be a credit in Escrow for the Property purchase price with the balance disbursed by City outside of Escrow as provided in this Agreement.

3.2 Loan Documents. ALLIED shall execute and deliver to the CITY the Loan Documents including the Note and the Deed of Trust that shall be recorded against the Property, as provided for in this Agreement.

3.3 Term of Agreement. This Agreement is effective upon the date of Escrow close and shall remain in force for the duration of the Affordability Period unless earlier terminated as provided herein. After the fifty-five (55) year Affordability Period, this Agreement will expire.

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

3.5 Incorporation of Documents. ALLIED's proposal dated March 4, 2010, the CITY Council approved Minutes of September 29, 2011, finally approving this Agreement, the Loan Documents, the Act and HUD regulations at 24 CFR Part 92, and all exhibits, attachments, documents and instruments referenced herein, as now in effect and as may be amended from time to time, constitute part of this Agreement and are incorporated herein by reference. All such documents have been provided to the parties herewith or have been otherwise provided to/procured by the parties and reviewed by each of them prior to execution hereof.

3.5 Covenants of ALLIED. ALLIED, jointly and severally for themselves and their respective assigns covenant and agree to comply with all the terms and conditions of this Agreement and the requirements of 24 CFR Part 92.

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

## ARTICLE 4 GENERAL REPRESENTATIONS AND WARRANTIES OF ALLIED

4.1 Existence and Qualification. ALLIED represents and warrants as of the date hereof, that it is a duly organized California limited partnership in good standing with its principal office in Agoura Hills, California, and has the requisite power, right and legal authority to execute, deliver, and perform its obligations under this Agreement and has taken all actions necessary to authorize the execution, deliver, performance, and observance of its obligations under this Agreement. This Agreement, when executed and delivered, shall constitute the legal, valid, and binding obligations of ALLIED enforceable against ALLIED 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.

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

4.3 No Conflict of Interest. ALLIED represent and warrant as of the date hereof that no official, officer, agent, or employee of the CITY directly or indirectly owns or controls any interest in ALLIED, and no person, directly or indirectly owning or controlling any interest in ALLIED, is an official, officer, agent, or employee of the CITY.

4.4 No Legal Bar. ALLIED represents and warrants as of the date hereof that the execution, delivery, performance, or observance by ALLIED of this Agreement will not, to the best of ALLIED'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 ALLIED; or (c) any mortgage, indenture, security agreement, contract, undertaking, or other agreement or instrument to which ALLIED is/are a party or that is binding on any of its properties or assets, the result of which would materially or substantially impair ALLIED's ability to perform and discharge its/their obligations or its/their ability to complete the Project under this Agreement.

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

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

4.7 Assurance of Governmental Approvals and Licenses. ALLIED represents and warrants, as of the date hereof, that ALLIED has obtained and, to the best of ALLIED'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 ALLIED for the Project as of the date hereof.

## **ARTICLE 5 HOME PROGRAM REPRESENTATION AND WARRANTIES BY ALLIED**

ALLIED, for itself and its development team, represents and warrants that:

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

A. At least five percent (5%) of the dwelling units, or at least three (3) units, whichever is greater, must be constructed to be accessible for persons with mobility disabilities. An additional two percent (2%) of the dwelling units, or at least one (1) unit, whichever is greater, must be accessible for persons with hearing or visual disabilities. These units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) or a standard that is equivalent or stricter. These mandates can be found in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

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

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

- vii. Provide usable kitchens and bathrooms such that an individual who uses a wheelchair can maneuver about the space.

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

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

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

5.2 Affirmative Marketing. ALLIED warrants, covenants and agrees that it shall comply with all affirmative marketing requirements, including without limitation, those set out at 24 CFR 92.350, 24 CFR 92.351, in order to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market. ALLIED shall be responsible for complying with the CITY's "Affirmative Marketing Policy" document, incorporated herein, as amended from time to time. ALLIED shall maintain records of actions taken to affirmatively market units, and to assess the results of these actions.

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

5.4 Compliance with Agreement. ALLIED warrants, covenants and agrees that, in accordance with the requirements of 24 CFR 92.252 and 24 CFR Part 85, upon any uncured default by ALLIED within the meaning of Article 11 of this Agreement, the CITY may suspend or terminate this Agreement and all other agreements with ALLIED without waiver or limitation of rights/remedies otherwise available to the CITY.

5.5 Conflict of Interest. ALLIED warrants, covenants and agrees that it shall comply with the Conflict of Interest requirements of 24 CFR 92.356 including, without limitation, that no officer, employee, agent or consultant of ALLIED (other than an employee or agent of ALLIED who occupies a unit as the project manager or maintenance worker) may occupy a Project Unit. ALLIED understands and acknowledges that no employee, agent, consultant, officer or elected official or appointed official of the CITY, who exercises or has exercised any functions or responsibilities with respect to the Project, or

who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for anyone with which that person has family or business ties, during his or her tenure or for one year thereafter. To the extent provided at 24 CFR 92.356(f), no owner, developer or sponsor of the Project, or officer, employee, agent or consultant thereof, may occupy a Project Unit.

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

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

A. The CITY and ALLIED hereby declares their understanding and intent that the covenants and restrictions set forth herein directly benefit the land by: a) enhancing and increasing the enjoyment and ownership of the proposed Project by certain Extremely Low- and Low-Income Senior Households, and b) making possible the obtaining of advantageous financing for construction.

B. ALLIED covenants and agrees that until the expiration of the Affordability Period it shall cause the Affordable Rental Housing to be used for Affordable Housing for Extremely Low- to Low-Income Senior Households.

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

D. All present and future owners of the Senior Rental Housing 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 Senior Rental Housing shall constitute an agreement that the covenants and restrictions, as may be amended or supplemented from time to time, are accepted and ratified by such future owners, tenant or occupant, and all such covenants and restrictions shall be covenants running with the land and shall bind any person having at any time any interest or estate in the Rental Housing, all as though such covenants and restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

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

5.8 Displacement of Persons. ALLIED warrants, covenants and agrees that pursuant to 24 CFR 92.353, it will take all reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations and farms).

5.9 Initial and Annual Income Certification. ALLIED warrants, covenants and agrees that it shall comply with the procedures for annual income determinations at 24 CFR 92.203. ALLIED shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from each tenant Household renting any Unit. ALLIED shall make a good faith effort to verify that the income provided by an applicant or occupying Senior Household in an income certification is accurate by taking one or more of the following steps as part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income verification form from the applicant's current employer; (3) obtain an income verification form from the Social Security Administration and California Department of Social Services if the applicant receives assistance from either of such agencies, or (4) obtain another form of independent verification. Copies of household income certification and verification must be available for review and approval by the CITY. ALLIED further warrants, covenants and agrees that it shall cooperate with the CITY in the CITY's income certification/affordability monitoring activities.

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

5.11 Minority Outreach Activities. ALLIED warrants, covenants and agrees that it shall comply with all federal laws and regulations described in Subpart H of 24 CFR Part

92, including, without limitation, any requirement that ALLIED comply with the CITY's minority outreach program.

5.12 Other Laws and Regulations. ALLIED warrants, covenants and agrees that, in addition to complying with the federal laws and regulations already cited in this Agreement, ALLIED has reviewed, and shall comply with, all other federal laws and regulations that apply to the HOME Program, including, without limitation, requirements of 24 CFR 58.6 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128) and the following:

A. ALLIED does not intend to use any financing that is secured by a mortgage insured by HUD in connection with the Project as part of its acquisition and/or construction of this Project.

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

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

D. The property standards at 24 C.F.R. 92.251.

E. The Project "Labor" requirements, as applicable, of 24 C.F.R. 92.354 including Davis Bacon prevailing wage requirements (40 U.S.C. 276a - 276a-7), as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

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

G. ALLIED 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 E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

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

I. The provisions of the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

J. The provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C.

1352).

K. The provision of E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 C.F.R. part 24.

L. The provisions of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), in accordance with the Act and with HUD's rules at 24 C.F.R. part 24, subpart F.

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

N. Executive Order 11063 on Equal Opportunity and Housing.

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

P. The Housing and Community Development Act of 1974.

Q. Clean Water Requirements 33 U.S.C. 1251.

R. Civil Rights Requirements, 29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 C.F.R. Part 1630, 41 C.F.R. Parts 60 et seq.

5.13 Faith Based Activities. ALLIED warrants, covenants and agrees that it shall not engage in any prohibited activities described in 24 C.F.R. 92.257.

5.14 Reporting Requirements. ALLIED warrants, covenants and agrees that it shall submit performance reports to the CITY as detailed in Section 8.19. Furthermore, ALLIED agree to provide, at the sole cost of ALLIED, annual audited Financial Statements for the Project expenses and ongoing financial transactions which occur as a result of this Agreement as detailed in Sections 6.6 and 6.7. ALLIED agrees to account for the expenditure of HOME Funds using generally accepted accounting principles, which financial documentation shall be made available to the CITY and HUD upon their respective written request(s).

5.15 Housing Affordability. ALLIED warrants, covenants and agrees that the Project will meet the Affordable Rental Housing income targeting and other requirements of 24 C.F.R. 92.252 during the Affordability Period. The Units shall, at a minimum, be rented to and occupied by, or, if vacant, available for rental and occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than thirty percent (30%) for Extremely Low-Income and eighty percent (80%) for Low-Income, of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent with HOME Program regulations, for the Affordability Period except upon foreclosure by a lender or transfer in lieu of foreclosure following default under a Deed of Trust. However, if at any time following transfer by foreclosure or transfer in lieu of foreclosure, but still during the Affordability Period, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes such owner of record or those whom such owner of record has or had family or business ties, obtains an ownership interest in the Project or Property, the Affordability Period shall be

revived according to its original terms. In the event ALLIED fails to comply with this Section or the Affordability Period is not revived following transfer by foreclosure or transfer in lieu of foreclosure, ALLIED shall return to the CITY all HOME Funds disbursed to ALLIED by the CITY.

5.16 Terminated Projects(s). ALLIED 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 HOME Program assistance funding to the Project Units, and the City may seek available relief.

## **ARTICLE 6 COVENANTS AND AGREEMENTS OF ALLIED**

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

6.1 Adequate Repair and Maintenance. After construction of the Project is complete, ALLIED shall maintain the Project and Property in compliance with all applicable codes, laws, and ordinances.

6.2 Affordable Rental Housing. ALLIED covenants and agrees that the Project shall constitute Affordable Housing with at least eleven (11) units preserved as Extremely Low- to Low-Income Rental Senior Housing (as variously provided at 24 C.F.R. 92.252), as more specifically provided herein, during the entire Affordability Period. This covenant as to Affordable Housing shall remain in effect and run with and restrict the land during the entirety of the Affordability Period. In the event that ALLIED fails to comply with the time period in which the Project must constitute Affordable Housing, the CITY shall without waiver or limitation, be entitled to injunctive relief, as ALLIED acknowledges that damages are not an adequate remedy at law for such breach.

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

Additionally, ALLIED agrees:

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

B. Not to transport to or from the proposed project site(s), or use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, or about the project site(s), or surrounding real estate, or transport to or from the project site(s), or surrounding real estate, any hazardous or toxic chemicals, materials, substance,

or wastes or allow any person or entity to do so except in such amounts and under such terms and conditions permitted by applicable laws, rules, regulations, ordinances, and statutes;

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

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

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

3. ALLIED'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 ALLIED or any other party's use or release of any hazardous or toxic chemicals, materials, substance, or wastes on the eligible Property regardless of cause or origin, including any and all liability arising out of or relating to any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature.

6.4 Compliance With Laws. ALLIED shall be responsible for and promptly and faithfully comply with, conform to and obey all present and future federal, state and local statutes, regulations, rules, ordinances and other legal requirements applicable by reason of this Agreement or otherwise to the Affordable Project including without limitation as to prevailing wage requirements. ALLIED acknowledges that the use of HOME Funds subjects the Affordable Project to extensive federal regulation and covenants and agrees that it shall comply with, conform to and obey (and take such steps as are required of ALLIED to enable the CITY to comply with, conform to and obey) all federal statutes, regulations, rules and policies applicable to the Project. The CITY and ALLIED acknowledge that: (i) pursuant to 24 C.F.R. 92.354, a contract for the construction (rehabilitation or new construction) of housing that includes fewer than 12 units assisted with HOME funds need not contain a provision requiring the payment of the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a- 5), to all laborers and mechanics employed in the development of any part of the housing, or the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), and (ii) pursuant to Cal. Labor Code 1720, the public participation in the project that would otherwise meet the criteria of a public work for which State prevailing is required under Cal. Lab. Code 1720 et seq. is exempt where the public funding is in the form of below-market interest rate loans

for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income. Nonetheless ALLIED shall be solely responsible for determining and effectuating compliance. Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall be construed as imposing any independent prevailing wage requirements that are different from those imposed by applicable federal or state law.

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

6.6 Financial Statements and Audits. ALLIED, as a subrecipient of federal financial assistance, is required to comply with the provisions of the Single Audit Act of 1984 (31 U.S.C. Sections 7501 et seq.), as amended. Annually, within one hundred and eighty (180) days following: 1) the end of fiscal year(s) in which the HOME Funds are disbursed hereunder, and 2) the end of fiscal year(s) in which this contract shall terminate, and otherwise upon the CITY's, written request during the term of this Agreement, ALLIED, at its sole cost and expense shall submit to the CITY.

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

B. Audited Financial Statements covering the income and expenses, and the financial transactions for the Project during the prior fiscal year.

6.7 Inspection and Audit of Books, Records and Documents. ALLIED shall be accountable to the CITY for all HOME Funds disbursed for this project pursuant to this Agreement. Any duly authorized representative of the CITY, the State, or HUD shall, at all reasonable times, upon reasonable prior written notice 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 ALLIED 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. ALLIED will maintain books and records for the Project using generally accepted accounting principles. ALLIED agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with HOME Funds and to keep all invoices, receipts and other documents related to expenditures financed with HOME Funds for not less than six (6) years after the expiration or termination of the Agreement. Books and records must be kept accurate and current. For purposes of this section, "books, records and documents" include, without limitation; plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, funding applications, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda, and electronically stored versions of the foregoing. This section shall survive the termination of this Agreement.

B. The CITY may audit any conditions relating to this Agreement at the CITY's expense, unless such audit shows a significant discrepancy in information reported by ALLIED in which case ALLIED shall bear the cost of such audit. ALLIED shall also comply with any applicable audit requirements of 24 C.F.R. 92.506. This section shall survive the termination of this Agreement.

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

6.8 Inspection of Property. Any duly authorized representative of the CITY, the State, or HUD shall, at all reasonable times, have access and the right to inspect the Property until completion of the Project and expiration of the applicable Affordability Period within seventy-two (72) hours written notice, subject to the rights of the tenants.

6.9 No Other Liens. ALLIED shall not create or incur, or suffer to be created or incurred, or to exist, any additional mortgage, pledge, encumbrance, lien, charge, or other security interest of any kind on the eligible Property, other than those related to construction, permanent, or pre-development loans in relation to the Affordable Rental Senior Housing Project consistent with the attached EXHIBIT "C" Project Budget (as such may be amended pursuant to Section 1.8 above), without the prior written consent of the CITY.

6.10 Nondiscrimination. ALLIED 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 ALLIED 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.

6.11 Ownership. Except as required in pursuit hereof, ALLIED shall not sell, lease, transfer, assign or otherwise dispose of ("Transfer") all or any material part of any interest it might hold in the Property or the Project without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed. "Transfer" shall exclude the leasing of any single Unit in the Project.

A. ALLIED may request the City's written approval of the granting of the security interests in the Property described in Section 6.9 above.

B. ALLIED anticipates syndicating the Low Income Housing Tax Credits that will be generated by the Project, which syndication will require the transfer of limited partnership interests. The CITY hereby approves the initial Transfer of the limited partnership interest to a tax credit investor and future Transfers of the limited partner interest to affiliates of the investor, provided that in each instance the CITY is given prior written notice, and the City approves of such transfer in writing. The CITY also hereby approves the removal of ALLIED's general partners by ALLIED's limited partners for cause in accordance with the terms of the developer's partnership agreement.

C. The City hereby approves a Transfer of the Property from ALLIED to Foundation for Affordable Housing V, Inc., a non-profit affiliate of ALLIED, and an assumption of the Loan by such transferee at or before the end of the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986 (26 U.S.C. Section 42 (i)(1)), pursuant to an option agreement as described in ALLIED's partnership agreement, provided that the City is in each instance given prior written notice thereof, that there are then no defaults hereunder, and the City approves such transfer in writing.

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

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

## **ARTICLE 7 DISBURSEMENT OF HOME FUNDS**

Without waiver of limitation, the parties agree as follows, regarding disbursement of HOME Funds:

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

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

7.3 Use of HOME Program Funds. ALLIED warrants covenants and agrees that it shall request HOME Program Funds only for HOME eligible costs as identified in the Budget, attached hereto as EXHIBIT "C", including costs allowable under 24 C.F.R. 92.206, aggregating not more than Eight Hundred Eighteen Thousand Thirty Four dollars and 00/100 (\$818,034.00). The CITY's obligations shall in no event exceed the HOME Funds amount specified in this Agreement.

A. If any such Funds shall be determined to have been requested and/or used by ALLIED for something other than for HOME eligible costs, and subject to the notice and cure provisions of Section 11.2 hereunder, an equal amount from nonpublic funds shall become immediately due and payable by ALLIED to the CITY; provided, however, that ALLIED shall, subject to its full cooperation with the CITY, be entitled to participate in any opportunity to remedy, contest, or appeal such determination.

B. In the event HOME Funds are requested to reimburse/pay for Eligible Costs which subsequently lose eligibility as Eligible Costs, ALLIED shall immediately return such HOME Funds to the CITY.

C. The CITY will disburse HOME Funds, only to ALLIED through proper invoicing, for HOME eligible costs of the Project as provided in this Article 7.

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

A. There exists no Event of Default as provided in Article 11, 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. ALLIED has submitted evidence that the combined monies from the Funding Sources and the HOME Funds are not less than Eight Million Eight Hundred Eleven Thousand Nine Hundred Fourteen dollars and 00/100 (\$8,811,914) attached hereto in EXHIBIT "C", the amount necessary to complete the Project;

C. The CITY has approved the requested payment of HOME eligible Project/Property costs.

D. ALLIED has acquired insurance coverage and delivered to the CITY evidence of insurance as required in Article 10.

E. ALLIED is current with its compliance of all reporting requirements set forth in this Agreement.

F. ALLIED has provided the CITY with a written request for HOME Funds (in CITY-approved Form), for payment of HOME eligible Project costs, and detailing such Eligible Costs applicable to the request.

G. The CITY has received Certification required by Section 7.6 of this Agreement.

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

7.5 Request for and Disbursement of HOME Program Funds. ALLIED shall request disbursement of HOME Funds using the CITY's Request for Disbursement of

Funds Form, or a similar document. ALLIED shall only request a maximum of Eight Hundred Eighteen Thousand Thirty Four dollars and 00/100 (\$818,034.00) in HOME Program assistance. All requests should provide in detail such Eligible Costs applicable to the request. All requests for HOME funds disbursement shall be accompanied with the Certification required by Section 7.6 of this Agreement.

7.6 ALLIED Certification. ALLIED shall submit to the CITY a written certification that, as of the date of the Request for Disbursement ("Certification"):

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

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

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

D. The Disbursement requested will be used solely for reimbursement of eligible costs and must be supported by the itemized obligations that have been properly incurred and are properly chargeable in connection with the Project.

7.7 Disbursement of Funds. Disbursements of HOME Program Loan proceeds shall occur within thirty (30) days after the CITY receives the Certification and to the extent of annually allocated and available HOME Funds.

## **ARTICLE 8 DEVELOPMENT AND CONSTRUCTION OF PROJECT**

Without waiver of limitation, the parties agree as follows:

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

8.2 Commencement and Completion of Project. ALLIED shall commence and complete construction in accordance with the Project Description and Schedule as identified in EXHIBIT "B".

8.3 Contracts and Subcontracts. Consistent with Section 6.3, all demolition, hazardous waste abatement, construction work and professional services for the Affordable Project shall be performed by persons or entities licensed or otherwise legally authorized to perform the applicable work or service in the State of California and the City of Fresno. ALLIED shall provide the CITY with copies of all agreements it has entered into with any and all general contractors for the Affordable Project. ALLIED shall require that each such general contractor agreement contain a provision whereby the party(ies) to the agreement

other than the ALLIED agree to: (i) notify the CITY immediately of any event of default by ALLIED thereunder; (ii) notify the CITY immediately of the filing of a mechanic's lien; (iii) notify the CITY immediately of termination or cancellation of the agreement; and (iv) provide the CITY, upon the CITY's request, an Estoppel Certificate certifying that the agreement is in full force and effect and ALLIED is not in default thereunder. ALLIED 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.

8.4 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, ALLIED 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 Unit. Such work or repair shall commence within ninety (90) days after the insurance proceeds are made available to ALLIED and shall be complete within one (1) year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, ALLIED shall make up the deficiency.

8.5 Fees, Taxes and Other Levies. ALLIED 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, ALLIED 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, ALLIED shall deposit with the CITY any funds or other forms of assurances that the CITY, in good faith, may determine from time to time are appropriate to protect the CITY from the consequences of the contest being unsuccessful.

8.6 Financing. ALLIED shall promptly inform the CITY of any new financing or funding, and ALLIED shall provide the CITY copies of all agreements with any and all Funding Sources for this Project. ALLIED agrees to notify the CITY immediately of termination or cancellation of any such agreement(s) or receipt of notice of default/default thereunder. ALLIED shall comply with all obligations of any such agreement(s) with any and all Funding Sources until the respective expiration of such agreement(s). In the event ALLIED fails to comply with its obligations of this section, the loan shall become immediately due and payable as provided for in this Agreement. This section shall survive expiration or termination of this Agreement.

8.7 Identification Signage. Before the start of construction, ALLIED shall place a poster or sign, with a minimum four feet by four feet in size, identifying the City of Fresno Development and Resource Management Department, Housing and Community Development Division as a Project participant. The sign shall also include the CITY's Housing Logo, as well as the Equal Housing Opportunity logo, as mandated by HUD. Font size shall be a minimum of 4 inches. The poster/sign shall be appropriately placed, and shall be in place throughout the Project construction.

8.8 Inspections. ALLIED shall permit, facilitate, and require its contractors and consultants to permit and facilitate observation and inspection at the job site by the CITY and other public authorities during reasonable business hours, for determining compliance with this Agreement, including without limitation those biennial on-site inspections required of the CITY by 24 C.F.R. 92.504(d).

8.9 Utilities. ALLIED 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 Affordable Project.

8.10 Insurance and Bonds. Upon CITY's reasonable request, ALLIED shall submit for CITY approval bonds, certificates and applicable endorsements for all insurance and bonds required by this Agreement in accordance with Article 10.

8.11 Mechanic's Liens and Stop Notices. If any claim of lien is filed against the Property or a stop notice affecting any financing, HOME Program Funds or Funding Sources for the Project is served on the CITY or any other third party in connection with the Project, ALLIED 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 ALLIED fails to discharge, bond or otherwise satisfy the CITY with respect to any lien, encumbrance, charge or claim referred to in this Section 8.10, 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 ALLIED's expense. Alternatively, the CITY may require ALLIED 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 ALLIED. ALLIED 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.

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

8.13 Plans and Specifications.

A. ALLIED has submitted to the CITY preliminary plans and specifications

for the Project under Conditional Use Permit file number C-11-128 ("Affordable Preliminary Plans"). ALLIED will reconstruct the Project in full conformance with the CITY-approved Conditional Use Permit and plans and specifications and modifications thereto approved by the CITY. The DEVELOPER shall obtain the CITY's prior written approval for any modifications to the plans and specifications.

B. The HOME Agreement shall contain by reference the design and site plan of the Project; such design must be approved by the City Council with the HOME Agreement.

8.14 Before Commencement of Construction, ALLIED submit to the CITY, for its review and approval, the final Plans and Specifications for the Project. The DEVELOPER will construct the Affordable Rental Housing 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 Plans and Specifications.

8.15 Project Responsibilities/Public Work-Prevailing Wage Requirements. ALLIED shall be solely responsible for all aspects of ALLIED's conduct in connection with the Project, including but not limited to, compliance with all local, state and federal laws including, without limitation, as to prevailing wage and public bidding requirements. This Project is a "public work" project for federal purposes including Davis Bacon and Related Acts wage requirements absent written direction/determination otherwise by HUD or a court of competent jurisdiction. This project is a "public work" project for state purposes including California Labor Code Section 1720 et seq. wage requirements, to which Section 1771 applies, absent written direction/determination otherwise by the California Department of Industrial Relations or a court of competent jurisdiction. Based thereon ALLIED shall cause the Project work to be performed as a "public work." The Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification, or type of workman needed in the execution of contracts for the City. A copy of the resolution is on file at the Office of the City Clerk. Actual wage schedules are available upon request at City's Construction Management Office. Without limiting the foregoing, ALLIED 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 contractors, subcontractors, consultants and suppliers. Any review or inspection undertaken by the CITY with reference to the Project and/or payroll monitoring/auditing is solely for the purpose of determining whether ALLIED is properly discharging its obligation to the CITY, and shall not be relied upon by ALLIED or by any third parties as a warranty or representation by the CITY as to governmental compliance and/or the quality of the work completed for the Project.

8.16 Property Condition. ALLIED shall maintain the Affordable Project Property 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. ALLIED and those taking direction under ALLIED 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 Affordable

Project Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to on-site improvements; and (v) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials.

8.17 Quality of Work. ALLIED shall ensure that construction of the proposed Project employs building materials of a quality suitable for the requirements of the Project. ALLIED shall cause completion of construction of the proposed Project on the Property in full conformance with applicable local, state and federal laws, statutes, regulations, and building and housing codes.

8.18 Relocation. If and to the extent that construction of the proposed Project results in the permanent or temporary displacement of residential tenants, homeowners or businesses, ALLIED shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. ALLIED 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.

8.19 Reporting Requirements. ALLIED shall submit to the CITY the following Project reports:

A. From the date of Commencement of the Project, until issuance of the final Certificate of Completion, ALLIED shall submit a Quarterly Report, in a form provided by the CITY, which will include, at a minimum, the following information: progress of the Project and affirmative marketing efforts (as applicable). The Quarterly Reports are due fifteen (15) days after each March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup>, during said period.

B. Annually, beginning on the first day of the month following the CITY's issuance of the final Certificate of Completion, and continuing until the termination of the Agreement, ALLIED shall submit an Annual Report to the CITY, in a form approved by the CITY. The Annual Report shall include, at a minimum, the following information: 1) the rents, 2) the annual income and the family size of the Households; 3) the date of tenancy commenced for each rental Unit; 4) tenant recertification information, and 5) an owner certification from an officer of ALLIED that the Project is in compliance with the Affordable Rental Housing Requirements, and such other information the CITY may be required by law to obtain. ALLIED shall provide any additional information reasonably requested by the CITY.

C. Annually, beginning on the first day of the month following the CITY's issuance of the final Certificate of Completion, and continuing until the expiration of the Agreement, ALLIED shall submit proof of insurance as required in Article 10.

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

A. The time for performance of provisions of the Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by: war, insurrection, strike or other labor disputes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by third parties concerning or arising out of this Agreement, or unseasonable weather conditions. An extension of time for any of the above specified causes will be granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is accepted by the other party in writing. In any event, the Project must be completed no later than one hundred eighty (180) calendar days after the scheduled completion date specified in this Agreement, notwithstanding any delay caused by that included in this section.

B. Any and all extensions hereunder shall be by mutual written agreement by the CITY's Housing and Community Development Division Manager and ALLIED, shall not cumulatively exceed one hundred eighty (180) days.

8.21 Certificate of Completion. Upon completion of the construction of the Project, ALLIED shall certify in writing to the CITY that the Affordable Rental Senior Housing has been constructed in accordance with the plans and specifications approved by the CITY, and Conditional Use Permit. Upon completion of the Affordable Rental Senior Housing, ALLIED shall also submit to the CITY a cost-certifying final budget where ALLIED 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 ALLIED is in compliance with all of ALLIED's construction obligations, as specified in this Agreement, the CITY shall furnish, within thirty (30) calendar days of a written request by ALLIED, a recordable Certificate of Completion for the Project in the form attached hereto as EXHIBIT "E". The CITY will not unreasonably withhold or delay furnishing the Certificate of Completion. If the CITY fails to provide the Certificate of Completion within the specified time, it shall provide ALLIED with a written statement indicating in what respects ALLIED has failed to complete the Project in conformance with this Agreement or has otherwise failed to comply with the terms of this Agreement, and what measures ALLIED will need to take or what standards it will need to meet in order to obtain the Certificate of Completion. Upon ALLIED taking the specified measures and meeting the specified standards, ALLIED will certify to the CITY in writing of such compliance and the CITY shall deliver the recordable Certificate of Completion to ALLIED in accordance with the provisions of this section.

## **ARTICLE 9 PROJECT OPERATIONS**

9.1 Operation of the Project. ALLIED shall lease, operate and manage the Project in full conformity with the terms of this Agreement.

9.2 Occupancy Requirements. Of the fifty-one (51) Project Units, six (6) shall be rented and occupied by, or if vacant, available for rental occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than thirty percent (30%), thirty-three (33) shall be occupied by, or if vacant, available for rental occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater

that fifty (50%), and twelve (12) shall be rented and occupied by, or if vacant, available for rental occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than sixty (60%), of the most recent annual median income, calculated and published by HUD for the Fresno Metropolitan Statistical Area, applicable to such household's size, and at an affordable price consistent with HOME Program regulations (as variously provided at 24 CFR 92.252) for the term of this Agreement. ALLIED shall comply with the income targeting requirements of 24 CFR 92.216. One (1) Project unit shall be reserved as an on-site property manager unit.

9.3 Leasing the Project. Before leasing any Units, ALLIED shall submit its proposed form of Lease for CITY's review and approval. ALLIED covenant and agree to utilize only Leases that have been approved in advance by CITY. The CITY shall respond to ALLIED submission of a sample Lease within thirty (30) days. Should CITY not respond within thirty (30) days of Lease submittal, ALLIED shall be authorized to use the submitted sample Lease. Additionally, ALLIED agrees not to terminate the tenancy or to refuse to renew a Lease with a tenant of the Affordable Rental Housing assisted with HOME Funds except for serious or repeated violation of the terms and conditions of the Lease, for violation of applicable federal, state, or local law, or for other good cause. Any such termination or refusal to renew must be preceded by not less than 30 days written notice served by ALLIED or its authorized management entity upon the tenant specifying the grounds for such action. ALLIED agrees it shall annually report to CITY the number of Leases that were not renewed or terminated and the reason for such non-renewal or termination.

9.4 Lease Provisions. In addition to the requirements of 24 C.F.R. 92.253, the Leases are subject to the following:

A. ALLIED shall include in Leases for all Units, provisions which authorize ALLIED to immediately terminate the tenancy of any Household of which one or more members misrepresented any fact material as to the qualification as a Extremely Low- to Low-Income Household. Each such Lease shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for Extremely Low- to Low-Income Families such Household's rent may be subject to increase to the lesser of: 1) the amount payable by tenant under state or local law; or 2) thirty percent (30%) of the Household's actual adjusted monthly income.

B. In addition, the leases for Units shall provide that if the Affordable Project is subject to state or federal rules governing Low Income Housing Tax Credits, the provision of those rules regarding continued occupancy by, and increases in Rent for, Households whose incomes exceed the eligible income limitation shall apply in place of the provisions set forth in subsection (A) above.

9.5 Final Management Plan. Before leasing the Affordable Rental Housing and at least sixty (60) calendar days prior to the Project Completion Date, ALLIED shall submit to the CITY, for review and approval, a plan for marketing and managing the proposed Affordable Rental Housing ("Final Management Plan"). The Final Management Plan shall address in detail how ALLIED or its designated property management entity plans to market the availability of Units to prospective tenants and how ALLIED plans to certify the eligibility of potential tenants. The Final Management Plan shall also address how ALLIED

and/or the property management entity plan to manage and maintain the Affordable Rental Housing, and shall include appropriate financial information and documentation. The Final Management Plan shall contain detailed descriptions of policies and procedures with respect to tenant selections and evictions. Topics to be covered in these procedures shall include at a minimum the following:

- Interviewing procedures for prospective tenants;
- Previous rental history of tenants with references;
- Credit reports and checks;
- Criminal background checks;
- Deposit amounts, purpose, use and refund policy;
- Employment/Income verification;
- Occupancy restrictions;
- Income Limit;
- Equal Housing Opportunity Statement;
- Restrictions on use of the premises; and
- Tenant/Landlord dispute resolution procedures.

The Final Management Plan shall contain copies of all standardized forms associated with the above listed topics. The Final Management Plan shall include a form Lease agreement that ALLIED proposes to enter into with Project tenants. ALLIED shall abide by the terms of this Final Management Plan, approved by the CITY, in marketing, managing and maintaining the Housing.

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

9.6 Property Management. With respect to the Project, ALLIED shall comply with the following:

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

9.7 Maintenance and Security. ALLIED shall at its own expense maintain the Affordable Rental Housing in good condition, in good repair and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of the Unit occupants. ALLIED shall not commit or permit any waste on or to the Affordable Rental Housing, and shall prevent and/or rectify any physical deterioration of the housing. ALLIED shall maintain the housing in conformance with all applicable federal, state and local laws, ordinances, codes

and regulations, the Final Management Plan, and this Agreement.

9.8 Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to senior individuals who are income eligible. ALLIED shall not illegally discriminate or segregate in the development, construction, use, enjoyment, occupancy or conveyance of any part of the Affordable Rental Senior Housing Project or Property on the basis of race, color, ancestry, national origin, religion, sex, age, marital status, family status, source of income/rental assistance subsidy, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), sexual orientation, or any other arbitrary basis. ALLIED shall otherwise comply with all applicable local, state and federal laws concerning nondiscrimination in housing. ALLIED nor any person claiming under or through ALLIED, shall establish or permit any such practice or practices of illegal discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants or vendees of any Unit or in connection with employment of persons for the construction of any Unit. All deeds or contracts made or entered into by ALLIED as to the Units or the housing project or portion thereof, shall contain covenants concerning nondiscrimination consistent with this section. ALLIED shall include a statement in all advertisements, notices and signs for availability of Units for rent to the effect that ALLIED is an Equal Housing Opportunity Provider.

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

9.9 Rent Schedule and Utility Allowances. ALLIED covenants and agrees not to charge rent for Units in an amount which exceeds those rents prescribed in the HOME Program requirements applicable to Affordable Housing in the Fresno, California area, as established by HUD, and further covenants and agrees not to impose a monthly allowance for utility services to tenants of such Units in excess of an amount approved by HUD in accordance with 24 C.F.R. 92.252. ALLIED agrees to furnish to the CITY a certificate setting forth the maximum monthly rentals for Units and the monthly allowances for utilities and services to be charged during any annual period until the expiration of the Affordability Period. ALLIED shall re-examine the income of each tenant Household living in the Unit on an annual basis.

## **ARTICLE 10 INSURANCE AND INDEMNITY**

Without waiver of limitation, the parties agree as follows regarding ALLIED's insurance and indemnity obligations:

10.1 Indemnification. ALLIED shall indemnify, hold harmless and defend the CITY, HUD and each of their 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, HUD, ALLIED 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. ALLIED's obligation under the preceding sentence shall apply regardless of whether the CITY, HUD or any of their officers, officials, employees, agents or volunteers

are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of the CITY, HUD or any of their officers, officials, employees, agents or volunteers.

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

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

10.2 Insurance. Throughout the life of this Agreement, ALLIED shall itself and/or through its consultant(s), assignee(s), nominee(s), contractors and subcontractors pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with (an) insurance company(ies) either (1) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (2) authorized by the CITY's Risk Manager. The following policies of insurance are required:

A. Until issuance of Certificate(s) of Completion, BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the Affordable Project with no coinsurance penalty provisions.

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

1. The above described policy(ies) of insurance shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice has been given to CITY an unrestricted thirty (30) day written notice in favor of the CITY, of policy cancellation, change or reduction of coverage. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, change or reduction in coverage, ALLIED or its contractors/subcontractors, as the case may be, shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event the policy is due to expire during the term of this Agreement, ALLIED shall provide a new certificate, and applicable endorsements, a new certificate evidencing renewal of such policy shall be provided not less than fifteen (15) days prior to the expiration date of the expiring policy. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, ALLIED or its contractors/subcontractors, as the case may be, shall file with the CITY a certified copy of the new or renewal policy and certificates for such policy.

2. The Builders Risk (Course of Construction) and Property Insurance policies shall name the CITY as loss payee. The insurance required herein shall contain no special limitations on the scope of protection afforded to the City.

3. If at any time during the life of this Agreement or any extension, ALLIED fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, until notice is received by the CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the CITY. Any failure to maintain the required insurance, subject to notice and cure requirements herein, shall be sufficient cause for the CITY to terminate this Agreement.

10.3 Bonds. ALLIED shall pay for and maintain good and sufficient surety bonds from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California and Treasury-listed, in a form satisfactory to the CITY and naming the CITY as Obligee.

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

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

C. In lieu of the bonds required above, CITY, in its sole discretion, may accept from ALLIED an Irrevocable Standby Letter of Credit issued with the CITY named as the sole beneficiary in the amount(s) of the bonds required above. The Irrevocable Standby Letter of Credit is to be issued by a bank, and in a form, acceptable to CITY. This Irrevocable Standby Letter of Credit shall be maintained by ALLIED in full force and effect until CITY is provided with a recorded Notice of Completion for construction of the Project and shall be subject to and governed by the laws of the State of California."

## **ARTICLE 11 DEFAULT AND REMEDIES**

11.1 Events of Default. The parties agree that each of the following shall constitute an "Event of Default" for purposes of this Agreement after the cure period in Section 11.2 has expired without a cure:

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

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

C. Except as otherwise provided in this Agreement, the failure of ALLIED to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: 1) ALLIED's substantial deviation in the Project work specified in the Project Description as identified in this Agreement, without the CITY's prior written consent; 2) ALLIED's use of defective or unauthorized materials or defective workmanship in pursuit of the Project; 3) ALLIED's failure to commence or complete the Project, as specified in this Agreement, unless delay is permitted under Section 8.20 of this Agreement; 4) ALLIED's cessation of the Project for a period of more than fifteen (15) consecutive days (other than as provided at Section 8.20 of this Agreement) prior to submitting to the CITY, pursuant to Section 8.21, certification that the Project is complete; 5) any material adverse change in the condition of ALLIED 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) ALLIED's failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY's request; or 7) ALLIED's failure to substantially comply with any federal, state or local laws or applicable CITY restrictions governing the Project, including but not limited to provisions of this Agreement pertaining to equal employment opportunity, nondiscrimination and lead-based paint;

D. Any representation, warranty, or certificate given or furnished by or on behalf of ALLIED shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that ALLIED 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 ALLIED inadvertence, ALLIED 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. ALLIED shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within fourteen (14) days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within fourteen (14) days;

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

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

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

I. Any substantial or continuous breach by ALLIED of any material obligation owed by ALLIED imposed by any other agreement with respect to the financing, development, construction or operation of the Project, whether or not the CITY is a party to such agreement.

11.2 Notice of Default and Opportunity to Cure. The CITY shall give written notice to ALLIED 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, ALLIED 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 ALLIED shall have the right to cure any defaults hereunder and that notice and cure rights hereunder shall extend to any and all partners of ALLIED that are previously identified in writing delivered to the CITY in the manner provided in this Agreement.

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

- A. Terminate this Agreement immediately upon written notice to ALLIED;
- B. Bring an action in equitable relief: 1) seeking specific performance by ALLIED 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.

11.4 Cure by Limited Partner. Any cure tendered by ALLIED's limited partner shall be accepted or rejected on the same term and conditions as any cure.

## **ARTICLE 12 GENERAL PROVISIONS**

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

12.1 Amendments. No modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by the parties hereto. The CITY recognizes that other Project funders and equity investors may require revisions to the Loan Documents to be consistent with their funding and investing requirements. The

CITY agrees to reasonably consider and negotiate as to any reasonable amendments to this Agreement to address such requirements, subject to any necessary City Council approval.

12.2 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.

12.3 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.

12.4 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.

12.5 Disclaimer of Relationship. Nothing contained in this Agreement, nor any act of the CITY or of ALLIED, 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.

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

12.7 Effective Date. This Agreement shall be effective upon the close of Escrow following City Council approval to close Escrow.

12.8 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.

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

12.10 Expenses Incurred Upon Event of Default. ALLIED 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 ALLIED under this Agreement.

12.11 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.

12.12 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.

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

12.14 No Assignment or Succession. Except as may be otherwise expressly provided by this Agreement, neither this Agreement, nor any interest of ALLIED in, under, or to this Agreement, or the Project, may be assigned or transferred by ALLIED without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed. Any assignment without consent is null and void.

12.15 No Third-Party Beneficiary. No contractor, subcontractor, mechanic, materialman, laborer, vendor, or other person hired or retained by ALLIED 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: 1) that they shall look to ALLIED as their sole source of recovery if not paid, and 2) 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.

12.16 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 ALLIED 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 ALLIED in any case shall entitle ALLIED 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.

12.17 Nonreliance. ALLIED 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.

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

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

If to ALLIED: AMCAL ALLIED FUND, L.P.  
c/o AMCAL Multi-Housing, Inc.  
30141 Agoura Road, Suite 100  
Agoura Hills, CA 91301

12.19 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.

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

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

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

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

CITY OF FRESNO, a Municipal Corporation

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

Date: 9-29-11

ATTEST:  
REBECCA E. KLISCH  
City Clerk

By: Rebecca E. Klisch  
~~Deputy~~

Date: 9-29-11

APPROVED AS TO FORM:  
JAMES SANCHEZ  
City Attorney

By: R. Lyle  
Senior Deputy City Attorney

Date: 9-29-11

AMCAL ALLIED FUND, L.P.  
a California limited partnership

By: AMCAL Multi-Housing, Inc.  
a California Corporation;  
it's General Partner  
By: Arjun Nagarkatti  
Arjun Nagarkatti, President  
(Attach notary certificate of acknowledgment)

Date: \_\_\_\_\_

By: Foundation for Affordable Housing V,  
Inc., a California nonprofit public  
benefit corporation, its General Partner  
By: \_\_\_\_\_  
Deborah A. Willard, President  
(Attach notary certificate of acknowledgment)

Date: \_\_\_\_\_

Attachments:

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

## ACKNOWLEDGMENT

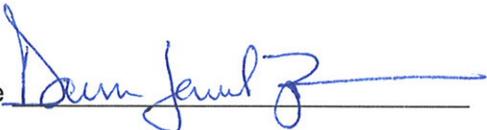
State of California  
County of Los Angeles )

On September 26, 2011 before me, Dawn Janel Zusman, Notary Public  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)



## EXHIBIT A: PROPERTY DESCRIPTION

### Legal Description (717 South Seventh Street Portion)

#### PHASE 1:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

#### PORTION OF PARCEL 2:

THAT PORTION OF KENMOORE PARK, ACCORDING THE MAP THEREOF RECORDED NOVEMBER 8, 1911 IN BOOK 7 PAGE 4 OF RECORD OF SURVEYS AND THAT PORTION OF LINCOLN HILL ADDITION, FRESNO COUNTY RECORDS IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

**COMMENCING** AT THE NORTH ¼ COR OF SECTION 11, T.14S, R.20E. M.D.B&M. THENCE SOUTH 89°29'08" EAST ALONG THE NORTH LINE OF SAID SECTION 11, A DISTANCE OF 391.78 FEET, THENCE SOUTH 00°25'07" WEST, A DISTANCE OF 200.23 FEET TO THE **TRUE POINT OF BEGINNING**, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID PARCEL "1".

THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID PARCEL "1", NORTH 89°39'33" WEST, A DISTANCE OF 83.82 FEET, THENCE NORTHERLY ALONG THE WEST LINE OF SAID PARCEL "A", NORTH 00°29'22" EAST, A DISTANCE OF 150 FEET TO A POINT, SAID POINT ALSO BEING THE NORTHEAST CORNER OF PARCEL "1", THENCE SOUTH 89°29'06" EAST, A DISTANCE OF 250 FEET, THENCE SOUTH 00°29'22" WEST, A DISTANCE OF 267.25 FEET, THENCE NORTH 89°29'06" WEST, A DISTANCE OF 101.56 FEET, THENCE NORTH 00°30'54" EAST, A DISTANCE OF 3.50 FEET, THENCE NORTH 89°29'06" WEST, A DISTANCE OF 232.12 FEET, THENCE NORTH 00°25'07" EAST, A DISTANCE OF 113.50 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 1.74 ACRES MORE OR LESS.

PORTION OF APN: 470-052-02T

## EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE

### I. PROJECT DESCRIPTION

The Project consists of the acquisition of property, construction of related on-site and off-site improvements, and construction of fifty-one (51) one- and two-bedroom affordable senior housing units (and one (1) manager unit) of which eleven (11) will be HOME-Assisted and preserved as Extremely Low- to Low-Income Senior Housing in accordance with the chart below:

HOME FUNDED UNITS	
% of Median	Units
30% or less	2
45%	4
50%	4
60%	1
<b>Totals</b>	<b>11</b>

One (1) two-bedroom unit will be designated as an on-site property manager unit.

HOME Funds will be made available by the CITY for payment of HOME eligible costs not to exceed the lesser of Eight Hundred Eighteen Thousand Thirty Four dollars and 00/100 (\$818,034.00), and the aggregate HOME Program per unit cap (24 C.F.R. 92.250) for the eleven (11) HOME-assisted Units as determined by the CITY, as needed, for HOME eligible project development costs.

### II. PROJECT SCHEDULE:

Start Construction:	November 15, 2012
Complete Construction:	December 13, 2013
Complete Lease Up:	March 1, 2014

## EXHIBIT C: BUDGET AND CASH FLOW STATEMENT

	Total Development Costs	Residential Total	Funding Sources					
			HOME	RDA	Tax Credit Equity	Constr./ Perm Loan		
<b>Acquisition Costs:</b>								
Purchase Price	361,000		361,000					
Closing, Title & Recording	20,000		20,000					
<b>SUBTOTAL</b>	<b>381,000</b>		<b>381,000</b>					
<b>Construction</b>								
Basic Construction Contract	3,729,722	3,593,588		136,134	3,593,588			
Bond Premium	34,023				34,023			
Off-site improvements	264,202			264,202				
Infrastructure Improvements								
General Requirements	327,939					327,939		
Contractor Overhead	132,815					132,815		
Contractor Profit	132,815					132,815		
Construction Contingency	241,446				241,446			
<b>SUBTOTAL</b>	<b>4,862,962</b>			<b>400,336</b>	<b>3,869,057</b>	<b>593,569</b>		
<b>Development</b>								
Appraisal	10,000				10,000			
Architect/Engineer	835,000			689,698	145,302			
Boundary & Topographic Surv	15,000				15,000			
Legal	70,000				70,000			
Developer Fee	1,050,651				1,002,107	48,544		
Market Study	8,000				8,000			
<b>SUBTOTAL</b>	<b>1,988,651</b>			<b>689,698</b>	<b>1,250,409</b>	<b>48,544</b>		
<b>Other Development</b>								
Real Estate Tax	9,025				9,025			
Insurance	58,660				58,660			
Relocation	0							
Permits, Fees & Hookups	127,500			127,500				
Impact/Mitigation Fees	739,500		457,034	282,466				
Construction Loan Fees	32,858				32,858			
Construction Interest	198,572				198,572			
Origination Fee	55,159				55,159			
Other Accrued Interest HA								
LIHTC Fees	44,731				44,731			
Environmental Audit								
Accounting/Audit	30,000				30,000			
Soft Cost Contingency	52,250				52,250			
Marketing/Leasing Expenses	84,150				84,150			
Operating Reserves	143,727					143,727		
Replacement Reserves:	12,750				12,750			
<b>SUBTOTAL</b>	<b>1,588,882</b>		<b>457,034</b>	<b>409,966</b>	<b>578,155</b>	<b>143,727</b>		
<b>Total Development Costs</b>	<b>8,821,495</b>		<b>838,034</b>	<b>1,500,000</b>	<b>5,697,621</b>	<b>785,840</b>		



Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30	Year 31	Year 32	Year 33	Year 34	Year 35	Year 36	Year 37		
2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	
451,037	462,384	473,523	485,771	497,816	510,263	523,123	535,201	548,606	553,346	577,429	591,665	608,932	637,374	663,541	683,305	703,542	721,130	739,158	757,637				
5,318	5,451	5,587	5,727	5,870	6,017	6,167	6,322	6,480	6,602	6,802	7,002	7,202	7,414	7,630	7,852	8,081	8,316	8,557	8,804	9,057	9,316	9,581	9,852
258,405	267,812	278,511	289,458	300,786	312,538	324,763	337,502	350,803	364,623	378,917	393,742	409,145	425,174	441,886	459,331	477,568	496,658	516,652	537,612	559,608	582,702	606,957	632,437
22,320	23,391	24,576	25,189	26,189	26,464	27,126	27,642	28,014	28,469	29,212	29,692	30,591	31,438	32,244	33,065	33,877	34,724	35,592	36,452	37,324	38,194	39,079	39,968
433,585	444,424	455,535	466,923	478,597	490,561	502,625	514,836	528,261	541,988	555,005	568,307	581,923	597,761	614,844	633,200	652,859	673,844	695,196	716,948	739,130	761,779	784,824	808,294
4,674	4,814	4,959	5,107	5,261	5,418	5,581	5,748	5,921	6,208	6,281	6,470	6,584	6,884	7,070	7,262	7,500	7,752	7,957	8,156	8,442	8,726	9,006	9,286
6,232	6,415	6,611	6,810	7,014	7,224	7,441	7,664	7,894	8,131	8,375	8,628	8,886	9,152	9,426	9,708	10,000	10,300	10,609	10,926	11,250	11,580	11,916	12,258
7,011	7,221	7,438	7,661	7,891	8,128	8,371	8,622	8,881	9,148	9,422	9,705	9,995	10,286	10,585	10,892	11,200	11,516	11,840	12,170	12,506	12,848	13,196	13,542
7,011	7,221	7,438	7,661	7,891	8,128	8,371	8,622	8,881	9,148	9,422	9,705	9,995	10,286	10,585	10,892	11,200	11,516	11,840	12,170	12,506	12,848	13,196	13,542
33,372	34,372	35,404	36,468	37,560	38,687	39,846	41,043	42,274	43,542	44,849	46,194	47,579	49,007	50,478	51,992	53,550	55,152	56,800	58,494	60,234	62,020	63,852	65,730
27,338	28,372	29,438	30,536	31,666	32,828	34,022	35,248	36,507	37,797	39,129	40,504	41,922	43,384	44,891	46,443	48,041	49,685	51,375	53,111	54,894	56,724	58,600	60,522
54,775	57,443	60,077	62,775	65,549	68,398	71,322	74,321	77,395	80,544	83,768	87,067	90,441	93,890	97,414	100,913	104,487	108,136	111,860	115,659	119,534	123,485	127,512	131,615
48,555	51,391	54,281	57,225	60,224	63,278	66,387	69,551	72,770	76,044	79,373	82,757	86,196	89,690	93,239	96,843	100,502	104,216	107,985	111,809	115,688	119,622	123,611	127,655
38,549	40,115	41,751	43,458	45,236	47,084	48,999	50,981	52,930	54,947	56,932	58,985	61,006	63,094	65,150	67,173	69,163	71,120	73,044	74,935	76,793	78,618	80,410	82,169
9,887	10,184	10,489	10,804	11,128	11,462	11,806	12,160	12,525	12,901	13,285	13,679	14,082	14,494	14,914	15,343	15,781	16,228	16,684	17,149	17,624	18,108	18,601	19,103
12,764	12,832	13,223	13,919	14,625	14,465	14,882	15,329	15,799	16,282	16,779	17,289	17,811	18,345	18,891	19,448	20,016	20,595	21,185	21,786	22,398	23,021	23,655	24,300
10,127	10,431	10,744	11,066	11,396	11,734	12,082	12,450	12,828	13,216	13,614	14,022	14,440	14,868	15,306	15,754	16,212	16,680	17,158	17,646	18,144	18,652	19,170	19,698
11,685	12,035	12,398	12,768	13,144	13,526	13,914	14,307	14,705	15,108	15,516	15,929	16,346	16,768	17,195	17,627	18,064	18,506	18,953	19,405	19,862	20,324	20,791	21,263
10,127	10,431	10,744	11,066	11,396	11,734	12,082	12,450	12,828	13,216	13,614	14,022	14,440	14,868	15,306	15,754	16,212	16,680	17,158	17,646	18,144	18,652	19,170	19,698
2,337	2,407	2,478	2,554	2,630	2,709	2,794	2,874	2,959	3,049	3,141	3,235	3,332	3,432	3,535	3,641	3,750	3,862	3,976	4,094	4,216	4,341	4,469	4,600
13,243	13,645	14,049	14,471	14,905	15,342	15,781	16,221	16,672	17,124	17,577	18,031	18,486	18,942	19,400	19,859	20,319	20,780	21,242	21,705	22,169	22,634	23,100	23,567
7,911	7,221	7,438	7,661	7,891	8,128	8,371	8,622	8,881	9,148	9,422	9,705	9,995	10,286	10,585	10,892	11,200	11,516	11,840	12,170	12,506	12,848	13,196	13,542
2,234	2,301	2,370	2,441	2,515	2,590	2,668	2,748	2,830	2,915	3,002	3,093	3,185	3,281	3,379	3,481	3,585	3,693	3,804	3,918	4,035	4,156	4,280	4,406
25,239	25,992	26,776	27,579	28,400	29,239	30,107	31,004	31,932	32,890	33,878	34,896	35,944	37,022	38,130	39,268	40,436	41,634	42,862	44,120	45,408	46,726	48,074	49,452
12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750
347,959	357,822	368,278	379,944	392,930	407,245	412,900	424,904	437,939	450,005	463,122	476,803	490,550	504,894	519,648	534,855	550,518	566,651	583,266	600,324	618,013	636,370	655,427	675,211
55,716	56,502	57,257	57,950	58,657	59,376	60,102	60,834	61,572	62,316	63,066	63,822	64,584	65,352	66,126	66,906	67,692	68,484	69,282	70,086	70,896	71,712	72,534	73,362
59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505	59,505
1,44	1,45	1,46	1,48	1,49	1,50	1,52	1,53	1,54	1,55	1,56	1,58	1,59	1,60	1,62	1,64	1,66	1,68	1,70	1,72	1,74	1,76	1,78	1,80
26,110	26,895	27,651	28,374	29,051	29,770	30,532	31,287	32,037	32,782	33,522	34,257	34,987	35,712	36,432	37,147	37,857	38,562	39,262	39,957	40,647	41,332	42,012	42,687
[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]	[15,000]
15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000
11,110	11,896	12,651	13,374	14,061	14,710	15,320	15,896	16,436	16,937	17,401	17,828	18,218	18,571	18,888	19,169	19,414	19,623	19,796	19,934	20,037	20,104	20,136	20,132
2,777	2,974	3,163	3,343	3,516	3,672	3,800	3,971	4,122	4,219	4,324	4,415	4,452	4,552	4,598	4,652	4,685	4,708	4,721	4,724	4,717	4,700	4,673	4,636
2,777	2,974	3,163	3,343	3,516	3,672	3,800	3,971	4,122	4,219	4,324	4,415	4,452	4,552	4,598	4,652	4,685	4,708	4,721	4,724	4,717	4,700	4,673	4,636

Year 39	Year 40	Year 41	Year 42	Year 43	Year 44	Year 45	Year 46	Year 47	Year 48	Year 49	Year 50	Year 51	Year 52	Year 53	Year 54	Year 55
2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067
776,178	798,983	815,593	835,259	857,197	880,596	905,169	931,085	958,540	987,605	1,018,341	1,051,717	1,087,785	1,126,592	1,168,177	1,212,586	1,260,866
8,139	9,394	10,819	12,429	14,239	16,164	18,219	20,419	22,769	25,274	27,939	30,769	33,769	36,944	40,309	43,869	47,619
784,724	808,377	826,412	847,688	871,436	896,763	923,388	951,005	979,309	1,008,209	1,038,780	1,070,086	1,103,174	1,138,000	1,174,711	1,213,365	1,254,511
36,297	40,266	44,307	48,549	52,992	57,645	62,508	67,581	72,864	78,357	84,060	89,973	96,096	102,429	108,972	115,725	122,688
748,427	768,111	784,719	803,239	824,197	846,608	870,896	897,081	924,171	952,166	981,071	1,010,886	1,041,611	1,073,246	1,105,791	1,139,246	1,173,611
8,865	9,724	10,706	11,822	13,074	14,464	15,994	17,666	19,482	21,446	23,560	25,826	28,246	30,822	33,556	36,450	39,504
11,241	12,269	13,443	14,774	16,274	17,946	19,792	21,816	24,021	26,410	28,977	31,726	34,661	37,786	41,106	44,616	48,311
13,424	14,837	16,419	18,182	20,138	22,294	24,662	27,244	30,054	33,096	36,372	39,886	43,641	47,640	51,888	56,381	61,114
15,424	16,837	18,419	20,182	22,138	24,294	26,662	29,244	32,054	35,096	38,372	41,886	45,641	49,640	53,888	58,381	63,114
17,424	18,837	20,419	22,182	24,138	26,294	28,662	31,244	34,054	37,096	40,372	43,886	47,641	51,640	55,888	60,381	65,114
19,424	20,837	22,419	24,182	26,138	28,294	30,662	33,244	36,054	39,096	42,372	45,886	49,641	53,640	57,888	62,381	67,114
21,424	22,837	24,419	26,182	28,138	30,294	32,662	35,244	38,054	41,096	44,372	47,886	51,641	55,640	59,888	64,381	69,114
23,424	24,837	26,419	28,182	30,138	32,294	34,662	37,244	40,054	43,096	46,372	49,886	53,641	57,640	61,888	66,381	71,114
25,424	26,837	28,419	30,182	32,138	34,294	36,662	39,244	42,054	45,096	48,372	51,886	55,641	59,640	63,888	68,381	73,114
27,424	28,837	30,419	32,182	34,138	36,294	38,662	41,244	44,054	47,096	50,372	53,886	57,641	61,640	65,888	70,381	75,114
29,424	30,837	32,419	34,182	36,138	38,294	40,662	43,244	46,054	49,096	52,372	55,886	59,641	63,640	67,888	72,381	77,114
31,424	32,837	34,419	36,182	38,138	40,294	42,662	45,244	48,054	51,096	54,372	57,886	61,641	65,640	69,888	74,381	79,114
33,424	34,837	36,419	38,182	40,138	42,294	44,662	47,244	50,054	53,096	56,372	59,886	63,641	67,640	71,888	76,381	81,114
35,424	36,837	38,419	40,182	42,138	44,294	46,662	49,244	52,054	55,096	58,372	61,886	65,641	69,640	73,888	78,381	83,114
37,424	38,837	40,419	42,182	44,138	46,294	48,662	51,244	54,054	57,096	60,372	63,886	67,641	71,640	75,888	80,381	85,114
39,424	40,837	42,419	44,182	46,138	48,294	50,662	53,244	56,054	59,096	62,372	65,886	69,641	73,640	77,888	82,381	87,114
41,424	42,837	44,419	46,182	48,138	50,294	52,662	55,244	58,054	61,096	64,372	67,886	71,641	75,640	79,888	84,381	89,114
43,424	44,837	46,419	48,182	50,138	52,294	54,662	57,244	60,054	63,096	66,372	69,886	73,641	77,640	81,888	86,381	91,114
45,424	46,837	48,419	50,182	52,138	54,294	56,662	59,244	62,054	65,096	68,372	71,886	75,641	79,640	83,888	88,381	93,114
47,424	48,837	50,419	52,182	54,138	56,294	58,662	61,244	64,054	67,096	70,372	73,886	77,641	81,640	85,888	90,381	95,114
49,424	50,837	52,419	54,182	56,138	58,294	60,662	63,244	66,054	69,096	72,372	75,886	79,641	83,640	87,888	92,381	97,114
51,424	52,837	54,419	56,182	58,138	60,294	62,662	65,244	68,054	71,096	74,372	77,886	81,641	85,640	89,888	94,381	99,114
53,424	54,837	56,419	58,182	60,138	62,294	64,662	67,244	70,054	73,096	76,372	79,886	83,641	87,640	91,888	96,381	101,114
55,424	56,837	58,419	60,182	62,138	64,294	66,662	69,244	72,054	75,096	78,372	81,886	85,641	89,640	93,888	98,381	103,114
57,424	58,837	60,419	62,182	64,138	66,294	68,662	71,244	74,054	77,096	80,372	83,886	87,641	91,640	95,888	100,381	105,114
59,424	60,837	62,419	64,182	66,138	68,294	70,662	73,244	76,054	79,096	82,372	85,886	89,641	93,640	97,888	102,381	107,114
61,424	62,837	64,419	66,182	68,138	70,294	72,662	75,244	78,054	81,096	84,372	87,886	91,641	95,640	99,888	104,381	109,114
63,424	64,837	66,419	68,182	70,138	72,294	74,662	77,244	80,054	83,096	86,372	89,886	93,641	97,640	101,888	106,381	111,114
65,424	66,837	68,419	70,182	72,138	74,294	76,662	79,244	82,054	85,096	88,372	91,886	95,641	99,640	103,888	108,381	113,114
67,424	68,837	70,419	72,182	74,138	76,294	78,662	81,244	84,054	87,096	90,372	93,886	97,641	101,640	105,888	110,381	115,114
69,424	70,837	72,419	74,182	76,138	78,294	80,662	83,244	86,054	89,096	92,372	95,886	99,641	103,640	107,888	112,381	117,114
71,424	72,837	74,419	76,182	78,138	80,294	82,662	85,244	88,054	91,096	94,372	97,886	101,641	105,640	109,888	114,381	119,114
73,424	74,837	76,419	78,182	80,138	82,294	84,662	87,244	90,054	93,096	96,372	99,886	103,641	107,640	111,888	116,381	121,114
75,424	76,837	78,419	80,182	82,138	84,294	86,662	89,244	92,054	95,096	98,372	101,886	105,641	109,640	113,888	118,381	123,114
77,424	78,837	80,419	82,182	84,138	86,294	88,662	91,244	94,054	97,096	100,372	103,886	107,641	111,640	115,888	120,381	125,114
79,424	80,837	82,419	84,182	86,138	88,294	90,662	93,244	96,054	99,096	102,372	105,886	109,641	113,640	117,888	122,381	127,114
81,424	82,837	84,419	86,182	88,138	90,294	92,662	95,244	98,054	101,096	104,372	107,886	111,641	115,640	119,888	124,381	129,114
83,424	84,837	86,419	88,182	90,138	92,294	94,662	97,244	100,054	103,096	106,372	109,886	113,641	117,640	121,888	126,381	131,114
85,424	86,837	88,419	90,182	92,138	94,294	96,662	99,244	102,054	105,096	108,372	111,886	115,641	119,640	123,888	128,381	133,114
87,424	88,837	90,419	92,182	94,138	96,294	98,662	101,244	104,054	107,096	110,372	113,886	117,641	121,640	125,888	130,381	135,114
89,424	90,837	92,419	94,182	96,138	98,294	100,662	103,244	106,054	109,096	112,372	115,886	119,641	123,640	127,888	132,381	137,114
91,424	92,837	94,419	96,182	98,138	100,294	102,662	105,244	108,054	111,096	114,372	117,886	121,641	125,640	129,888	134,381	139,114
93,424	94,837	96,419	98,182	100,138	102,294	104,662	107,244	110,054	113,096	116,372	119,886	123,641	127,640	131,888	136,381	141,114
95,424	96,837	98,419	100,182	102,138	104,294	106,662	109,244	112,054	115,096	118,372	121,886	125,641	129,640	133,888	138,381	143,114
97,424	98,837	100,419	102,182	104,138	106,294	108,662	111,244	114,054	117,096	120,372	123,886	127,641	131,640	135,888	140,381	145,114
99,424	100,837	102,419	104,182	106,138	108,294	110,662	113,244	116,054	119,096	122,372	125,886	129,641	133,640	137,888	142,381	147,114
101,424	102,837	104,419	106,182	108,138	110,294	112,662	115,244	118,054	121,096	124,372	127,886	131,641	135,640	139,888	144,381	149,114
103,424	104,837	106,419	108,182	110,138	112,294	114,662	117,244	120,054	123,096	126,372	129,886	133,641	137,640	141,888	146,381	151,114
105,424	106,837	108,419	110,182	112,138	114,294	116,662	119,244	122,054	125,096	128,372	131,886	135,641	139,640	143,888	148,381	153,114
107,424	108,837	110,419	112,182	114,138	116,294	118,662	121,244	124,054	127,096	130,372	133,886	137,641	141,640	145,888	150,381	155,114
109,424	110,837	112,419	114,													

## EXHIBIT D: DECLARATION OF RESTRICTIONS

RECORDING REQUESTED BY AND for the benefit of the City of Fresno and is exempt from the payment of a recording fee in accordance with Government Code Sections 6103 and 27383.

AND WHEN RECORDED MAIL TO:

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

Title Order No. \_\_\_\_\_

Escrow No. \_\_\_\_\_

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this 29 day of Sept., 2011 by AMCAL ALLIED FUNDS, L.P., a California limited partnership in good standing with its principal office in Agoura Hills, California, referred herein as " ("Declarant") in favor of the City of Fresno, acting by and through its Development and Resources Management Department, Housing and Community Development Division ("City").

WHEREAS, Declarant is the owner/developer of the real estate in the county of Fresno, state of California, consisting of APN: 470-052-02T Portion, which is more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, Pursuant to a certain Development and Disposition and HOME Investment Partnerships Program Agreement dated Sept. 29, 2011 incorporated herein, ("HOME Agreement") and instruments referenced therein, Declarant agrees to utilize and the City agrees to provide certain HOME Program Funds from the United States Department of Housing and Urban Development ("HUD"), to Declarant for certain Affordable Senior Rental Housing (the "Project") upon the Property, with no less than fifty-one (51) of the proposed fifty-one (51) Units to be preserved as Extremely Low- to Low-Income Affordable Rental Housing for tenants earning up to eighty (80%) or below of the area median income for the Fresno MSA, subject to the terms and conditions set forth in the HOME Agreement; and

WHEREAS, the HOME Program regulations promulgated by HUD, including without limitation 24 CFR Section 92.252, and the HOME Agreement impose certain affordability requirements upon property benefited thereby, which affordability restrictions shall be enforceable for a fifty-five (55) year period commencing from the date the CITY enters the project completion information into HUD's Integrated Disbursement and Information System; and

WHEREAS, these restrictions are intended to bind Declarant and all purchasers and their successors.

NOW THEREFORE, Declarant declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the proposed Affordable Rental Housing Project, the City's General Plan, Consolidated and Annual Action Plans, and Housing Element, and therein HOME Program requirements. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, will inure to the benefit of the City, and will be enforceable by it. Any purchaser under a contract of sale covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenants, and limitations set forth in this Declaration for the period of fifty-five (55) years commencing from the date the Declarant is notified in writing by the CITY that the Affordability Period has begun.

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

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

a. Declarant for itself and its successor(s) on title covenants and agrees that from the date the project tenant information is entered into the Integrated Disbursement and Information System, until the expiration of the Affordability Period it shall cause the Project Units to be used as Affordable Rental Housing. Declarant further agrees to file a recordable document setting forth the Project Completion Date when determined by the City. Unless otherwise provided in the HOME Agreement, the term Affordable Rental Housing shall include, without limitation, compliance with the following requirements:

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

owners or vendees of the Project Property.

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

(iii) Income Requirements. A total of fifty-one (51) Units constituting Affordable Rental Senior Housing upon the Property may be leased only to (a) person(s) whose annual household income at the time of initial occupancy is not greater than eighty percent (80%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent HOME Program regulations, as more specifically provided in the HOME Agreement.

(iv) Injunctive Relief and Recapture. Should any of the Extremely Low- to Low-Income Units constituting Affordable Rental Senior Housing upon the Property, not continue to be, after the time of initial occupancy, the principal residence of a Household whose annual household income is not greater than eighty percent (80%) of the most recent annual median income, the City shall be entitled to injunctive relief and recapture.

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

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

Notwithstanding the foregoing, upon foreclosure by a lender or other transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD, the Affordability Period shall be terminated if the foreclosure or other transfer in lieu of foreclosure or assignment recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid the termination of low-

income affordability. However, the requirements with respect to this Affordable Rental Senior Housing Project, shall be revived according to their original terms, if during the original Affordability Period, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner or those with whom the former owner has or had formerly, family or business ties, obtains an ownership interest in the Project or the Property, the Affordability Period shall be revived according to its original terms.

5. Benefit. This Declaration shall run with and bind the Property for a term commencing on the date this Declaration is recorded in the Office of the Recorder of the County of Fresno, state of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of City or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof. The obligations and liabilities of Declarant and each of them hereunder, shall be joint and several.

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

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

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

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

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

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

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

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

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

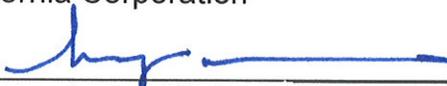
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IN WITNESS WHEREOF, Declarant has executed this Declaration of Restrictions on the date first written above.

DECLARANT:  
AMCAL ALLIED FUND, LP  
a California limited partnership

By: AMCAL MULTI-HOUSING, INC  
a California Corporation

By:   
(Attach notary certificate of acknowledgement)

Title: Arjun Nagarkatti, Vice President

Date: 9-26-11

## EXHIBIT "A" TO DECLARATION OF RESTRICTIONS

### Legal Description (717 South Seventh Street Portion)

#### PHASE 1:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

#### PORTION OF PARCEL 2:

THAT PORTION OF KENMOORE PARK, ACCORDING THE MAP THEREOF RECORDED NOVEMBER 8, 1911 IN BOOK 7 PAGE 4 OF RECORD OF SURVEYS AND THAT PORTION OF LINCOLN HILL ADDITION, FRESNO COUNTY RECORDS IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

**COMMENCING** AT THE NORTH  $\frac{1}{4}$  COR OF SECTION 11, T.14S, R.20E. M.D.B&M. THENCE SOUTH  $89^{\circ}29'03''$  EAST ALONG THE NORTH LINE OF SAID SECTION 11, A DISTANCE OF 391.78 FEET, THENCE SOUTH  $00^{\circ}25'07''$  WEST, A DISTANCE OF 200.23 FEET TO THE **TRUE POINT OF BEGINNING**, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID PARCEL "1".

THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID PARCEL "1", NORTH  $89^{\circ}39'33''$  WEST, A DISTANCE OF 83.82 FEET, THENCE NORTHERLY ALONG THE WEST LINE OF SAID PARCEL "A", NORTH  $00^{\circ}29'22''$  EAST, A DISTANCE OF 150 FEET TO A POINT, SAID POINT ALSO BEING THE NORTHEAST CORNER OF PARCEL "1", THENCE SOUTH  $89^{\circ}29'06''$  EAST, A DISTANCE OF 250 FEET, THENCE SOUTH  $00^{\circ}29'22''$  WEST, A DISTANCE OF 267.25 FEET, THENCE NORTH  $89^{\circ}29'06''$  WEST, A DISTANCE OF 101.56 FEET, THENCE NORTH  $00^{\circ}30'54''$  EAST, A DISTANCE OF 3.50 FEET, THENCE NORTH  $89^{\circ}29'06''$  WEST, A DISTANCE OF 232.12 FEET, THENCE NORTH  $00^{\circ}25'07''$  EAST, A DISTANCE OF 113.50 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 1.74 ACRES MORE OR LESS.

PORTION OF APN: 470-052-02T

**EXHIBIT E: CERTIFICATE OF COMPLETION**

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

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

---

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

APN: 470-052-02T portion

City of Fresno

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

Date: \_\_\_\_\_

## CERTIFICATE OF COMPLETION

APN: 470-052-02T

Recitals:

A. By a City of Fresno ("CITY") Development and Disposition Agreement and HOME Investment Partnerships Program Agreement dated \_\_\_\_\_, 2011 ("HOME Agreement"), AMCAL Allied Fund, L.P., a California limited partnership in good standing with its principal office in Agoura Hills, California, ("ALLIED") agreed to develop a fifty-one (51) unit affordable senior rental housing project (and one (1) manager's unit), of which eleven (11) units are HOME Assisted units to be reserved for rental by Extremely Low to Low-Income Seniors ("Project"), upon the premises legally described in EXHIBIT "A" attached to the HOME Agreement and made a part hereof by this reference, (the "Property") for the purposes of Affordable Senior Rental Housing, with the assistance of HOME funds while meeting the affordable housing, income targeting and other requirements of 24 CFR 92 according to the terms and conditions of the HOME Agreement and the Loan Documents and other document/instruments referenced therein.

B. The HOME Agreement or a memorandum of it was recorded on \_\_\_\_\_, 20\_\_ as Instrument No. \_\_\_\_\_ in the Official Records of Fresno County, California.

C. Under the terms of the HOME Agreement, after ALLIED completes the Project, ALLIED may ask CITY to record a Certificate of Completion.

D. ALLIED has asked CITY to furnish ALLIED with a recordable Certificate of Completion.

E. The CITY's issuance of this Certificate of Completion is conclusive evidence that ALLIED has completed construction the Project as set forth in the HOME Agreement.

NOW THEREFORE:

1. The CITY certifies that ALLIED commenced the Project on \_\_\_\_\_, 20\_\_ and completed the Project on \_\_\_\_\_, 20\_\_, and has done so in full compliance with the HOME Agreement.

2. This Certificate of Completion is not evidence of the ALLIED's compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project.

3. This Certificate of Completion is not a notice of completion as referred to in California Civil Code Section 3093.

4. Nothing contained herein modifies any provision of the HOME Agreement.

///

IN WITNESS WHEREOF, CITY has executed this Certificate of Completion as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF FRESNO

By: \_\_\_\_\_  
Craig Scharton, Assistant Director  
Development and Resource Management Department

ATTEST:  
CITY CLERK

By: \_\_\_\_\_  
Deputy

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
CITY ATTORNEY

By: \_\_\_\_\_  
Assistant/Deputy

Name: \_\_\_\_\_

Date: \_\_\_\_\_

AMCAL ALLIED FUNDS, LP  
a California limited partnership

BY: AMCAL MULTI-HOUSING, INC.  
a California corporation  
Its General Partner

By: \_\_\_\_\_  
(Attach notary certificate of acknowledgement)

NAME: Arjun Nagarkatti

TITLE: Executive Vice President

Date: \_\_\_\_\_

## EXHIBIT F: PROMISSORY NOTE

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

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### PROMISSORY NOTE

Loan Amount: \$818,034.00  
Fresno, California

Date: \_\_\_\_\_, 2011

For value received, the undersigned, AMCAL ALLIED FUND, L.P., a California limited partnership ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation, ("Lender"), the sum of Eight Hundred Eighteen Thousand Thirty Four Seven dollars and 00/100 (\$818,034.00), to the extent that such funds are loaned to Borrower, with interest on the unpaid principal balance running from the date of the permanent loan conversion with simple interest at the rate of three percent (3%) annually in accordance with the HOME Agreement regarding Affordable Senior Housing Project, dated Sept 29, 2011, entered into between AMCAL ALLIED FUND, L.P. and the City of Fresno, with principal and interest due and payable annually from Residual Receipts, as provided herein, and with all remaining principal and interest due and payable on or before the earlier of: (i) Borrower's uncured default under the Agreement with respect to the Affordable Senior Housing Project, along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws, or (ii) fifty-five (55) years from the permanent loan conversion date ("Maturity Date").

This is a Residual Receipts Note. Principal and interest payments in the amount of Residual Receipts, to the extent that Residual Receipts exist and itemized in audited financial statements supplied to Lender with each payment hereunder, shall be due one hundred eighty (180) days following the end of the year in which the Affordable Project converts to its permanent financing phase under the Senior Financing, and said payment continues each successive year thereafter until the Maturity Date, upon which all principal and interest shall be due and payable (prorated amounts to be paid for the first and last year of the Note). Any failure to make a payment required hereunder within ten (10) days after such payments are due shall constitute a default under the Agreement with respect to the Affordable Project and this Note. It shall not be a default hereunder if no payment was made because Project Residual Receipts did not exist for any particular year. Additionally any failure to timely submit to Lender audited financial statements within thirty (30) days after such financial statements are due shall constitute a default under the Agreement with respect to the Affordable Project and Note.

Residual Receipts means in each operating year after the conversion of the Affordable Rental Housing Project financing to its permanent financing phase, fifty percent (50%) of the sum of: (i) all cash received by the Affordable Rental Senior Housing Project from (A) rents, lease payments, and all sources generally considered in the apartment industry to be "other income" (which does not include payments for optional services provided by Borrower), (B) payments from HUD under a Housing Assistance Program Section 8 Contract to the Project, if any, and excluding: (a) tenant security or other deposits required by law to be segregated,

(b) interest on reserves not available for distribution, and (c) loan and capital contribution proceeds, and (ii) the net proceeds of any insurance (including rental interruption insurance), other than fire and extended coverage and title insurance, to the extent not reinvested, less the sum of: (i) all cash expenditures, and all expenses unpaid but properly accrued, which are Operating Expenses incurred in the operation of the Affordable Project's business, excluding expenditures paid from any reserve account (whether or not such expenditure is deducted, amortized or capitalized for tax purposes); (ii) the Affordable Project related annual fee payable to the investment limited partner and the annual fees payable to the nonprofit managing general partner; (iii) all payments on account of any loans (including unpaid principal and accrued reasonable interest) made for the benefit of the Affordable Project by the partners of the Borrower pursuant to the terms of the amended and restated limited partnership agreement of the Partnership; (iv) payments towards the deferred developer fee and any interest thereon (including repayment of loans or capital contributions made by the general partner to the partnership specifically for the purpose of paying the deferred developer fee); (v) contributions to any prudent and reasonable cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as may be reasonably required by the lenders to the Affordable Project and the limited partners of the Borrower for the operation of the Project not to exceed the amount required by the Affordable Project's permanent lender, annually adjusted if required by the permanent lender or limited partners; (vi) the payment of principal and interest, and any associated fees, expenses, and costs, with respect to Senior Financing, and (vii) payments made to the investor limited partner which are required to reimburse the investor a portion of its capital contribution in relation to the Affordable Project when there is a shortfall in the tax credits initially promised to the investor pursuant to the terms of the amended and restated limited partnership agreement of the Borrower.

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

All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in a certain HOME Investment Partnerships Program Agreement dated Sept. 29, 2011, incorporated herein, ("HOME Agreement") and instruments referenced therein. In addition, as used in this Note, the following terms will have the following meanings:

Business Day means any day other than Saturday, Sunday, or public holiday or the

equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day. However, if the extension would cause the payment to be made in a new calendar month, that payment will be made on the next preceding Business Day.

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note, and executed in favor of and delivered to the Lender ("Deed of Trust"), insured as a not worse than 3<sup>rd</sup> position lien on the Property.

Time is of the essence. It will be a default under this Note if Borrower defaults under the HOME Agreement, defaults under any other Loan Documents, or if Borrower fails to pay when due any sum payable under this Note. In the event of a default by Borrower, the Borrower shall pay a late charge equal to the lesser of two percent (2%) of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest and then to principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the Loan Documents give rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind.

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

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

City of Fresno – Finance Department  
Accounts Receivable  
2600 Fresno Street, Room 2156  
Fresno, CA 93721

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

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

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

The Deed of Trust provides as follows:

**DUE ON SALE-CONSENT BY BENEFICIARY.** Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of land interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law. A sale or transfer shall not include those matters excluded from the definition of "Transfer" in Section 6.11 of the HOME Program Agreement.

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

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

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

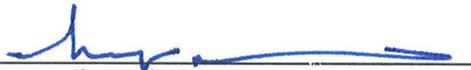
Neither the Borrower, nor any general or limited partner of the Borrower, shall have any direct or indirect personal liability for payment of the principal of, and interest on, the Loan. Following recordation of the Deed of Trust, the sole recourse of the City with respect to the principal of, and interest on, the Note and defaults by Borrower in the performance of its Loan covenants under the Deed of Trust shall be to the property described in the Deed of Trust.

///  
///  
///

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

BORROWER: AMCAL ALLIED FUND, L.P.  
a California limited partnership

By: AMCAL MULTI-HOUSING, INC.  
a California corporation, its general partner

By:   
(Attach notary certificate of acknowledgment)

Name: Arjun Nagarkatti  
Title: President  
Date: 9-26-11

**ACKNOWLEDGMENT**

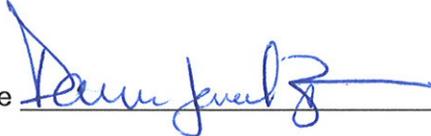
State of California  
County of Los Angeles )

On September 26, 2011 before me, Dawn Janel Zusman, Notary Public  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature 

(Seal)



**EXHIBIT G**

RECORDING REQUESTED BY  
Chicago Title Company

AND WHEN RECORDED MAIL TO:  
City of Fresno  
Housing and Community Development Division  
2600 Fresno Street, Room 3070  
Fresno CA 93721-3605

Space Above This Line for Recorder's Use Only

A.P.N.: \_\_\_\_\_

File No.: \_\_\_\_\_

**DEED OF TRUST AND ASSIGNMENT OF RENTS**

THIS DEED OF TRUST, made this \_\_\_\_\_, 2011, by

TRUSTOR: **AMCAL Allied Fund, L.P., a California limited partnership**

whose address is **30141 Agoura Road, Suite 100, Agoura Hills, California, 91301,**

TRUSTEE: Chicago **Title Company, a California corporation**

and BENEFICIARY: **City of Fresno, a California municipal corporation.**

**Witnesseth:** That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the City of **Fresno, Fresno** County, State of **California**, described as: See Exhibit A attached hereto.

TOGETHER WITH the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph 10 of the provisions, incorporated by reference, to collect and apply such rents, issues and profits.

FOR THE PURPOSE OF SECURING: 1. Performance of each agreement of Trustor, incorporated by reference or contained herein, including without limitation the Development and Disposition and HOME Program Agreement entered between [\_\_\_\_\_] and Beneficiary dated [\_\_\_\_\_, 200\_\_]. 2. Payment of the indebtedness evidenced by a Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of \$818,034.00 **to City of Fresno** executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record Owner of said property hereafter may borrow from Beneficiary, when evidenced by another Note (or Notes) reciting it is so secured.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

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

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

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

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

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

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

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

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

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

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

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

entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act pursuant to such notice.

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

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale.

Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

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

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

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

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

(15) The Loan is a nonrecourse obligation of Trustor. Neither Trustor nor any of its general and limited partners shall have any personal liability for repayment of the Loan. The sole recourse of the Lender under the Loan Documents for repayment of the Loan shall be the exercise of its rights against the Property.

(16) The withdrawal, removal and/or replacement of a general partner of Trustor pursuant to the terms of the Partnership Agreement due to a violation by a general partner of the terms of the Partnership Agreement, or a voluntary withdrawal from the Partnership by a general partner, and any transfer of limited partnership interests 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) Beneficiary agrees that the lien of this Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "Extended Use Agreement") recorded against the Property, provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Property by instrument in 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) Prior to declaring or taking any remedy permitted under Loan Documents, Trustor'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, Trustor'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 Trustor's limited partners reasonably believe that in order to cure such default, Trustor's limited partners must remove one or both of Trustor's general partners in order to cure such default, Trustor's limited partners shall have and additional thirty (30) days following the effective date of such removal to cure such default.

(19) Beneficiary shall give the Trustor's limited partners notice of any default under the Loan Documents at the following address:

30141 Agoura Road, Suite 100  
Agoura Hills, CA 91301

The indebtedness evidenced by the Note and the Deed of Trust is and shall be subordinate in right of payment to the prior payment in full of all amounts then due and payable (including, but not limited to, all amounts due and payable by virtue of any default or acceleration or upon maturity) with respect to the indebtedness evidenced by a Multifamily Note, dated as of \_\_\_\_\_, in the original principal amount of \$\_\_\_\_\_, executed by the Borrower and payable to \_\_\_\_\_ ("Issuer"), as assigned to \_\_\_\_\_ ("Trustee"), to the extent and in the manner provided in that certain Subordination and Intercreditor Agreement, dated as of \_\_\_\_\_, among the Beneficiary, the Trustee and the Borrower (the "Subordination Agreement"). The rights and remedies of the payee and each subsequent holder of the Note and this Deed of Trust shall be deemed, by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the "Junior Lender" under the Subordination Agreement.

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale be mailed to Trustor at Trustor's address hereinbefore set forth, or if none shown, to Trustor at property address.

**NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.**

Except as provided herein or in the DDA, 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.

Dated: \_\_\_\_\_, 2011

Signature of Trustor(s):

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[ALL SIGNATURES MUST BE NOTARIZED]

## EXHIBIT "A" TO DEED OF TRUST

### Legal Description (717 South Seventh Street Portion)

#### PHASE 1:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

#### PORTION OF PARCEL 2:

THAT PORTION OF KENMOORE PARK, ACCORDING THE MAP THEREOF RECORDED NOVEMBER 8, 1911 IN BOOK 7 PAGE 4 OF RECORD OF SURVEYS AND THAT PORTION OF LINCOLN HILL ADDITION, FRESNO COUNTY RECORDS IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

**COMMENCING** AT THE NORTH ¼ COR OF SECTION 11, T.14S, R.20E. M.D.B&M. THENCE SOUTH 89°29'08" EAST ALONG THE NORTH LINE OF SAID SECTION 11, A DISTANCE OF 391.78 FEET, THENCE SOUTH 00°25'07" WEST, A DISTANCE OF 200.23 FEET TO THE **TRUE POINT OF BEGINNING**, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID PARCEL "1".

THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID PARCEL "1", NORTH 89°39'33" WEST, A DISTANCE OF 83.82 FEET, THENCE NORTHERLY ALONG THE WEST LINE OF SAID PARCEL "A", NORTH 00°29'22" EAST, A DISTANCE OF 150 FEET TO A POINT, SAID POINT ALSO BEING THE NORTHEAST CORNER OF PARCEL "1", THENCE SOUTH 89°29'06" EAST, A DISTANCE OF 250 FEET, THENCE SOUTH 00°29'22" WEST, A DISTANCE OF 267.25 FEET, THENCE NORTH 89°29'06" WEST, A DISTANCE OF 101.56 FEET, THENCE NORTH 00°30'54" EAST, A DISTANCE OF 3.50 FEET, THENCE NORTH 89°29'06" WEST, A DISTANCE OF 232.12 FEET, THENCE NORTH 00°25'07" EAST, A DISTANCE OF 113.50 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 1.74 ACRES MORE OR LESS.

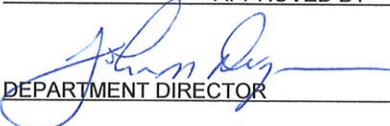
PORTION OF APN: 470-052-02T

City of  
**FRESNO**  **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO. 1:30pm #3

COUNCIL MEETING September 29, 2011

APPROVED BY

  
DEPARTMENT DIRECTOR

  
CITY MANAGER

September 29, 2011

FROM: CRAIG SCHARTON, Assistant Director  
Development and Resource Management

CLAUDIA CAZARES, Division Manager  
Housing and Community Development Division

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

Presented to City Council  
Date 9/29/11  
Disposition Per approved

SUBJECT: **CONTINGENT APPROVAL OF A \$818,034 DISPOSITION AND DEVELOPMENT AND HOME AGREEMENT WITH AMCAL ALLIED FUND, LP, FOR DEVELOPMENT OF THE ALLIED PLAZA SENIOR APARTMENTS, PHASE I, A 52-UNIT AFFORDABLE SENIOR HOUSING PROJECT TO BE LOCATED ON THE SOUTH SIDE OF VENTURA BETWEEN SEVENTH STREET AND EIGHTH STREET IN SOUTHEAST FRESNO**

**RECOMMENDATIONS**

Staff recommends that the City Council approve a \$818,034 Disposition and Development and HOME Agreement (DDA/HOME Agreement) with AMCAL Allied Fund, LP, substantially in the form attached as Exhibit "B" – DDA/HOME Agreement, for development of the Allied Plaza Senior Apartments, a 52-unit affordable senior housing project to be located on the south side of Ventura Avenue between Seventh St. and Eighth St., in southeast Fresno, a portion of APN: 470-052-02 (please see Exhibit "C" – Project Location Maps), subject to prior approval as to form by the City Attorney's Office.

**EXECUTIVE SUMMARY**

In August 2010, AMCAL entered into a joint City/RDA Exclusive Negotiation Agreement (ENA) to negotiate pre-development project matters. AMCAL and the City are now ready to take certain steps necessary to encumber federal HOME funds for the project, and seek Council authorization to: (i) negotiate final terms and conditions of the DDA/HOME Agreement, (ii) open a project escrow, and (iii) execute and tender into escrow the project DDA/HOME Agreement, documents, instruments and instructions. Staff will return to the Housing and Community Development Commission (HCDC) and Council at a later date for approval of California Environmental Quality Act (CEQA) findings, entitlements, the DDA/HOME Agreement as it relates to CEQA findings and to close escrow. The DDA/HOME Agreement provides \$818,034 to the project, as a loan at 3% interest with principal and interest repaid from 50% of the project's annual residual receipts. Cost of the Phase I is estimated at \$8.8 million, of which a majority of financing is expected to come from the California Tax Credit Allocation Committee (TCAC), Low Income Housing Tax Credits (LIHTC) Program. Upon final approval by Council, the City will convey, through escrow, a portion of the Seventh Street property to AMCAL Allied Fund, LP, for Phase I.

**BACKGROUND**

In 2005, the City of Fresno began negotiations with the FUSD for the purchase of a vacant 2.85-acre parcel located at 717 Seventh Street to facilitate a mixed-use project consisting of affordable residential units and commercial/retail space. At the end of 2008, the purchase was complete and City and RDA staff began seeking a developer to develop a viable project for the site. A proposed project was to consist of

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housing with a possible commercial/retail component. In March 2010, the City and RDA completed a formal request for proposals process for selection of a developer for the project. The evaluation team for selection of a developer consisted of City staff from the Housing and Community Development Division and RDA staff. In April, 2010, the City and RDA selected AMCAL as the most qualified and experienced developer. The selection was based on AMCAL's experience as a developer, manager, and owner of quality affordable housing.

AMCAL has over 30 years of residential development experience and has successfully developed over 40 affordable family, senior, and farmworker housing projects throughout California; a total of 3,534 units. AMCAL is also the developer of the recently completed Summer Hill Place Apartments, a 50-unit affordable workforce housing project and Sandstone Apartments, a 69-unit affordable multifamily housing project, located in southwest Fresno. In 2007, AMCAL, a southern California development company, opened a Fresno office as a result of the flourishing development activities in the central region. AMCAL's Fresno office staff will be overseeing development of the proposed project.

In August, 2010, in preparation for development, the City, RDA, and AMCAL entered in to an ENA to negotiate pre-development matters for a proposed project. During the negotiation agreement period, the City, RDA, and AMCAL were able to resolve a number of issues in regards to development of the site. The site is now ready for development (please see Exhibit "E" – Current Property Conditions). However, due to the extreme competitive nature of the tax credits, AMCAL is proposing to complete the development in two phases. Phasing will position AMCAL with a competitive advantage by lowering the number of units to be funded with tax credits and increasing the public subsidy per unit. This strategy should produce a LIHTC tie-breaker score that will be high enough to secure an award of approximately \$5.7 million in tax credits.

AMCAL and the City are now prepared to take certain interim steps necessary to encumber federal HOME funds for Phase I, and seek Council authorization to: (i) negotiate final terms and conditions of the DDA/HOME Agreement, (ii) open a project escrow, and (iii) execute and tender into escrow the project DDA/HOME Agreement, documents, instruments and instructions. Staff will return to HCDC and Council at a later date for approval of the CEQA findings, entitlements, final DDA/HOME Agreement to include CEQA approval, and to close escrow.

Cost of the proposed Phase I is estimated at \$8.8 million of which \$818,034 in HOME Program funds will serve as gap financing. Of the \$818,034, \$361,100 represents one-half of the cost the City initially paid for the property. The other half of the property costs will be allocated to Phase II of this development. HOME funding for Phase II (44 units) will be presented to Council for consideration at a later date. The \$456,934 balance will be used to fund other Phase I project costs. The \$818,034 in City HOME funds will be provided to AMCAL as a loan at 3% interest, with principal and interest to be repaid from 50% of the project's annual residual receipts. AMCAL is anticipating that \$5.6 million of the project cost will be financed with LIHTC (please see Exhibit "A" – Project Cost Information/Budget).

Phase I will consist of 51 units of affordable senior housing, one manager's unit, a community clubhouse, ground floor commercial/retail space on Ventura, a swimming pool, outdoor recreation area, and parking. The buildings will be two- and three-story structures. One-bedroom units will have approximately 661 square feet of living space and the two-bedroom units will have approximately 804 square feet of living space. Phase I also consists of a commercial/retail component on the ground floor fronting Ventura Street (please see Exhibit "D" – Plans and Elevations). The project's residential cost per square foot is estimated at \$180.51, the community building cost per square foot is estimated at \$58.65 and the commercial area cost per square foot is estimated at \$44.59. The total development cost per gross square foot is \$166.14. The grounds will incorporate landscaping that will include a variety of trees,

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flowers, shrubs, walkways, and a sitting area. Additionally, the project will meet the Leadership in Energy and Environmental Design standards and incorporate the City's Universal Design features.

Once completed, the Allied Plaza Senior Apartments will assist the City in meeting its affordable housing goals as identified in the Housing Element of the 2025 General Plan, the 2010-2014 Consolidated Plan, the HOME Program funding priorities for new housing development, and the City's revitalization efforts for the Ventura/Kings Canyon corridor.

**ENVIRONMENTAL FINDING**

In anticipation of the funding, the City completed a National Environmental Policy Act assessment on April 26, 2007 (EA No. H-2005-03), which resulted in a Finding of No Significant Impact. On June 11, 2007, the City received HUD environmental clearance and authorization for use of HOME funds for the proposed mixed-use project. Staff is currently conducting a project environmental assessment for the purposes of CEQA. Staff will return to Council this fall, for approval of the CEQA findings, entitlements, final DDA/HOME Agreement, and to close escrow.

**HOUSING AND COMMUNITY DEVELOPMENT COMMISSION**

The Housing and Community Development Commission considered and recommended this item for approval on September 14, 2011.

**FISCAL IMPACT**

HOME Program funds for the Allied Plaza Senior Housing project are available in the Development and Resource Management Department's Fiscal Year 2012 Budget. The project's total property acquisition and construction cost is estimated at \$8.8 million, of which \$818,034 in HOME Program funds is proposed to be provided as gap financing. An estimated \$5.7 million in LIHTC funds is expected to finance a majority of the project costs, with the balance to come from other funding sources.

**APPENDICES**

- Exhibit A – Project Cost Information/Budget
- Exhibit B – Disposition and Development and HOME Agreement
- Exhibit C – Project Location Maps
- Exhibit D – Plans and Elevations
- Exhibit E – Current Property Conditions

**EXHIBIT "A"**  
**PROJECT COST INFORMATION/BUDGET**

## PROJECT COST INFORMATION

### Residential

Project Name:	Allied Plaza Senior Apartments
Location:	District 5: 3740 E. Ventura Street (south side of Ventura between Seventh and Eighth).
Total No. of Housing Units:	52
Total No. of HOME Units:	11
Gross Square Foot Residential:	47,176
Residential Construction (Hard Costs):	\$4,557,312
Soft Costs:	\$3,421,056
Land Cost:	\$381,000
Reserves:	\$156,477
Development Costs Residential:	\$8,515,845
Cost Per Unit:	\$163,766
Residential Cost Per GSF:	\$180.51

### Community Building

Gross Square Foot Community:	2,961
Construction (Hard Costs):	\$173,650
Cost Per GSF:	\$58.65

### Commercial

Gross Square Foot Residential:	2,960
Construction (Hard Costs):	\$132,000
Cost Per GSF:	\$44.59

Total Development Cost:	\$8,821,495
Total Cost Per GSF:	\$166.14

# PROJECT BUDGET

	Total Development Costs	Residential Total	Funding Sources						
			HOME	RDA	Tax Credit Equity	Constr./Perm Loan			
<b>Acquisition Costs:</b>									
Purchase Price	361,000		361,000						
Closing, Title & Recording	20,000		20,000						
<b>SUBTOTAL</b>	<b>381,000</b>		<b>381,000</b>						
<b>Construction</b>									
Basic Construction Contract	3,729,722	3,593,588		136,134	3,593,588				
Bond Premium	34,023				34,023				
Off-site improvements	264,202			264,202					
Infrastructure Improvements									
General Requirements	327,939					327,939			
Contractor Overhead	132,815					132,815			
Contractor Profit	132,815					132,815			
Construction Contingency	241,446				241,446				
<b>SUBTOTAL</b>	<b>4,862,962</b>			<b>400,336</b>	<b>3,869,057</b>	<b>593,569</b>			
<b>Development</b>									
Appraisal	10,000				10,000				
Architect/Engineer	835,000			689,698	145,302				
Boundary & Topographic Surv	15,000				15,000				
Legal	70,000				70,000				
Developer Fee	1,050,651				1,002,107	48,544			
Market Study	8,000				8,000				
<b>SUBTOTAL</b>	<b>1,988,651</b>			<b>689,698</b>	<b>1,250,409</b>	<b>48,544</b>			
<b>Other Development</b>									
Real Estate Tax	9,025				9,025				
Insurance	58,660				58,660				
Relocation	0								
Permits, Fees & Hookups	127,500			127,500					
Impact/Mitigation Fees	739,500		457,034	282,466					
Construction Loan Fees	32,858				32,858				
Construction Interest	198,572				198,572				
Origination Fee	55,159				55,159				
Other Accrued Interest HA									
LIHTC Fees	44,731				44,731				
Environmental Audit									
Accounting/Audit	30,000				30,000				
Soft Cost Contingency	52,250				52,250				
Marketing/Leasing Expenses	84,150				84,150				
Operating Reserves	143,727					143,727			
Replacement Reserves:	12,750				12,750				
<b>SUBTOTAL</b>	<b>1,588,882</b>		<b>457,034</b>	<b>409,966</b>	<b>578,155</b>	<b>143,727</b>			
<b>Total Development Costs</b>	<b>8,821,495</b>		<b>838,034</b>	<b>1,500,000</b>	<b>5,697,621</b>	<b>785,840</b>			