



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.:	9:30am A
COUNCIL MEETING:	July 22, 2008
APPROVED BY	
DEPARTMENT DIRECTOR	<i>[Signature]</i>
CITY MANAGER	<i>[Signature]</i>

July 22, 2008

FROM: NICK P. YOVINO, Director
Planning and Development Department

BY: KEITH BERGTHOLD, Assistant Director *[Signature]*
Planning and Development Department

THROUGH: CLAUDIA CÁZARES, Interim Manager *[Signature]*
Housing and Community Development Division

SUBJECT: APPROVAL OF HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM LOAN FUNDS IN THE AMOUNT OF \$2,100,000 TO BASTIAN COURT LP FOR THE 61-UNIT BASTIAN COURT AFFORDABLE MULTI-FAMILY DEVELOPMENT PROJECT

KEY RESULT AREA

One Fresno

Presented to City Council
 Date 7/22/08
 Disposition was approved

RECOMMENDATION

Staff recommends Council:

1. Authorize negotiation and entry of a HOME Program Agreement in the amount of \$2,100,000 to Bastian Court LP for the construction of the 61-unit mixed-use Bastian Court affordable multi-family development project, subject to prior approval by the City Attorney; and
2. Adopt environmental assessment No. 014-07206 Determination of Exemption for the Bastian Court affordable housing project.

EXECUTIVE SUMMARY

The City has received a HOME funding request in the amount of \$4,050,000 from Bastian Court LP for its proposed Bastian Court apartments. Staff is requesting approval of HOME funds in the amount of \$2,100,000, from FY 08-09. Staff will return to HCD and Council in the next two fiscal years for approval of the additional \$1,950,000 in HOME Program funds.

The proposed project is located in downtown Fresno (See Exhibit A - Project Map) on the northwest corner of Stanislaus and L Streets. The project will consist of 60 affordable rental housing units, of which all will be available to very-low and low-income families, one manager's unit and commercial ground floor space. The HOME Program funds will be provided as a loan at the applicable federal rate (at time of disbursement), will carry a 55-year affordability period, with the principal and interest payable from residual receipts from the project's net operating income.

KEY OBJECTIVE BALANCE

The approval of HOME Program funds for the Bastian Court apartments presents an opportunity to make a positive impact to the Customer Satisfaction, Employees Satisfaction, and Financial Management Key Objectives. Approval impacts the Customer Service aspect by demonstrating the City's commitment

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to strengthening local and private partnerships to ensure adequate and affordable housing for households at or below 60% of area median income. The approval also contributes to Employee Satisfaction by supporting efforts that help achieve the Housing Element goals of producing affordable housing. In addition, it demonstrates creative and resourceful Financial Management by encouraging the practice of leveraging private and public funds to develop affordable housing.

BACKGROUND

The Bastian Court development team consists of Mission Housing Development Corporation, Cornerstone Foundation, and Bastian Partners LLC. The development team has over 30 years experience in development of affordable housing, general contracting, and provision of community services. Mission Housing, the project's co-managing general partner, is a non-profit, community based organization which creates and preserves high-quality affordable housing for residents of low and moderate incomes in the Mission District and San Francisco. Mission Housing has partnered with the development team to provide development and management expertise to the project. The Cornerstone Foundation will provide local input to the project as co-managing general partner. Bastian Partners LLC is the developer of record for this affordable housing project.

The total project cost is estimated at \$14.7 million. Other projected sources of financing are tax exempt bonds, 4% tax credits, deferred developer fee, and a general partner loan. The requested HOME funds will provide gap financing to complete the project. The commercial construction will be financed separately through other sources.

The HOME Program loan funds will carry an interest rate at the applicable federal rate (at the date of disbursement), will be repaid with residual receipts derived from the net operating income of the project and will be secured by a deed of trust recorded against the property. Sixty units will be designated as very-low and low-income available to households at, or below, 60 percent of area median income as defined annually by the U.S. Department of Housing and Urban Development (HUD) for the Fresno metropolitan area. One additional unit will be reserved for an on-site manager. The project will have 15 one-bedroom units and 45 two-bedroom units. The project will remain affordable to very-low and low-income families for a minimum of 55 years.

The HOME funding commitment in FY 08-09 is \$2,100,000, which will be available following Council approval and contract execution. Staff will return to Council in the next two fiscal years requesting approval of the additional HOME funds for the project. Additionally, staff will collaborate with Bastian Court LP to submit an application to the State of California Infill Infrastructure Grant Program, as funding becomes available. If awarded, these grant funds will underwrite the cost of capital improvements for the project, and subsequently may reduce the amount of City subsidy (HOME Program funds) requested for this project. Infill Infrastructure Grant Program funds are allocated by the State through a competitive process and are based on a points scale. Selection criteria include project readiness, housing affordability, density, proximity and access to transit centers, parks, employment centers, and consistency with regional growth plans.

The project is located on the northwest corner of Stanislaus and L Streets in downtown Fresno. A site map of the area, preliminary architectural elevations and site plan are shown in Exhibit A. The 0.48 acre-site will be developed as a mixed-use development, with sixty-one multi-family units and approximately 7,500 square feet of ground floor commercial space. The five-story building will incorporate wood construction with stucco exterior, a second floor plaza and energy efficient features. The Cornerstone Foundation will provide community outreach for the residents and assist in connecting residents with existing community services and groups.

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Development of Bastian Court helps to fulfill the affordable housing goals and objectives of the Housing Element of the 2025 General Plan and the 2006-2010 Consolidated Plan to HUD.

Environmental review consistent with both state regulations (CEQA) and federal funds (NEPA) has been completed. The project was found to be exempt from the provisions of CEQA (Exhibit B) and have no significant impact on the environment based on NEPA guidelines.

HOUSING AND COMMUNITY DEVELOPMENT COMMISSION

The Housing and Community Development Commission considered and recommended approval of this item on July 9, 2008.

FISCAL IMPACT

HOME funds for this proposed project are budgeted in the Planning and Development Department's FY 2009 Budget.

APPENDICES

Exhibit A – Project Map, Elevations, Site Plan

Exhibit B – CEQA Exemption



Exhibit A – Project Location Map

STUDIO 5
ARCHITECTS
12100 Wilshire Blvd., Suite 100, Beverly Hills, CA 90210
TEL: 310.274.1111 FAX: 310.274.1112
WWW.STUDIO5ARCHITECTS.COM

EXTERIOR ELEVATIONS
BASTIAN COURT
2100 ERMINGHAM ST.
FRESNO, CALIFORNIA 93710

07-006
A-2

TYPICAL KEYNOTES

- 1 WHITE FLUOROCARBON PAINT "WHITE" COLOR
- 2 POLYURETHANE FINISH "BLACK" COLOR
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SOUTH ELEVATION

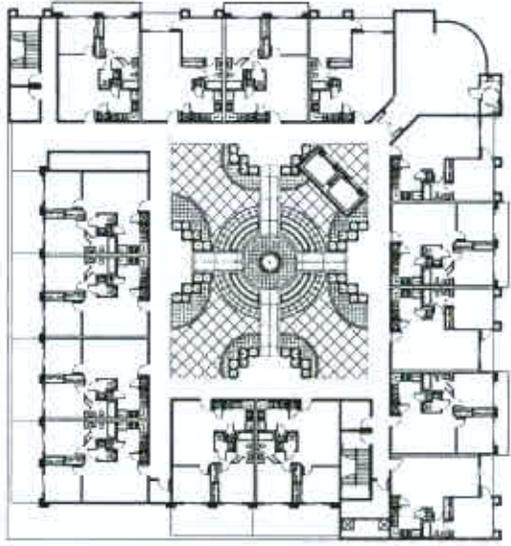
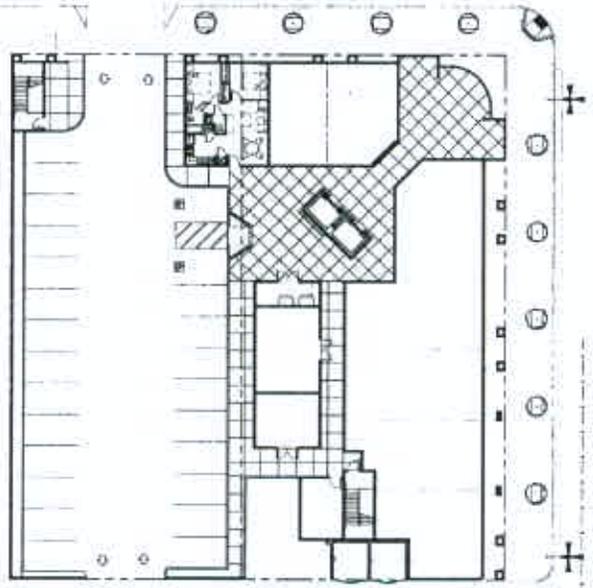
PUBLIC ALLEY ELEVATION

LEGEND

TREES & SHRUBS	QTY (SQ FT)	SHRUBS / BROWNVIVERS	QTY (SQ FT)
○ Large Tree	23	□ Shrub	132
○ Small Tree	20		
○ Tree	5		
○ Small Tree	5		
○ Tree	5		

NOTES

1. SEE SCHEDULE FOR TREE AND SHRUB SPECIFICATIONS.
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 **Krazan** & ASSOCIATES, INC.

GEOTECHNICAL ENGINEERING • ENVIRONMENTAL ENGINEERING
CONSTRUCTION TESTING & INSPECTION

**ENVIRONMENTAL ASSESSMENT
KRAZAN PROJECT NO. 014-07206**

**CITY OF FRESNO
EXEMPTION FROM THE PROVISIONS OF THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT**

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES (CALIFORNIA CODE OF REGULATIONS §15000 ET SEQ)

- APPLICANT:** City of Fresno, Planning and Development Department.
- PROJECT LOCATION:** 2139 Stanislaus and 1517 "L" Streets, Fresno, California
- PROJECT DESCRIPTION:** The City of Fresno conditionally approved \$4,050,000 in HUD Home Investment Partnerships (HOME) Program funds for the project. The project will include acquisition of two parcels of property, approximately 0.5 acres in size, located on the northwest corner of Stanislaus and "L" Streets in downtown Fresno, California, Fresno County Assessor's Parcel Numbers (APNs) 466-142-14 and -15. The current on-site structure is slated for demolition with a subsequent proposed mixed-use development including a 60-unit five-story affordable housing apartment complex with ground floor commercial space in an existing urban neighborhood.
- EXPLANATION:** Public Resources Code 21080.14 provides exemption for actions related to the construction, conversion, or use of lower-income housing projects of 100 units or less in urban areas, provided the site is less than 5 acres, not a wildlife habitat and is assessed for environmental contaminants. The proposed project includes 60 units, is approximately 0.5 acres in size, is not a wildlife habitat and was found to have no recognized environmental conditions based upon December 3, 2007 and March 14, 2008 Phase I Environmental Site Assessment research. Therefore, environmental review under the provisions of CEQA is not required.

DATE: March 20, 2008

PREPARED BY: Arthur C. Farkas
Registered Environmental Assessor

SUBMITTED BY: 
Nick P. Yovino, Director
City of Fresno
Development Department

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Recorded at the Request of
and When Recorded Return to:

City of Fresno
Planning and Development Department
Housing and Community Development Division
Attention: Housing Manager
2600 Fresno Street, Room 3076
Fresno, CA 93721-3605

FRESNO County Recorder
Robert C. Werner
DOC- 2008-0118280
Tuesday, AUG 19, 2008 11:19:51
Ttl Pd \$0.00 Nbr-0002828698
JZG/R3/1-59

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

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

By: Andrew T. Souza
Andrew T. Souza/~~Bruce Hudd~~ for
City Manager
Date: 8/12/08

CITY OF FRESNO HOME PROGRAM AGREEMENT

HOME Investment Partnerships Program Agreement

by and between

CITY OF FRESNO,
a municipal corporation

and

BASTIAN COURT, LP
a California Limited Liability Company

regarding

"Bastian Court"
APN: 466-142-15 and 466-142-14
An Affordable Multi-Family Mixed-Use Apartment Project

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EXHIBIT F: PROMISSORY NOTE	

HOME INVESTMENT PARTNERHIPS PROGRAM AGREEMENT

This HOME Investment Partnerships Program Agreement (hereinafter referred to as the "Agreement") is entered into this, July 22, 2008, by and between the CITY OF FRESNO, a municipal corporation, acting through its Planning and Development Department - Housing and Community Development Division (hereinafter referred to as the "CITY"), and BASTIAN COURT, LP, a California limited partnership, in good standing with principal offices in Fresno, California, (hereinafter referred to as "BASTIAN COURT").

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. To advance the supply of Affordable Rental Housing within the City of Fresno, the CITY desires, among other things, to encourage private investment in the affordable rental housing market.
- C. The Project will provide for the construction of sixty-one (61) affordable housing units, of which sixty (60) will be HOME-assisted affordable rental housing units at the Property identified in EXHIBIT A.
- D. BASTIAN COURT desires to act as owner, developer, and exercise effective project control as to the construction of a sixty-one (61) unit apartment complex of which sixty (60) units shall be constructed and preserved as Very Low- and Low-Income Rental Housing, and related on-site and off-site improvements, hereinafter referred to as the "Project", as more particularly described in the Project Description attached hereto as EXHIBIT B, incorporated herein.
- E. The Project will be constructed upon HOME eligible Property located within the boundaries of the City of Fresno, as more particularly described in the attached EXHIBIT A.
- F. To further its goal to increase the supply of Affordable Rental Housing within the City of Fresno, the CITY desires to assist BASTIAN COURT by providing a Two Million One Hundred Thousand Dollars (\$2,100,000) residual receipts HOME Program Loan to the Project (hereinafter referred to as "Loan"), for a term of fifty-five (55) years, for payment of HOME eligible Project costs, as further identified in EXHIBIT C (Project Budget), to be secured by the underlying real property and the Affordable Rental Housing covenants, upon the terms and conditions in this Agreement. The interest will be at the Applicable Federal Rate (as of the date of initial disbursement) compounded annually. Principal and interest will be payable from residual receipts at times prior to the Maturity Date and in full upon the Maturity Date.
- G. The CITY has conducted an environmental review of the Project pursuant to the National Environmental Policy Act ("NEPA") resulting in a finding of no significant impact.

CITY has received related federal approval for release of HOME funds pursuant to 24 CFR Part 58. Additionally, the City has conducted an environmental review of the Project pursuant to the California Environmental Quality Act ("CEQA") resulting in a categorical exemption.

H. 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 Low-Income Housing available at Affordable Rental Housing cost to persons and families of Low-Income, as defined hereunder, (v) planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of Low-Income Housing, and (vi) will comply with any and all owner participation rules and criteria applicable thereto.

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

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

ARTICLE 1. DEFINITIONS

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

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

1.2 Acquisition means vesting of the Property in fee title.

1.3 Affirmative Marketing means a good faith effort to attract eligible persons of all racial, ethnic and gender groups, in the housing market area, to rent the proposed 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 issues and records the Certificate of Completion, as more fully described in the Declaration of Restrictions (attached hereto as EXHIBIT D).

1.5 Affordable Rental Housing means the rental housing units of which sixty (60) will be required to meet the affordability requirements of 24 CFR 92.252.

1.6 Budget means the pro-forma Project Budget, 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.

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

1.8 CFR means the Code of Federal Regulations.

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

1.10 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 Affordable Rental Housing covenants and requirements of this Agreement which shall run with the land.

1.11 Deed of Trust means that standard, subordinate no worse than first (1st) position Deed of Trust including assignment of rents and security agreement given by BASTIAN COURT, as Trustor, to the CITY as beneficiary, issued through an escrow established by BASTIAN COURT 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.

1.12 Eligible Costs means any and all HOME Program eligible Project costs as may be reimbursed by the Loan(s), 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.

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

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

1.15 Hazardous Materials means any hazardous or toxic substances, materials, wastes, pollutants or contaminants which are defined, regulated or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants" or "toxic substances" under federal or state environmental and health safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable

explosives, urea formaldehyde insulation, radioactive materials, asbestos and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating or occupying a housing project, to the extent and degree that such substances are stored, used and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.16 HOME Investment Partnership 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 Two Million One Hundred Thousand Dollars (\$2,100,000) to be used for HOME Program eligible Project costs.

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

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

1.19 Loan means the non-assumable loan of HOME Funds, in an amount not to exceed the sum of Two Million One Hundred Thousand Dollars (\$2,100,000), 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.

1.20 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.

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

1.22 Note means the non-assumable, 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 BASTIAN COURT 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 1st 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.

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

1.24 Project means each and all of the sixty-one (61) Low-Income and Very Low-Income Affordable Rental Housing Units to be constructed, marketed, and rented as Low-Income Housing, and related on-site and off-site improvements, all as described in the

Project Description attached hereto and incorporated herein as EXHIBIT B, upon the Property as more particularly described in EXHIBIT A. Sixty (60) HOME-units will be rented to Very Low- and Low-Income persons as identified in the Project Description, which shall meet HOME Program requirements.

1.25 Project Completion Date means the date that the CITY shall have determined that the Project has reached completion in accordance with this Agreement. The Project Completion Date for this project is identified in EXHIBIT B.

1.26 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.

1.27 Property means the HOME Program eligible property located at the northwest corner of Stanislaus and L Streets, APN: 466-142-15 and 466-142-14, Fresno, California, more specifically described in the attached EXHIBIT A, to be acquired by BASTIAN COURT, and developed for Affordable Rental Housing.

1.28 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 BASTIAN COURT 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 BASTIAN COURT, and paid by the tenant.

1.29 Unit means a dwelling unit of the Rental Housing.

1.30 Very Low-Income Families 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 50% of the median for the area on the basis of HUD findings that such variations are necessary.

ARTICLE 2. TERMS

2.1 Loan of HOME Funds. The CITY agrees to provide the Loan of HOME Funds to BASTIAN COURT in an amount not to exceed Two Million One Hundred Thousand Dollars (\$2,100,000.00) under the terms and conditions provided in this Agreement. The HOME Funds shall only be used for payment of HOME eligible costs.

2.2 Loan Documents. BASTIAN COURT 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.

2.3 Term of Agreement. This Agreement is effective upon the date of execution 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. It is understood and agreed upon, however, that if for any reason this Agreement should be terminated in whole or in part as provided hereunder, without default, by BASTIAN COURT prior to disbursement of HOME Program Funding hereunder, the CITY agrees to record a Notice of Cancellation regarding this Agreement, upon the written request of BASTIAN COURT.

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

2.5 Incorporation of Documents. The BASTIAN COURT proposal dated March 22, 2007, the CITY Council approved Minutes of July 22, 2008, 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.

2.6 Covenants of BASTIAN COURT. BASTIAN COURT for itself and its nominees/assigns covenants and agrees to comply with all the terms and conditions of this Agreement and the requirements of 24 CFR Part 92.

ARTICLE 3. GENERAL REPRESENTATIONS AND WARRANTIES OF BASTIAN COURT

3.1 Existence and Qualification. BASTIAN COURT represents and warrants as of the date hereof, that BASTIAN COURT is a duly organized California limited partnership corporation in good standing. BASTIAN COURT 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, delivery, performance, and observance of its obligations under this Agreement. This Agreement, when executed and delivered, shall constitute the legal, valid, and binding obligations of BASTIAN COURT enforceable against BASTIAN COURT in accordance with its respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws of general applicability affecting the enforcement of creditors' rights generally, and (b) the application of general principles of equity without the joinder of any other party.

3.2 No Litigation Material to Financial Condition. BASTIAN COURT 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 BASTIAN COURT's knowledge, is any such litigation or proceeding now threatened, or anticipated against BASTIAN COURT that, if adversely determined, would have a material adverse effect on the financial condition, business, or assets of BASTIAN COURT or on the operation of the Project.

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

employee of the CITY.

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

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

3.6 No Litigation Material to Project. BASTIAN COURT 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 BASTIAN COURT 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 BASTIAN COURT's ability to perform and observe its obligations under this Agreement, or that would either directly or indirectly have an adverse effect on or impair the completion of the Project.

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

ARTICLE 4. HOME PROGRAM REPRESENTATION AND WARRANTIES BY BASTIAN COURT

BASTIAN COURT, for itself and its development team, represents and warrants that:

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

A. At least five percent (5%) of the dwelling units, or at least four (4) units, whichever is greater, must be constructed to be accessible for persons with mobility disabilities. An additional two percent (2%) of the dwelling units, or at least two (2) units, whichever is greater, must be accessible for persons with hearing or visual disabilities. These units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) or a standard that is equivalent or stricter. These mandates can be found in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973

(29 U.S.C. 794).

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

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

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

4.2 Affirmative Marketing. BASTIAN COURT 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. BASTIAN COURT shall be responsible for complying with the CITY's "Affirmative Marketing Policy" document, incorporated herein, as amended from time to time. BASTIAN COURT shall maintain records of actions taken to affirmatively market units, and to assess the results of these actions.

4.3 Availability of HOME Funds. BASTIAN COURT 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 BASTIAN COURT, 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.

4.4 Compliance with Agreement. BASTIAN COURT 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 BASTIAN COURT within the meaning of Article 10 of this Agreement, the CITY may suspend or terminate this Agreement and all other agreements with BASTIAN COURT without waiver or limitation of rights/remedies otherwise available to the CITY.

4.5 Conflict of Interest. BASTIAN COURT 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 BASTIAN COURT (other than an employee or agent of BASTIAN COURT who occupies a unit as the project manager or maintenance worker) may occupy a Project Unit. BASTIAN COURT 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.

4.6 Construction Standards. BASTIAN COURT 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, BASTIAN COURT agrees to comply with the applicable standards identified in 24 CFR 92.251.

4.7 Covenants and Restrictions to Run with the Land. The CITY and BASTIAN COURT 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 and the Affordable Housing requirements therein, said covenants and restrictions shall expire. BASTIAN COURT further warrants, covenants and agrees to ensure that the covenants and restrictions set forth herein shall run in favor of the CITY.

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

B. BASTIAN COURT covenants and agrees that until the expiration of the Affordability Period it shall cause the Affordable Rental Housing to be used for Affordable Housing.

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 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 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.

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

4.9 Initial and Annual Income Certification. BASTIAN COURT warrants, covenants and agrees that it shall comply with the procedures for annual income determinations at 24 CFR 92.203. BASTIAN COURT shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from each tenant Household renting any Unit. BASTIAN COURT shall make a good faith effort to verify that the income provided by an applicant or occupying Household in an income certification is accurate by taking one or more of the following steps as part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income verification form from the applicant's current employer; (3) obtain an income verification form from the Social Security Administration and California Department of Social Services if the applicant receives assistance from either of such agencies; (4) obtain an income tax return for the most recent tax year, or (5) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of household income certification and verification must be available for review and approval by the CITY. BASTIAN COURT further warrants, covenants and agrees that it shall cooperate with the CITY in the CITY's income certification/affordability monitoring activities.

4.10 Lead-Based Paint. BASTIAN COURT warrants, covenants and agrees that it shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 CFR Part 35 including the HUD 1012 Rule, and 24 CFR 982.401(j), including any amendments thereto, in the Affordable Rental Housing Project. These requirements apply to all units and common areas in the Affordable Rental Housing Project. BASTIAN COURT shall incorporate or cause incorporation of this provision in all contracts and subcontracts for work performed on the Project, which involve the application of paint. BASTIAN COURT shall be responsible for all disclosure, inspection, testing, evaluation, control and abatement activities.

4.11 Minority Outreach Activities. BASTIAN COURT 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 BASTIAN COURT comply with the CITY's minority outreach program.

4.12 Other Laws and Regulations. BASTIAN COURT warrants, covenants and agrees that, in addition to complying with the federal laws and regulations already cited in this Agreement, BASTIAN COURT 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. BASTIAN COURT 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 CFR Part 92, as applicable and in accordance with the type of Project assisted, including, but not limited to, the limit on per-unit subsidy amount at 24 CFR 92.250.

D. The property standards at 24 CFR 92.251.

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

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 CFR Part 5), in regards to the construction and management of the proposed Project.

G. BASTIAN COURT 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 CFR 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 CFR 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 CFR 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.

4.13 Religious Organizations. BASTIAN COURT warrants, covenants and agrees that it will not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded by this Agreement as described in 24 CFR 92.257.

4.14 Reporting Requirements. BASTIAN COURT warrants, covenants and agrees that it shall submit performance reports to the CITY as detailed in Section 7.16. Furthermore, BASTIAN COURT agrees to provide, at the sole cost of BASTIAN COURT, annual audited Financial Statements for the Project expenses and ongoing financial transactions which occur as a result of this Agreement as detailed in Sections 5.6 and 5.7. BASTIAN COURT agrees to account for the expenditure of HOME Funds using generally accepted accounting principals, which financial documentation shall be made available to the CITY and HUD upon their respective written request(s).

4.15 Housing Affordability. BASTIAN COURT warrants, covenants and agrees that the Project will meet the Affordable Rental Housing, income targeting and other requirements of 24 CFR 92.252 during the Affordability Period. The Units shall, at a minimum, be rented to and occupied by, or, if vacant, available for rental and occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than sixty percent (60%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable 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 BASTIAN COURT fails to comply with this Section or the Affordability Period is not revived following transfer by foreclosure or transfer in lieu of foreclosure, BASTIAN COURT shall return to CITY all HOME Funds disbursed to BASTIAN COURT by CITY.

4.16 Terminated Projects(s). BASTIAN COURT 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.

ARTICLE 5. COVENANTS AND AGREEMENTS OF BASTIAN COURT.

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

5.1 Adequate Repair and Maintenance. BASTIAN COURT shall maintain the Project and Property in compliance with all applicable codes, laws, and ordinances.

5.2 Affordable Rental Housing. BASTIAN COURT covenants and agrees that the Project shall constitute Affordable Housing with at least sixty (60) units preserved as Low-Income and Very Low-Income Rental Housing (as variously provided at 24 CFR 92.252) 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 BASTIAN COURT fails to comply with the time period in which the Project must constitute Affordable Housing, CITY shall without waiver or limitation be entitled to injunctive relief, as BASTIAN COURT acknowledges that damages are not an adequate remedy at law for such breach.

5.3 Compliance With Environmental Laws. BASTIAN COURT 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, BASTIAN COURT agrees that, if the CITY has reasonable grounds to suspect any such violation, BASTIAN COURT 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, BASTIAN COURT shall pay for the reasonable cost of the independent consultant.

Additionally, BASTIAN COURT 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 BASTIAN COURT;

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

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

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

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

3. BASTIAN COURT'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 BASTIAN COURT 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.

5.4 Compliance With Laws. BASTIAN COURT shall promptly and faithfully comply with, conform to and obey all present and future federal, state and local statutes, regulations, rules, ordinances and other legal requirements applicable by reason of this Agreement or otherwise to the Project. BASTIAN COURT acknowledges that the use of HOME Funds subjects the Project to extensive federal regulation and covenants and agrees that it shall comply with, conform to and obey (and take such steps as are required of BASTIAN COURT to enable the CITY to comply with, conform to and obey) all federal statutes, regulations, rules and policies applicable to the Program and the Project.

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

5.6 Financial Statements and Audits. BASTIAN COURT, 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, BASTIAN COURT, 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.

5.7 Inspection and Audit of Books, Records and Documents. BASTIAN COURT shall be accountable to the CITY for all HOME Funds disbursed for this project pursuant to this Agreement. Any duly authorized representative of the CITY, the State, or HUD shall, at all reasonable times, have access to and the right to inspect, copy, make excerpts or transcripts, audit, and examine all books of accounts, records, files and other papers or property, and other documents of BASTIAN COURT 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. BASTIAN COURT will maintain books and records for the Project using generally accepted accounting principles. BASTIAN COURT 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 BASTIAN COURT in which case BASTIAN COURT shall bear the cost of such audit. BASTIAN COURT shall also comply with any applicable audit requirements of 24 CFR 92.506. This section shall survive the termination of this Agreement.

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

5.8 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 72 hours written notice.

5.9 No Other Liens. BASTIAN COURT 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 or pre-development loans in relation to the Affordable Rental

Housing Project consistent with the attached Exhibit C Project Budget, without the prior written consent of the CITY.

5.10 Nondiscrimination. BASTIAN COURT 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 BASTIAN COURT shall not illegally discriminate against any persons on account of race, religion, sex, family status, age, handicap, or place of national origin in its performance of this Agreement and the completion of the Project.

5.11 Ownership. Except as required in pursuit hereof, BASTIAN COURT shall not sell, lease, transfer, assign or otherwise dispose of all or any material part of any interest it might hold in the Property or the Project without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed.

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

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

ARTICLE 6. DISBURSEMENT OF HOME FUNDS

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

6.1 Use of HOME Program Funds. BASTIAN COURT warrants, covenants and agrees that it shall request HOME Program Funds only for reimbursement of HOME eligible costs as identified in the attached Budget, limited to the amount needed, including costs allowable under 24 CFR 92.206, aggregating not more than Two Million One Hundred Thousand Dollars (\$2,100,000). 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 BASTIAN COURT for something other than for HOME eligible costs, and subject to the notice and cure provisions of Section 10.2 hereunder, an equal amount from nonpublic funds shall become immediately due and payable by BASTIAN COURT to the CITY; provided, however, that BASTIAN COURT 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 for Eligible Costs which subsequently lose eligibility as Eligible Costs, BASTIAN COURT shall immediately return such HOME Funds to the CITY.

C. The CITY will disburse HOME Funds, only to BASTIAN COURT through proper invoicing, for HOME eligible costs of the Project as provided in this Article 6.

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

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

B. BASTIAN COURT has submitted evidence that the combined monies from the Funding Sources and the HOME Funds are not less than Fourteen Million Seven Hundred Thirty Five Thousand Two Hundred Six Dollars and 00/100 (\$14,735,206.00) 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. BASTIAN COURT has acquired insurance coverage and delivered to the CITY evidence of insurance as required in Article 9.

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

F. BASTIAN COURT 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 Certification required by Section 6.4 of this Agreement.

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

6.3 Request for and Disbursement of HOME Program Funds. BASTIAN COURT shall request disbursement of HOME Funds using the CITY's Request for Disbursement of Funds Form, or a similar document. BASTIAN COURT shall only request a maximum of Two Million One Hundred Thousand Dollars (\$2,100,000) 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 6.4 of this Agreement.

6.4 BASTIAN COURT Certification. BASTIAN COURT shall submit to the CITY a written certification that, as of the date of the Request for Disbursement:

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

B. BASTIAN COURT 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. BASTIAN COURT 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 HOME eligible costs and must be supported by the itemized obligations that have been properly incurred and are properly chargeable in connection with the Project.

ARTICLE 7. DEVELOPMENT AND CONSTRUCTION OF PROJECT

Without waiver of limitation, the parties agree as follows:

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

7.2 Commencement and Completion of Project. BASTIAN COURT shall commence and complete construction in accordance with the Project Description and Schedule as identified in EXHIBIT B.

7.3 Contracts and Subcontracts. Consistent with Section 5.3, all demolition, hazardous waste abatement, construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise legally authorized to perform the applicable work or service in the State of California and the City of Fresno. BASTIAN COURT shall provide the CITY with copies of all agreements with any and all contractors or subcontractors for this Project. BASTIAN COURT shall require that each contractor and subcontractor agreement contain a provision whereby the party(ies) to the agreement other than BASTIAN COURT agree to (i) notify the CITY immediately of any event of default by BASTIAN COURT 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 BASTIAN COURT is not in default thereunder. BASTIAN COURT agrees to notify the CITY immediately of termination or cancellation of any such agreement(s), notice of filing of a mechanic's lien, or breach or default by other party(ies) thereto.

7.4 Damage to Property. To the extent consistent with the requirements of any permitted encumbrance, or as otherwise approved by the CITY, and subject to Article 9 of this Agreement, if any building or improvement constructed on the Property is damaged or destroyed by an insurable cause, BASTIAN COURT 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 BASTIAN COURT 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, BASTIAN COURT shall make up the deficiency.

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

7.6 Financing. BASTIAN COURT shall promptly inform the CITY of any new financing or funding, and BASTIAN COURT shall provide the CITY copies of all agreements with any and all Funding Sources for this Project. BASTIAN COURT shall require each agreement with any and all Funding Sources to contain a provision whereby the party(ies) to the agreement other than BASTIAN COURT, agree to (i) notify the CITY immediately of any event of default by BASTIAN COURT thereunder; (ii) notify the CITY immediately of termination or cancellation of the agreement; and (iii) provide the CITY, upon CITY's request, an Estoppel Certificate certifying that the agreement is in full force and effect and BASTIAN COURT is not in default thereunder. BASTIAN COURT agrees to notify the CITY immediately of termination or cancellation of any such agreement(s) or receipt of notice of default thereunder. BASTIAN COURT 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 BASTIAN COURT 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.

7.7 Identification Signage. Before the start of construction, BASTIAN COURT shall place a poster or sign, with a minimum four feet by four feet in size, identifying the City of Fresno, Housing and Community Development Division, Planning and Development Department 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.

7.8 Inspections. BASTIAN COURT 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 CFR 92.504(d).

7.9 Insurance and Bonds. Upon CITY's reasonable request, BASTIAN COURT shall submit for CITY approval bonds, certificates and applicable endorsements for all insurance and bonds required by this Agreement in accordance with Article 9.

7.10 Mechanic's Liens and Stop Notices. If any claim of lien is filed against the Property or a stop notice affecting any financing, HOME Program Funds or Funding

Sources for the Project is served on the CITY or any other third party in connection with the Project, BASTIAN COURT 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 BASTIAN COURT fails to discharge, bond or otherwise satisfy the CITY with respect to any lien, encumbrance, charge or claim referred to in this Section 7.10, 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 BASTIAN COURT expense. Alternatively, the CITY may require BASTIAN COURT 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 BASTIAN COURT. BASTIAN COURT hereby agrees to indemnify and hold the CITY harmless from liability for such liens, encumbrances, charges or claims together with all related costs and expenses.

7.11 Permits and Licenses. Upon CITY's reasonable request, BASTIAN COURT shall submit, for CITY approval, all the necessary permits and licenses required for Commencement of Construction. As the CITY may reasonably request, BASTIAN COURT, 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 Housing Project, and for its stated purposes in accordance with all applicable building, environmental, ecological, landmark, subdivision, zoning codes, laws, and regulations. BASTIAN COURT is responsible, at its sole cost and expense, to determine the location of any utilities on the Property and to negotiate with the utility companies for and to relocate the utilities, if any, as necessary to complete the Project.

7.12 Plans and Specifications. Before Commencement of Construction, BASTIAN COURT shall submit to the CITY, for its review and approval, the final Plans and Specifications for the Project. BASTIAN COURT will construct the Affordable Rental Housing in full conformance with the Plans and Specifications and modifications thereto approved by the CITY. BASTIAN COURT shall obtain the CITY's prior written approval for any modifications to the Plans and Specifications.

7.13 Project Responsibilities/Public Work-Prevailing Wage Requirements. BASTIAN COURT shall be solely responsible for all aspects of BASTIAN COURT'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, as applicable. This Project is a "public work" project for federal purposes including Davis Bacon and Related Acts wage requirements absent written direction/determination otherwise by U.S. 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 BASTIAN COURT 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, BASTIAN COURT shall be solely responsible for the quality and suitability of the work completed, 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 BASTIAN COURT is properly discharging its obligation to the CITY, and shall not be relied upon by BASTIAN COURT 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

7.14 Quality of Work. BASTIAN COURT shall ensure that construction of the proposed Project employs building materials of a quality suitable for the requirements of the Project. BASTIAN COURT 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.

7.15 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, BASTIAN COURT shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. BASTIAN COURT shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

7.16 Reporting Requirements. BASTIAN COURT 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, BASTIAN COURT shall submit a Quarterly Report, in a form approved by the CITY, which will include, at a minimum, the following information: progress of the Project and affirmative marketing efforts (as applicable). The Quarterly Reports are due on each March 31st, June 30th, September 30th, and December 31st, during said period.

B. Annually, beginning on the first day of the month following the CITY's issuance of the final Certificate of Completion, and continuing until the termination of the Agreement, BASTIAN COURT 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: the rent, the annual income and the family size of the Households. The report shall also state the date tenancy commenced for each rental Unit, certification from an officer of BASTIAN COURT 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. BASTIAN COURT 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, BASTIAN COURT shall submit proof of insurance as required in Article 9.

7.17 Scheduling and Extension of Time; Unavoidable Delay in Performance. It shall be the responsibility of BASTIAN COURT 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. The CITY, through its Housing and Community Development Division Manager, may extend such time in writing at its sole and absolute discretion, and upon written request of BASTIAN COURT, as follows:

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

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

7.18 Certificate of Completion. Upon completion of the construction of the Project, BASTIAN COURT shall certify in writing to the CITY that the Affordable Rental Housing has been constructed in accordance with the plans and specifications approved by the CITY. Upon completion of the Affordable Rental Housing, BASTIAN COURT shall also submit to the CITY a cost-certifying final budget where BASTIAN COURT 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 BASTIAN COURT is in compliance with all of BASTIAN COURT's construction obligations, as specified in this Agreement, the CITY shall furnish, within 30 calendar days of a written request by BASTIAN COURT, 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 BASTIAN COURT with a written statement indicating in what respects BASTIAN COURT 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 BASTIAN COURT will need to take or what standards it will need to meet in order to obtain the Certificate of Completion. Upon BASTIAN COURT taking the specified measures and meeting the specified standards, BASTIAN COURT will certify to the CITY in writing of such compliance and the CITY shall deliver the recordable

Certificate of Completion to BASTIAN COURT in accordance with the provisions of this section.

ARTICLE 8. PROJECT OPERATIONS

8.1 Operation of the Project. BASTIAN COURT shall lease, operate and manage the Project in full conformity with the terms of this Agreement.

8.2 Occupancy Requirements. Forty-eight (48) Project Units 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 percent (60%) of the most recent annual median income, and twelve (12) Project Units 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 fifty percent (50%) of the most recent annual median income, calculated and published by HUD for the Fresno Metropolitan Statistical Area, applicable to such household's size, and at an affordable price consistent with HOME Program regulations (as variously provided at 24 CFR 92.252) for the term of this Agreement. BASTIAN COURT shall comply with the income targeting requirements of 24 CFR 92.216.

8.3 Leasing the Project. Before leasing any Units, BASTIAN COURT shall submit its proposed form of Lease for CITY's review and approval. BASTIAN COURT covenants and agrees to utilize only Leases that have been approved in advance by CITY. The CITY shall respond to BASTIAN COURT's submission of a sample Lease within thirty (30) days. Should CITY not respond within thirty (30) days of Lease submittal, BASTIAN COURT shall be authorized to use the submitted sample Lease. Additionally, BASTIAN COURT 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 BASTIAN COURT or its authorized management entity upon the tenant specifying the grounds for such action. BASTIAN COURT 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.

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

A. BASTIAN COURT shall include in Leases for all Units, provisions which authorize BASTIAN COURT to immediately terminate the tenancy of any Household one or more of whose members misrepresented any fact material to the Household's qualification as a Household for Low-Income or Very Low-Income Families. Each such Lease shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for Low-Income or Very 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.

8.5 Final Management Plan. Before leasing the Affordable Rental Housing and at least sixty (60) calendar days prior to the Project Completion Date, BASTIAN COURT 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 BASTIAN COURT or its designated management entity plans to market the availability of Units to prospective tenants and how BASTIAN COURT plans to certify the eligibility of potential tenants. The Final Management Plan shall also address how BASTIAN COURT and/or the 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 Limits
- 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 BASTIAN COURT proposes to enter into with Project tenants. BASTIAN COURT 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, BASTIAN COURT 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.

8.6 Property Management. With respect to the Project, BASTIAN COURT shall comply with the following:

A. Management Responsibilities. BASTIAN COURT directly and/or through its designated management entity, is specifically responsible for all management functions with respect to the Affordable Rental 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.

8.7 Maintenance and Security. BASTIAN COURT shall (i) at its own expense maintain the Affordable Rental Housing in good condition, in good repair and in decent, safe, sanitary, habitable and tenable living conditions for the benefit of the Unit occupants. BASTIAN COURT 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. BASTIAN COURT 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.

8.8 Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. BASTIAN COURT shall not illegally discriminate or segregate in the development, construction, use, enjoyment, occupancy or conveyance of any part of the Affordable Rental 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. BASTIAN COURT shall otherwise comply with all applicable local, state and federal laws concerning nondiscrimination in housing. Neither BASTIAN COURT nor any person claiming under or through BASTIAN COURT, 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 BASTIAN COURT as to the Units or the housing project or portion thereof, shall contain covenants concerning nondiscrimination consistent with this section. BASTIAN COURT shall include a statement in all advertisements, notices and signs for availability of Units for rent to the effect that BASTIAN COURT is an Equal Housing Opportunity Provider.

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

8.9 Rent Schedule and Utility Allowances. BASTIAN COURT covenants and agrees not to charge rent for Units in an amount which exceeds those rents prescribed in 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 CFR 92.252. BASTIAN COURT 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.

ARTICLE 9. INSURANCE AND INDEMNITY.

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

9.1 Insurance Coverage. Throughout the life of this Agreement, BASTIAN COURT shall itself and/or through its consultant(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:

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

A. The above described policy of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of the CITY, of policy cancellation, change or reduction of coverage. In the event the policy is due to expire during the term of this Agreement, a new certificate evidencing renewal of such policy shall be provided not less than fifteen (15) days prior to the expiration date of the expiring policy. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, BASTIAN COURT 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.

B. If at any time during the life of this Agreement or any extension, BASTIAN COURT fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and the CITY shall not provide further HOME funds to the Project 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 Section 10.2, notice and cure, shall be sufficient cause for the CITY to terminate this Agreement.

9.2 Indemnity. BASTIAN COURT shall indemnify, hold harmless and defend the CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the CITY, BASTIAN COURT 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. BASTIAN COURT's obligations under the preceding sentence shall apply regardless of whether the CITY or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active negligence or by the willful misconduct of the CITY or any of its officers, officials, employees, agents or volunteers.

A. If BASTIAN COURT should contract all or any portion of the work to be performed under this Agreement, BASTIAN COURT 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.

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

9.4 Bond Obligations. Upon the CITY's request, BASTIAN COURT shall obtain, pay for and deliver or cause to be obtained, paid for and delivered 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 Co-Obligee.

A. The "Faithful Performance Bond" shall be at least equal to 100% of Owner's estimated construction costs to guarantee faithful performance of the Project, within the time prescribed, in a manner satisfactory to the CITY, 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 100% of Owner's estimated construction costs to satisfy claims of material supplies and of mechanics and laborers employed for this Project. The bond shall be maintained by BASTIAN COURT in full force and effect until the Project is completed and accepted by the CITY, and until all claims for materials and labor are paid, and shall otherwise comply with any applicable provisions of Chapter 7, Title 15, Part 4, Division 3 of the California Civil Code.

ARTICLE 10. DEFAULT AND REMEDIES

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

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

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

C. Except as otherwise provided in this Agreement, the failure of BASTIAN COURT to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) BASTIAN COURT'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) BASTIAN

COURT's use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) BASTIAN COURT's failure to commence or complete the Project, as specified in this Agreement, unless delay is permitted under Section 7.17 of this Agreement; (4) the cessation of the Project for a period of more than fifteen (15) consecutive days (other than as provided at Section 7.17 of this Agreement) prior to submitting to the CITY, pursuant to Section 7.18, certification that the Project is complete; (5) any material adverse change in the condition of BASTIAN COURT 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) BASTIAN COURT's failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY's request; (7) BASTIAN COURT'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 BASTIAN COURT shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that BASTIAN COURT 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 BASTIAN COURT's inadvertence, BASTIAN COURT 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. BASTIAN COURT 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. BASTIAN COURT's failure, inability or admission in writing of its inability to pay its debts as they become due or BASTIAN COURT assignment for the benefit of creditors;

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

H. The failure of BASTIAN COURT to cause completion of the Project prior to the completion date identified in EXHIBIT B.

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

J. Any substantial or continuous breach by BASTIAN COURT of any material obligation owed by BASTIAN COURT imposed by any other agreement with

respect to the financing, development, construction or operation of the Project, whether or not the CITY is a party to such agreement.

10.2 Notice of Default and Opportunity to Cure. The CITY shall give written notice to BASTIAN COURT 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, BASTIAN COURT 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.

10.3 Remedies Upon an Event of Default. Upon the happening of an Event of Default by BASTIAN COURT 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 BASTIAN COURT;

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

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

ARTICLE 11. GENERAL PROVISIONS.

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

11.1 Amendments. No modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by the parties hereto.

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

11.3 Binding on All Successors and Assigns. Unless otherwise expressly provided in this Agreement, all the terms and provisions of this Agreement shall be binding on and

inure to the benefit of the parties hereto, and their respective nominees, heirs, successors, assigns, and legal representatives.

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

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

11.6 Discretionary Governmental Actions. Certain planning, land use, zoning and other permits and public actions required in connection with the Project including, without limitation, the approval of this Agreement, the environmental review and analysis under NEPA, 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 BASTIAN COURT or any of its executors, administrators, transferees, successors-in-interest or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

11.7 Effective Date. This Agreement shall be effective upon the date first above written.

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

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

11.10 Expenses Incurred Upon Event of Default. BASTIAN COURT 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 BASTIAN COURT under this Agreement.

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

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

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

11.14 No Assignment or Succession. Except as may be otherwise expressly provided by this Agreement, neither this Agreement, nor any interest of BASTIAN COURT in, under, or to this Agreement, or the Project, may be assigned or transferred by BASTIAN COURT 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.

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

11.16 No Waiver. Neither failure nor delay on the part of the CITY in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by BASTIAN COURT 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 BASTIAN COURT in any case shall entitle BASTIAN COURT to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the CITY's right to take other or further action in any circumstances without notice or demand.

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

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

If to the CITY: City of Fresno
Planning and Development Department
Housing and Community Development Division

Attn: Housing Manager
2600 Fresno Street, Room 3076
Fresno, CA 93721-3605

If to BASTIAN COURT:

Bastian Court, LP
Attn: Jaime Gonzalez
4321 N. West Ave.
Fresno, CA 93705

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

11.20 Recording of Documents. BASTIAN COURT 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.

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

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

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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: Andrew T. Souza
Andrew T. Souza
City Manager
(Attach notary certificate of acknowledgment)

Date: 8/12/08

ATTEST:
REBECCA E. KLISCH
City Clerk



APPROVED AS TO FORM:
JAMES SANCHEZ
City Attorney

By: Juanita L. Jones
Deputy

By: R. Cople
Name: Cople

Date: 8/13/08

Date: 8-06-08

BASTIAN COURT LP, a California limited partnership

By: Smith & Gonzalez, LLC
a California limited liability corporation,
its General Partner

By: Mission Housing Development Corporation
a California non-profit corporation,
its General Partner

By: Myron Smith
Myron Smith
Managing Member
(Attach notary certificate of acknowledgment)

By: _____
Larry Del Carlo
President
(Attach notary certificate of acknowledgment)

Date: 8-4-08

Date: _____

By: Jaime Gonzalez
Jaime Gonzalez
Co-Managing Member

Date: 8-1-08

Attachments:

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

3035 MS

ACKNOWLEDGMENT

State of California
County of FRESNO)

On AUGUST 12, 2008 before me, THERESA SALDIVAR, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared ANDREW T. SOUZA -
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 Theresa Saldivar (Seal)

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of FRESNO

On AUGUST 7, 2008 before me, LIZETTE G. CANCHOLA, NOTARY PUBLIC
(Here insert name and title of the officer)

personally appeared JAIME GONZALEZ

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 of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)
 Corporate Officer

(Title)

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

INSTRUCTIONS FOR COMPLETING THIS FORM

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

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

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of FRESNO

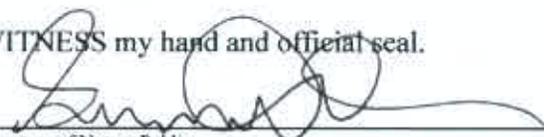
On AUGUST 4, 2008 before me, LIZETTE G. CANCHOLA, NOTARY PUBLIC
(Here insert name and title of the officer)

personally appeared MYRON F. SMITH

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 of Notary Public



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

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

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- Securely attach this document to the signed document

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

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

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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: Andrew T. Souza
Andrew T. Souza
City Manager

(Attach notary certificate of acknowledgment)

Date: 8/12/08

ATTEST:
REBECCA E. KLISCH
City Clerk



APPROVED AS TO FORM:
JAMES SANCHEZ
City Attorney

By: Jessalynne J. Jovan
Deputy

Date: 8/13/08

By: R. Cagle
Name: Cagle

Date: 8-06-08

BASTIAN COURT LP, a California limited partnership

By: Smith & Gonzalez, LLC
a California limited liability corporation,
its General Partner

By: Mission Housing Development Corporation
a California non-profit corporation,
its General Partner

By: _____
Myron Smith
Managing Member
(Attach notary certificate of acknowledgment)

Date: _____

By: Larry Del Carlo
Larry Del Carlo
President
(Attach notary certificate of acknowledgment)

Date: 8/4/08

By: _____
Jaime Gonzalez

Date: _____

Attachments:

By: Viola Maestas
Viola Maestas, Chairperson
Board of Directors

Date: 8/4/08

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

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ACKNOWLEDGMENT

State of California
County of FRESNO)

On AUGUST 12, 2008 before me, THERESA SALDIVAR, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared ANDREW T. SOUZA -
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 *Theresa Saldivar* (Seal)



CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Francisco

On 8/4/08 before me, R. Romero, Notary Public
(Here insert name and title of the officer)

personally appeared Larry del Carlo and Viola Maestas

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]
 Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

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

DESCRIPTION OF THE ATTACHED DOCUMENT

City of Fresno Home
(Title or description of attached document)

Program Agreement
(Title or description of attached document continued)

Number of Pages 35 Document Date 8/4/08

N/A

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer

N/A
(Title)

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

N/A

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
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 - ◆ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT A: PROPERTY DESCRIPTION

The Property is located on the northwest corner of Stanislaus and L Street.

Legal Description

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

Parcel 1:

Lots 14, 15 and 16 in Block 89 of the Town (Now City) of Fresno, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 1, Page 2 of Plats, Fresno County Records.

APN: 466-142-15

Parcel 2:

Lots 12, 13, and Southerly 15 feet of Lot 11 in Block 89, of the Town (Now City) of Fresno, in the City of Fresno, County of Fresno, State of California, according to the map thereof in Book 1, Page 2 of Plats, Fresno County Records.

APN: 466-142-14

EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE

I. PROJECT DESCRIPTION

The Project will include the acquisition of property, demolition and construction of a sixty-one (61) unit apartment complex of which sixty (60) HOME Program units will be constructed and preserved as Very Low- and Low-Income Housing in accordance with the chart below, and related on-site and off-site improvements. One unit will be reserved for an on-site manager.

HOME FUNDED UNITS			
% of Median	One Bedroom Units	Two Bedroom Units	Totals
50% or less	3	9	12
50% to 60%	12	36	48
Totals			60

HOME Funds will be made available by the CITY for payment of HOME eligible costs not to exceed Two Million One Hundred Thousand Dollars (\$2,100,000), as needed, for HOME eligible project development costs.

II. PROJECT SCHEDULE

Obtain Building Permits	November 26, 2008
Start Construction	December 15, 2008
Complete Construction	May 31, 2010
Complete Lease Up	July 30, 2010

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RESIDENTIAL DEVELOPMENT BUDGET

	Total Development Costs	Sources of Funds					Construction Financing
		HOME Funds FY 2009	LIHTC	Source 1st TE Bonds	GP Loan	Def. Dev. Fee	
Acquisition Costs:							
Purchase Price	400,000	400,000					
Liens							
Closing, Title & Recording Costs	25,000	25,000					
Other:Demolition	84,775	84,775					
SUBTOTAL	509,775	509,775	0	0	0	0	0
Construction							
Basic Construction Contract	8,580,398	419,182	4,977,587	1,800,409			1,383,220
Bond Premium	80,000						80,000
Infrastructure Improvements							
Hazardous Abate. & Monitoring							
Construction Contingency (10 %)	493,915		493,915				
* SEE BELOW							
Contractor O/H & Profit	1,091,580		248,364		843,216		
Other Construction Costs:General Req'ts	121,544		121,544				
Other Construction Costs:Misc.							
SUBTOTAL	10,367,437	419,182	5,841,410	1,800,409	843,216	0	1,463,220
Development							
Appraisal	12,500	12,500					
Architect/Engineer	459,600	459,600					
Environmental Assessment(soils&survey)	21,750	21,750					
Geotechnical Study	11,500	11,500					
Boundary & Topographic Survey	8,400	8,400					
Legal (syndication, legal, consulting)	55,000	55,000					
Developer Fee	1,561,767					1,561,767	
Project Management	62,335	62,335					
Technical Assistance	64,218					64,218	
Other Consultants	76,533	76,533					
Other:Personal Property	20,000		20,000				
SUBTOTAL	2,353,603	707,618	20,000	0	0	1,625,985	0
Other Development							
Real Estate Tax	5,760	5,750					
Insurance	75,000	62,533			12,467		
Permits, Fees & Hookups	320,000	320,000					
Impact/Mitigation Fees (Incl. in permits)							
Development Period Utilities							
Construction Loan Fees&Legal	111,000	35,170			12,467		63,363
Construction Interest	473,417					267,563	205,854
Other Loan Fees - PermLoan/Bond Issue	217,563						217,563
LIHTC Fees	39,972	39,972					
Accounting/Audit	15,000		15,000				
Marketing/Leasing Expenses	150,000		150,000				
Carrying Costs at Rent Up							
Operating Reserves	94,373		94,373				
Replacement Reserves:							
SUBTOTAL	1,502,075	463,425	259,373	0	24,934	267,563	486,780
Total Development Costs	14,732,890	2,100,000	6,120,783	1,800,409	868,150	1,893,548	1,950,000

To be inserted

Exhibit C – Cash Flow

Bonitas Manor
Projection of Value and Outstanding Debt

	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40
1.0%	306,273	310,014	313,855	317,706	321,567	325,428	329,289	333,150	337,011	340,872	344,733	348,594	352,455	356,316	360,177	364,038	367,899	371,760	375,621	379,482	383,343
2.0%	315,465	320,014	324,665	329,416	334,267	339,118	344,000	348,922	353,884	358,886	363,928	368,990	374,072	379,184	384,326	389,508	394,730	399,992	405,294	410,636	416,018
3.0%	321,567	327,014	332,665	338,416	344,267	350,118	356,000	361,922	367,884	373,886	379,928	386,000	392,102	398,234	404,396	410,588	416,810	423,062	429,344	435,656	442,008
4.0%	328,679	334,614	340,755	347,006	353,457	360,108	366,960	374,002	381,234	388,656	396,268	404,070	412,062	420,244	428,616	437,178	445,930	454,872	464,004	473,326	482,838
5.0%	336,801	343,214	350,000	357,051	364,367	371,940	379,770	387,858	396,204	404,818	413,700	422,860	432,308	442,044	452,068	462,380	472,980	483,878	495,074	506,566	518,354
6.0%	345,033	352,014	359,500	367,291	375,380	383,770	392,460	401,450	410,740	420,330	430,220	440,410	450,900	461,690	472,780	484,170	495,860	507,850	520,140	532,730	545,620
7.0%	353,375	361,014	369,200	377,691	386,480	395,570	404,960	414,650	424,640	434,930	445,520	456,410	467,600	479,090	490,880	502,970	515,360	528,050	541,040	554,330	567,920
8.0%	361,827	370,014	378,800	387,891	397,080	406,570	416,360	426,450	436,840	447,530	458,520	469,810	481,400	493,290	505,480	517,970	530,760	543,850	557,240	570,930	584,920
9.0%	370,389	379,014	388,400	397,991	407,780	417,770	428,060	438,650	449,540	460,730	472,220	484,010	496,100	508,490	521,180	534,170	547,460	561,050	574,940	589,130	603,620
10.0%	379,061	388,014	397,600	407,391	417,380	427,570	438,060	448,850	459,940	471,330	483,020	495,010	507,300	520,000	533,000	546,300	560,000	574,000	588,300	602,900	617,700
11.0%	387,843	397,014	406,800	416,791	426,980	437,370	448,060	459,050	470,340	481,930	493,820	506,010	518,500	531,300	544,400	557,800	571,500	585,500	599,800	614,400	629,200
12.0%	396,735	406,014	415,900	425,991	436,280	446,770	457,560	468,650	480,040	491,730	503,720	516,010	528,600	541,500	554,700	568,200	581,900	595,900	610,200	624,800	639,600
13.0%	405,737	415,014	424,900	435,091	445,480	456,070	466,860	477,950	489,340	501,030	513,020	525,310	537,900	550,800	564,000	577,500	591,300	605,400	619,800	634,500	649,400
14.0%	414,849	424,014	433,900	444,191	454,680	465,370	476,260	487,450	498,940	510,730	522,820	535,210	547,900	560,900	574,200	587,800	601,700	615,900	630,400	645,100	660,000
15.0%	424,071	433,014	442,900	453,291	463,880	474,670	485,660	496,950	508,540	520,430	532,620	545,110	557,900	571,000	584,400	598,100	612,100	626,400	641,000	655,800	670,800
16.0%	433,403	442,014	451,900	462,291	472,880	483,670	494,660	505,950	517,540	529,430	541,620	554,110	566,900	580,000	593,400	607,100	621,100	635,400	650,000	664,800	679,800
17.0%	442,845	451,014	460,900	471,291	481,880	492,670	503,660	514,950	526,540	538,430	550,620	563,110	575,900	589,000	602,400	616,100	630,100	644,400	659,000	673,800	688,800
18.0%	452,397	460,014	469,900	480,291	490,880	501,670	512,660	523,950	535,540	547,430	559,620	572,110	584,900	598,000	611,400	625,100	639,100	653,400	668,000	682,800	697,800
19.0%	462,059	469,014	478,900	489,291	499,880	510,670	521,660	532,950	544,540	556,430	568,620	581,110	593,900	607,000	620,400	634,100	648,100	662,400	677,000	691,800	706,800
20.0%	471,831	478,014	487,900	498,291	508,880	519,670	530,660	541,950	553,540	565,430	577,620	590,110	602,900	616,000	629,400	643,100	657,100	671,400	686,000	700,800	715,800
21.0%	481,713	487,014	496,900	507,291	517,880	528,670	539,660	550,950	562,540	574,430	586,620	599,110	611,900	625,000	638,400	652,100	666,100	680,400	695,000	709,800	724,800
22.0%	491,705	496,014	505,900	516,291	526,880	537,670	548,660	560,050	571,740	583,730	596,020	608,610	621,500	634,700	648,200	662,000	676,100	690,500	705,200	720,100	735,200
23.0%	501,807	505,014	514,900	525,291	535,880	546,670	557,660	568,950	580,540	592,430	604,620	617,110	629,900	643,000	656,400	670,100	684,100	698,400	713,000	727,800	742,800
24.0%	512,019	515,014	524,900	535,291	545,880	556,670	567,660	578,950	590,540	602,430	614,620	627,110	640,000	653,200	666,700	680,500	694,600	709,000	723,700	738,600	753,700
25.0%	522,341	525,014	534,900	545,291	555,880	566,670	577,660	588,950	600,540	612,430	624,620	637,110	650,000	663,200	676,700	690,500	704,600	719,000	733,700	748,600	763,700
26.0%	532,773	535,014	544,900	555,291	565,880	576,670	587,660	598,950	610,540	622,430	634,620	647,110	660,000	673,200	686,700	700,500	714,600	729,000	743,700	758,600	773,700
27.0%	543,315	545,014	554,900	565,291	575,880	586,670	597,660	608,950	620,540	632,430	644,620	657,110	670,000	683,200	696,700	710,500	724,600	739,000	753,700	768,600	783,700
28.0%	553,967	555,014	564,900	575,291	585,880	596,670	607,660	618,950	630,540	642,430	654,620	667,110	680,000	693,200	706,700	720,500	734,600	749,000	763,700	778,600	793,700
29.0%	564,729	565,014	574,900	585,291	595,880	606,670	617,660	628,950	640,540	652,430	664,620	677,110	690,000	703,200	716,700	730,500	744,600	759,000	773,700	788,600	803,700
30.0%	575,591	575,014	584,900	595,291	605,880	616,670	627,660	638,950	650,540	662,430	674,620	687,110	700,000	713,200	726,700	740,500	754,600	769,000	783,700	798,600	813,700
31.0%	586,553	585,014	594,900	605,291	615,880	626,670	637,660	648,950	660,540	672,430	684,620	697,110	710,000	723,200	736,700	750,500	764,600	779,000	793,700	808,600	823,700
32.0%	597,615	595,014	604,900	615,291	625,880	636,670	647,660	658,950	670,540	682,430	694,620	707,110	720,000	733,200	746,700	760,500	774,600	789,000	803,700	818,600	833,700
33.0%	608,777	605,014	614,900	625,291	635,880	646,670	657,660	668,950	680,540	692,430	704,620	717,110	730,000	743,200	756,700	770,500	784,600	799,000	813,700	828,600	843,700
34.0%	620,039	615,014	624,900	635,291	645,880	656,670	667,660	678,950	690,540	702,430	714,620	727,110	740,000	753,200	766,700	780,500	794,600	809,000	823,700	838,600	853,700
35.0%	631,401	625,014	634,900	645,291	655,880	666,670	677,660	688,950	700,540	712,430	724,620	737,110	750,000	763,200	776,700	790,500	804,600	819,000	833,700	848,600	863,700
36.0%	642,863	635,014	644,900	655,291	665,880	676,670	687,660	698,950	710,540	722,430	734,620	747,110	760,000	773,200	786,700	800,500	814,600	829,000	843,700	858,600	873,700
37.0%	654,425	645,014	654,900	665,291	675,880	686,670	697,660	708,950	720,540	732,430	744,620	757,110	770,000	783,200	796,700	810,500	824,600	839,000	853,700	868,600	883,700
38.0%	666,087	655,014	664,900	675,291	685,880	696,670	707,660	718,950	730,540	742,430	754,620	767,110	780,000	793,200	806,700	820,500	834,600	849,000	863,700	878,600	893,700
39.0%	677,849	665,014	674,900	685,291	695,880	706,670	717,660	728,950	740,540	752,430	764,620	777,110	790,000	803,200	816,700	830,500	844,600	859,000	873,700	888,600	903,700
40.0%	689,711	675,014	684,900	695,291	705,880	716,670	727,660	738,950	750,540	762,430	774,620	787,110	800,000	813,200	826,700	840,500	854,600	869,000	883,700	898,600	913,700
41.0%	701,673	685,014	694,900	705,291	715,880	726,670	737,660	748,950	760,540	772,430	784,620	797,110	810,000	823,200	836,700	850,500	864,600	879,000	893,700	908,600	923,700
42.0%	713,735	695,014	704,900	715,291	725,880	736,670	747,660	758,950	770,540	782,430	794,620	807,110	820,000	833,200	846,700	860,500					

Bascom Manor
Programs of Value and Overheading Debt

	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
Return Income - Residential	1.0%	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Other Income - Residential	1.0%	28,234	29,508	30,782	32,056	33,330	34,604	35,878	37,152	38,426	39,700	40,974	42,248	43,522	44,796
Income Tax - Residential	1.0%	(12,201)	(12,586)	(12,971)	(13,356)	(13,741)	(14,126)	(14,511)	(14,896)	(15,281)	(15,666)	(16,051)	(16,436)	(16,821)	(17,206)
Net Return Income	1.0%	16,033	16,922	17,811	18,700	19,589	20,478	21,367	22,256	23,145	24,034	24,923	25,812	26,701	27,590
Operating Expenses	3.0%	(71,373)	(75,851)	(80,329)	(84,807)	(89,285)	(93,763)	(98,241)	(102,719)	(107,197)	(111,675)	(116,153)	(120,631)	(125,109)	(129,587)
Net Operating Income		15,660	16,071	16,482	16,893	17,304	17,715	18,126	18,537	18,948	19,359	19,770	20,181	20,592	21,003
Debt Service - Loan 1															
Debt Service - Loan 2															
Debt Service - Loan 3															
Development Costs Paid From Operations															
Deferred Developer Fee															
Operating Management Fee															
Net Cashflow		14,659	15,162	15,665	16,168	16,671	17,174	17,677	18,180	18,683	19,186	19,689	20,192	20,695	21,198
Loan Debt Service on Self Debt															
Loan 4															
Program - RTMSE															
GP Loan															
Loan 7															
Loan 4															
Value of CIP used	6.00%														
Value remaining market rate															
Value at Value															
Debt to Value at Market Rate	3.00%														

Loan 2 - Deferred Developer Fee

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Beginning Balance															
Interest Expense															
Operating Expense															
Ending Balance															

Loan 3 - Program - RTMSE

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Beginning Balance															
Interest Expense															
Operating Expense															
Ending Balance															

Loan 4 - GP Loan

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Beginning Balance															
Interest Expense															
Operating Expense															
Ending Balance															

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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
Planning and Development Department
Housing and Community Development Division
Attn: Housing Manager
2600 Fresno Street, Rm. 3076
Fresno, CA 93721-3605

Title Order No. _____ Escrow No. _____

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this _____, 200__ by BASTIAN COURT LLC, ("Declarant") in favor of the City of Fresno, acting by and through its Planning and Development Department, Housing and Community Development Division, ("City").

WHEREAS, Declarant is the owner of the real estate in the county of Fresno, state of California, consisting of APN: 466-142-15 and 466-142-14, which is more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, Pursuant to a certain HOME Investment Partnerships Program Agreement dated [---] incorporated herein, ("HOME Agreement") and instruments referenced therein, Declarant agrees to utilize and City agrees to provide certain HOME Program Funds from the United States Department of Housing and Urban Development, to Declarant for certain Affordable Rental Housing (the "Project") upon the Property, with no less than twelve (12) of the proposed Units to be preserved as Very Low-Income Affordable Rental Housing for tenants earning 50% or below of the area median income for the Fresno MSA, and with no less than forty-eight (48) of the proposed Units to be preserved as Low-Income Affordable Rental Housing for tenants earning 60% 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 issues and records the Certificate of Completion; 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, Consolidated and Annual Action Plans and Housing Element therein and HOME Program requirements. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, will inure to the benefit of the City, and will be enforceable by it. Any purchaser under a contract of sale 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 CITY issues and records the Certificate of Completion constituting the Affordability Period.

1. **Declarations.** Declarant hereby declares that the Property is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Project and the 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. All terms not otherwise defined herein shall have the meaning ascribed to such term in the HOME Agreement.

2. **Restrictions.** The following covenants and restrictions on the use and enjoyment of the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of 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 of recordation of the City's Certificate of Completion, 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(s) and the Affordability Period 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 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 twelve (12) Units constituting Affordable Rental Housing upon the Property may be leased only to (a) person(s) whose annual household income at the time of initial occupancy is not greater than 50% of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent HOME Program regulations. Additionally, a total of forty-eight (48) Units constituting Affordable Rental Housing upon the Property may be leased only to (a) person(s) whose annual household income at the time of initial occupancy is not greater than 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

(iv) Injunctive Relief and Recapture. Should any of the Very Low-Income Units constituting Affordable Rental 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 fifty percent (50%) of the most recent annual median income, during the period of Affordability, such Unit(s) shall be made available for subsequent lease only to Households whose annual household income is not greater than fifty percent (50%) of the most recent annual median income, for use as the Household's principal residence. Should any of the Low-Income Units constituting Affordable Rental 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 sixty percent (60%) of the most recent annual median income, during the period of Affordability, such Unit(s) shall be made available for subsequent lease only to Households whose annual household income is not greater than sixty percent (60%) of the most recent annual median income, for use as the Household's principal residence.

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

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 Affordable Rental Housing 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.

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.

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.

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, of even date.

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.

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

DECLARANT: BASTIAN COURT, LP

By: _____
(Attach notary certificate of acknowledgement)

NAME: _____

TITLE: _____

Date: _____

By: _____
(Attach notary certificate of acknowledgement)

NAME: _____

TITLE: _____

Date: _____

EXHIBIT E: CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno
Department of Planning and Development
Housing and Community Development Division
2600 Fresno Street, Room 3076
Fresno, CA 93721-3605
Attention: Housing Manager

(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: _____

City of Fresno

By: _____
NAME: _____
Planning and Development Department

Date: _____

CERTIFICATE OF COMPLETION

APN: _____

Recitals:

A. By a HOME Investment Partnerships Program Agreement dated _____, 200____, ("HOME Agreement") between the City of Fresno, a municipal corporation ("CITY"), and BASTIAN COURT LP, a California limited partnership corporation, ("BASTIAN COURT"), BASTIAN COURT agreed to develop a sixty-one (61) unit affordable rental housing project, of which sixty (60) units would be reserved for rental by Very Low- and Low-Income households ("Project"), upon the premises legally described in EXHIBIT A attached to the HOME Agreement as amended from time to time, made a part hereof by this reference, (the "Property") for the purposes of Affordable 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 _____, 200[---] as Instrument No. _____ in the Official Records of Fresno County, California.

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

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

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

NOW THEREFORE:

1. CITY certifies that BASTIAN COURT commenced the Project on _____, 200[---] and completed the Project on _____, 200[---], and has done so in full compliance with the HOME Agreement.

2. This Certificate of Completion is not evidence of BASTIAN COURT 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 _____, 200[---].

CITY OF FRESNO

By: _____
Nick P. Yovino, Director
Planning and Development Department

ATTEST:
CITY CLERK

By: _____
Deputy

Date: _____

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Assistant/Deputy

Name: _____

Date: _____

CONSENT OF OWNER

BASTIAN COURT LP, a California limited partnership, the owner of record of the Property, consents to recording this Certificate of Completion against the Property described herein.

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

Date: _____

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

Date: _____

EXHIBIT F: PROMISSORY NOTE

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

PROMISSORY NOTE

Loan Amount: \$2,100,000.00

Date: _____, 200[---]

Fresno, California

For value received, the undersigned, BASTIAN COURT LP, a California Limited Partnership Corporation ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation, ("Lender"), the sum of Two Million One Hundred Thousand Dollars, (\$2,100,000). The interest will be at the Applicable Federal Rate (as of the date of initial disbursement) compounded annually. Principal and interest will be payable from residual receipts from the project's net operating income after payment of debt service, deferred developer fee payments, operating expenses and management fees at times prior to the Maturity Date and in full upon the Maturity Date. Interest will accrue upon fund disbursement.

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

Business Day means any day other than Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day. 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.

Maturity Date means 55 years commencing from the date the CITY issues and records the Project Certificate of Completion. The Affordability Period begins on the date the Lender issues the Project Certificate of Completion.

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 1st 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 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 St., 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.

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.

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: BASTIAN COURT LP, a California limited partnership

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

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