

September 15, 2011

AGENDA ITEM NO. 9:00 AM G
COUNCIL MEETING September 15, 2011
APPROVED BY _____

FROM: CRAIG SCHARTON, Assistant Director
Development and Resource Management 

DEPARTMENT DIRECTOR _____

CITY MANAGER _____

CLAUDIA CAZARES, Division Manager
Housing and Community Development Division 

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

SUBJECT: **AFFIRM A FINDING OF CONFORMITY THAT DETERMINED SIERRA GATEWAY SENIOR RESIDENCE PHASE II PROJECT IS IN CONFORMITY WITH THE MASTER ENVIRONMENTAL IMPACT REPORT NO. 10130 (SCH NO. 2001071097), AND APPROVE A \$750,000 HOME INVESTMENT PARTNERSHIPS AGREEMENT WITH SOUTHERN CALIFORNIA PRESBYTERIAN HOMES/ITS NONPROFIT ASSIGNEE FOR CONSTRUCTION OF A 68-UNIT AFFORDABLE SENIOR HOUSING PROJECT TO BE LOCATED AT THE SOUTHWEST CORNER OF WEST SAN JOSE AVENUE AND NORTH MARTY AVENUE IN NORTHWEST FRESNO**

RECOMMENDATIONS

Staff recommends that the City Council:

- 1) Affirm a Finding of Conformity that determined Sierra Gateway Senior Residence Phase II housing project is in conformity with the Master Environmental Impact Report No. 10130 (SCH No. 200171097) of the General Plan; and
- 2) Approve a \$750,000 HOME Investment Partnerships (HOME) Program Agreement (Please see Exhibit "A" – HOME Agreement) with Southern California Presbyterian Homes (SCPH) with subsequent assignment to its special purpose nonprofit, for construction of a 68-unit affordable senior housing project, subject to City Attorney approval to form, to be located at the southwest corner of W. San Jose Ave. and N. Marty Ave. (APN: 415-044-59) in northwest Fresno (Please see Exhibit "B" – Project Location Maps).

EXECUTIVE SUMMARY

On April 15, 2011, the City received a \$500,000 HOME Program funding proposal from SCPH in response to the City's HOME Notice of Funding Availability (NOFA), published March, 2011. The HOME Program Agreement includes \$500,000 provided through the NOFA and \$250,000 previously approved by Council as provided through the adoption of Resolution 2011-77, to SCPH with subsequent assignment to its special purpose nonprofit, for development of the Sierra Gateway Senior Residence II project. If approved as recommended, HOME Program funds will be provided to SCPH, in the form of a zero percent interest, deferred and forgivable loan. Disbursement of funds will be contingent upon full project financing including an award of Section 202 Supportive Housing Program funds from the U.S. Department of Housing and Urban Development

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(HUD). SCPH owns the property and the project is ready to proceed pending complete financing. Sixty-seven units will be HOME-Assisted and carry 55-year affordability covenants.

BACKGROUND

The City Council previously approved a Resolution (Please see Exhibit "E" – Resolution 2011-77) authorizing \$250,000 in HOME Program funds to the project. The April 28, 2011 Resolution served as the City's financial commitment to the project for SCPH's Section 202 Program application to HUD. The additional \$500,000 in HOME Program funds were requested by SCPH through the City's March, 2011 NOFA. In June, 2011, shortly after SCPH was notified that it was considered for HOME funding, it submitted its Section 202 application to HUD, requesting \$9.5 million in Section 202 funding to finance construction of the apartment complex. The project cost is estimated at \$10.7 million, of which a majority of funding is expected to come from an allocation of HUD 202 funds. If approved as recommended, the HOME Agreement for the development of the project will provide for a commitment of \$750,000 in HOME Program funds (Please see Exhibit "C" – Project Sources and Uses of Funds). Disbursement of the HOME Program funds for eligible project costs will be contingent upon full project funding including an award of Section 202 funds from HUD.

Sierra Gateway Senior Residence II will be situated on a 1.38-acre parcel adjacent to Sierra Gateway Senior Residence I, at the southwest corner of W. San Jose Ave. and N. Marty Ave. in northwest Fresno (Please see Exhibit "B" – Project Location Maps). SCPH owns the project site that is adjacent to Sierra Gateway Senior Residence I and is ready to proceed with construction of Phase II pending complete financing. Predevelopment activities for Phase II were completed in conjunction with Sierra Gateway Senior Residence Phase I. A Conditional Use Permit (No. C-04-062) was issued for the development on July 7, 2004.

The project will consist of a single three-story building, 67 one-bedroom units of affordable senior rental housing (for seniors 62-years and older), a community room, on-site parking, and one manager's unit (Please see Exhibit "D" – Plans and Elevations). Each unit size will be approximately 540 square feet, as required by HUD. There will be approximately 58,400 square feet of living space at a cost of \$137.00 per square foot. Construction of the building structure will incorporate energy-efficient low-maintenance materials, the City of Fresno's Green building standards, and Universal Design features. The ground floor will also be occupied by a community center, management office, multi-purpose room, kitchen, laundry rooms, restroom facilities, and a patio area. Qualifying seniors' income will be at, or below, 50% of area median income and rents will be at 30% of a tenant's income.

Once completed, Sierra Gateway Senior Residence II will assist the City in meeting its affordable housing goals as identified in the Housing Element of the 2025 General Plan and 2010-2014 Consolidated Plan.

SCPH is a well known non-profit corporation that has over 56 years of experience with development and management of affordable housing projects. SCPH currently operates over 36 developments including 24 affordable housing communities with 1,700 units. In May, 2007, SCPH successfully completed Sierra Gateway Senior Residence I, an 80-unit affordable senior housing complex adjacent to the Phase II site. SCPH proposes to establish a special purpose non-profit, Sierra Gateway Senior Residence II, as a tax exempt nonprofit public benefit entity that will own, manage and operate the project. Once the entity is established, SCPH will assign, and Sierra Gateway Senior Residence II will assume, the HOME Program Agreement and loan.

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Agreement with Southern California Presbyterian Homes for Development of Sierra Gateway Senior Residence II

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ENVIRONMENTAL FINDING

The City completed a National Environmental Policy Act assessment on September 24, 2004, which resulted in a Finding of No Significant Impact. On October 28, 2004, the City received HUD environmental clearance and authorization for use of HOME funds for Sierra Gateway Senior Residence II. On August 24, 2004 Council considered and adopted California Environmental Quality Act (CEQA) Environmental Assessment No. R-04-24/C-04-62: Finding of Conformity to the 2025 Fresno General Plan Master Environmental Impact Report (MEIR 10130) (Please see Exhibit F – CEQA Documents). With the mitigation imposed, there is no substantial evidence in the record that this project may have additional significant, direct, indirect or cumulative effects on the environment that are significant and that were not identified and analyzed in the MEIR. After conducting a review of the adequacy of the MEIR pursuant to Public Resources Code, Section 21157.1, staff has determined no substantial changes have occurred with respect to the circumstances under which the MEIR was certified and that no new information, which was not known and could not have been known at the time that the MEIR was certified as complete has become available. The project is not located on a site which is included on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to, lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that Section. Therefore, any necessary environmental review required by CEQA has been completed for the project. As with Phase I, Southern California Presbyterian Homes hopes to enhance the Sierra Gateway II project by adding solar energy facilities as programs and rebates become available. This type of renewable energy improvements will reduce energy consumption, greenhouse gases and air pollutant emissions, and help support objectives and policies of the City's recently-adopted Air Quality update to the 2025 Fresno General Plan with the City's sustainability initiatives.

HOUSING AND COMMUNITY DEVELOPMENT COMMISSION

The Housing and Community Development Commission considered and recommended this item for approval on August 24, 2011.

FISCAL IMPACT

HOME Program funds for the project are available in the Development and Resource Management Department's Fiscal Year 2012 Budget. The project's total construction cost is estimated at \$10.7 million, of which a majority of funding is expected to come from HUD Section 202 funds and a total of \$750,000 is proposed to come from the City's HOME Program.

APPENDICES

Exhibit A - HOME Program Agreement

Exhibit B - Project Location Maps

Exhibit C - Project Sources and Uses of Funds

Exhibit D - Plans and Elevations

Exhibit E - Resolution 2011-77

Exhibit F - CEQA Documents:

1. Notice of Determination;
2. Finding of Conformity;
3. MEIR Mitigation Monitoring Checklist; and
4. Ordinance No.: 2004-84

Recorded at the Request of
and When Recorded Return to:

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

(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

CITY OF FRESNO

By: _____
Mark Scott, City Manager

Date: _____

CITY OF FRESNO
HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT

HOME Investment Partnerships Program Agreement

by and between

CITY OF FRESNO,
a municipal corporation

and

"Southern California Presbyterian Homes"
a California Non-profit Public Benefit Corporation

regarding

Sierra Gateway Senior Residence II
Affordable Multi-Family Senior Housing
Adjacent to property at the southwest corner of
West San Jose Avenue and North Marty Avenue
Fresno, CA 93711 (APN: 415-044-59)

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EXHIBITS

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

HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT

This HOME Investment Partnerships Program Agreement (hereinafter referred to as the "Agreement") is entered into this, _____, 2011, by and between the City of Fresno, a municipal corporation, acting through its Development and Resource Management Department - Housing and Community Development Division (hereinafter referred to as the "CITY"), and SOUTHERN CALIFORNIA PRESBYTERIAN HOMES, a California non-profit public benefit corporation, and its approved transferees and assignees (hereinafter collectively referred to as "SCPH" or "Developer").

RECITALS

WHEREAS, 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 Housing Act of 1990, as amended (hereinafter referred to as the "HOME Act"); and

WHEREAS, SCPH, or as provided herein, a special purpose nonprofit 501(c)(3) assignee to be formed by SCPH and intended by SCPH at the time of this Agreement to be known as Sierra Gateway Senior Residence II (hereinafter referred to as "Sierra Gateway II"), will act as owner/developer and exercise effective project control as to the construction of a sixty-eight (68) Unit apartment complex, of which sixty-seven (67) units shall be constructed and preserved as Very Low- and Low-Income Senior Rental Housing for seniors age sixty-two (62) and above, and related on-site and off-site improvements, pursuant to and with primary funding under HUD's Supportive Housing for the Elderly Program under Section 202 of the Housing Act of 1959, as amended, including related provisions at Section 811 of the Cranston-Gonzalez National Affordable Housing Act and its implementing regulations are 24 CFR 891 et seq. and related HUD Capital Advance Documents (collectively "Section 202 Program") incorporated herein by this reference (the "Project", as further defined herein), as more particularly described in the attached EXHIBIT "A", upon HOME eligible property owned by SCPH, located adjacent to the property located at the southwest corner of West San Jose Avenue and North Marty Avenues, within the boundaries of the City of Fresno, as more particularly described in the attached EXHIBIT "B" (the "Property"); and

WHEREAS, the Project will provide for the construction of sixty-eight (68) affordable senior rental housing units, of which one (1) will be an on-site manager unit, at the Property identified in EXHIBIT "A"; and

WHEREAS, to further its goal to increase the supply of Affordable Housing within the City of Fresno, the CITY desires to assist SCPH by providing a Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00), zero percent interest, deferred payment forgivable HOME Program Loan to SCPH, assignable to Sierra Gateway II as provided hereunder, for the Project, as further identified in EXHIBIT "C" (Project Budget), for eligible costs, to be secured by the underlying real property and the Affordable Housing covenants (hereinafter referred to as "Loan"), upon the terms and conditions in this Agreement; and

WHEREAS, the CITY has determined that this Agreement is in the best interest of,

and will materially contribute to, the Housing Element of the General Plan. Further, the CITY has found that the Project: (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 Senior Housing available at affordable housing cost to Seniors 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- and Very Low-Income Senior Housing, and (vi) will comply with any and all owner participation rules and criteria applicable thereto; and

WHEREAS, the environmental effects of the Project have been assessed resulting in a Finding of No Significant Impact pursuant to the National Environmental Policy Act (NEPA) completed on September 24, 2004 as EA No. H-2004-15, and Finding of Conformity to the 2025 General Plan Master Environmental Impact Report pursuant to the California Environmental Quality Act (CEQA) completed on October 28, 2004 as EA No. H-2004-15, and the HOME Funds have been approved by HUD for release pursuant to 24 CFR Part 58; and

WHEREAS, the CITY and SCPH 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 Housing Unit(s) 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 enters project completion information into HUD's Integrated Disbursement and Information System (IDIS), which date will be provided to SCPH by the CITY.

1.5 Affordable Housing means the rental housing units of which all will be

required to meet the affordability requirements of 24 CFR 92.252.

1.6 Assignment and Assumption means assignment by SCPH and assumption by Sierra Gateway II pursuant to an Assignment and Assumption Agreement in the form of EXHIBIT "H" attached hereto and incorporated herein, upon approval of the City through its Development and Resource Management Department Assistant Director as provided hereunder and approval to form by the City Attorney's Office. The exact name of Sierra Gateway II will be determined at the time of filing of its Articles of Incorporation with the California Secretary of State.

1.7 Budget means the Budget for the development of the Project, 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, attached hereto as EXHIBIT "C".

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

1.9 CFR means the Code of Federal Regulations.

1.10 Commencement of Construction means the time SCPH or SCPH's construction contractor begins substantial physical work on the Property, including, without limitation, delivery of materials and any work, beyond maintenance of the Property in its status quo condition, which shall take place no later than thirty (30) calendar days following the HUD 202 Closing as hereinafter defined.

1.11 Declaration of Restrictions means the Declaration of Restrictions in the form attached hereto as EXHIBIT "D", which SCPH shall record or cause to be recorded against the Property no later than the date of Commencement of Construction, setting out the Affordable Housing covenants and requirements of this Agreement which shall run with the land.

1.11 Deed of Trust means the Short Form Deed of Trust and Assignment of Rents in use by Lawyers Title Company ("Title Company") given by SCPH, as Trustor, to the CITY, as Beneficiary, with Title Company as Trustee, substantially in the form attached hereto as EXHIBIT "G", recorded against the Property not later than date of the making of the Loan, insured in the full amount of the Loan by a CLTA lender's policy, as well as any amendments to, modifications of, and restatements of said Deed of Trust, which shall be second and junior in lien to a deed of trust made by Trustor in favor of the Secretary of Housing and Urban Development ("Secretary") to be recorded concurrently securing a Capital Advance made by the Secretary pursuant to Section 202 of the Housing Act of 1959, as amended, or Section 811 of the Cranston-Gonzales National Affordable Housing Act and to a Regulatory Agreement and Use Agreement between Trustor and the Secretary with respect to the Property referred to herein. The terms of any such Deed of Trust are hereby incorporated into this Agreement by this reference.

1.12 Eligible Costs means those Project costs in the Budget, incurred by SCPH

before the CITY issues the Certificate of Completion, and related to Property acquisition and Project pre-development/development costs for which HOME Funds may be used 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 Partnerships Program Funds (also referred to in this Agreement as HOME Funds) means the HOME Program monies in an amount not to exceed the sum of Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00), provided to SCPH or Sierra Gateway II as provided herein, as a zero percent interest, deferred forgivable loan, to be used for eligible Project development costs, pursuant to this Agreement.

1.17 Household means a Senior Household consisting of one or more persons whose primary occupant is 62 years of age or above, or a single person 62 years of age or above, meeting the requirements of the HUD Section 202 Program during the term of the HUD Capital Advance Documents (as hereinafter defined), and for the fifteen (15) years following the HUD Capital Advance Documents term, it shall mean one or more persons whose primary occupant is 62 years of age or above who has an annual income of eighty percent (80%), or less.

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

1.19 HUD Capital Advance shall mean the financial assistance to be provided by HUD to the Developer for development of the Project thereon.

1.20 HUD Capital Advance Agreement shall mean the agreement between HUD and the Developer pursuant to which HUD provides a HUD Capital Advance to Developer for the Project.

1.21 HUD Capital Advance Documents shall collectively refer to the HUD Note, Deed of Trust, Regulatory Agreement, Use Agreement, Capital Advance Agreement and

Project Rental Assistance Contract as required by Section 202 of the Housing Act of 1959, as amended, or by Section 811 of the Cranston-Gonzalez National Affordable Housing Act ("the Act").

1.22 HUD Capital Advance Program means the program established under the Act.

1.23 HUD Closing shall mean the point in time when all conditions of the HUD Firm Commitment is satisfied permitting the Project to commence construction.

1.24 HUD Deed of Trust means that Deed of Trust securing the HUD Capital Advance in favor of HUD.

1.25 HUD Firm Commitment shall mean the written commitment by HUD to SCPH to provide the HUD Capital Advance on terms set forth in such commitment.

1.26 HUD Note means the Promissory Note evidencing the HUD Capital Advance in favor of HUD and secured by the HUD Deed of Trust.

1.27 HUD Regulatory Agreement means the Regulatory Agreement encumbering the Property by and between the SCPH and the Secretary of HUD.

1.28 HUD 202 Program means the program established under the Act.

1.29 Loan means the zero percent interest, deferred, forgivable loan of Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00) in HOME Funds, made by the CITY to SCPH, (or Sierra Gateway II as provided herein), for eligible Project development costs, pursuant to this Agreement, as more specifically described in this Agreement and the Note.

1.30 Loan Documents are collectively this Agreement, the Note (attached hereto as EXHIBIT "F"), 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.

1.31 Low-Income Household means those Senior households 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. Notwithstanding the foregoing, during the term of the HUD Capital Advance Documents occupancy of the Project should be in accordance with HUD Section 202 requirements, which is limited to Very Low-Income Households earning fifty percent (50%) of median income for the area.

1.32 Note means that certain zero percent interest, deferred, forgivable Note in a principal amount not to exceed Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00), given by SCPH or by Sierra Gateway II as provided herein, 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 Deed of

Trust as 2nd position or better lien upon the Property, naming the CITY as beneficiary and provided to the CITY no later than the date of the HUD Closing, in the form attached hereto as EXHIBIT "F", as well as any amendments to, modifications of and restatements of said Note. The terms of the Note are hereby incorporated into this Agreement by this reference.

1.33 Project means the construction of the sixty-eight (68) Unit apartment complex for Senior Households, one (1) of which is a manager's unit, to be known as Sierra Gateway Senior Residence II, at the Property and preservation of the Project as rental housing for Very Low- and Low-Income Senior Households, to be assisted with HOME Funds, while meeting the Affordable Housing, income targeting and other requirements of 24 CFR 92.252 for the fifty-five (55) year Affordability Period, all as described in the Project Description attached hereto and incorporated herein as EXHIBIT "A", upon the Property as more particularly described in EXHIBIT "B", provided that during the term of the HUD Capital Advance Documents the occupancy and tenant income limitations of the HUD 202 Program shall be applicable and, in the event of a conflict, the HUD Section 202 Program requirements shall control. In the event of a conflict between the HUD 202 Program requirements and the HOME requirements the matter shall be submitted to HUD for determination.

1.34 Project Completion Date means the date that the CITY shall have determined that the Project: 1) has reached completion in accordance with the plans and specifications as approved by the CITY; 2) is in compliance with all Housing Standards, and 3) has been issued a Certificate of Occupancy. The project Completion Date for this Project is identified in EXHIBIT "A", or as extended by HUD and noticed to the CITY.

1.35 Project Schedule means the schedule for completion of the Project included in EXHIBIT "B".

1.36 Property means the real property described in EXHIBIT "B".

1.37 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 SCPH 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, electricity, gas and other heating, cooking and refrigeration fuel, 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 SCPH, and paid by the tenant.

1.38 Rental Housing is the sixty-eight (68) unit senior apartment complex to be constructed and named Sierra Gateway Senior Residence II, to be located at the Property, and which sixty-seven (67) Units in the Project shall be preserved as rental housing for households as set forth in Exhibit "B" hereto.

1.39 Section 202 means that Section 202 of the Housing Act of 1959, The Supportive Housing for the Elderly Program, implemented by 24 CFR 891, et seq., and all HUD Capital Advance Documents thereunder.

1.40 Senior means an individual age sixty-two (62) years and above as provided in the Section 202 Program.

1.41 Unit means a dwelling unit of the Rental Housing.

1.42 Very Low-Income Household means those Senior households whose annual income does not exceed fifty percent (50%) of the median income for the Fresno, California areas as determined by HUD, 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 a Loan of HOME Funds to SCPH, assignable to/assumable by Sierra Gateway II as provided herein, in an amount not to exceed Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00), as needed, under the terms and conditions provided in this Agreement. The HOME Funds shall only be used for the Project for Eligible Project Costs under the HOME Program. The CITY acknowledges that the Loan of HOME Funds is to pay for costs not included within the HUD Capital Advance and that all CITY Loan Funds are to be disbursed before any HUD Capital Advance funds.

2.2 Loan Documents. SCPH shall execute and deliver, or cause to be executed and delivered, to the CITY the Loan Documents including the Note, as provided for in this Agreement, and the Declaration of Restrictions and Deed of Trust which shall be recorded against the Property.

2.3 Term of Agreement. This Agreement is effective upon the date of execution and shall remain in force until the end of the Project's Affordability Period. It is understood and agreed upon, however, that if for any reason this Agreement should be terminated as provided hereunder, without default, by SCPH 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 SCPH. After the fifty-five (55) year Affordability Period, this Agreement will expire and the Loan will be forgiven unless at said time SCPH, Sierra Gateway II, or the then current owner of the Project is in material default under this Agreement and a Default has been declared by City and not remedied at such time.

2.4 Loan Repayment and Maturity. The Loan shall be due and payable in full upon any early termination of this Agreement including a termination due to Default, provided that if SCPH fully complies with the terms of the Loan Documents and HUD regulations at 24 CFR 92, upon expiration of the Affordability Period, the Loan shall be forgiven and the Deed of Trust reconveyed, provided, further, that the Loan shall not be accelerated during the term of the HUD Capital Advance Documents without the prior written approval of HUD.

2.5 Incorporation of Documents. The SCPH Proposal to the City dated April 15, 2011, SCPH Resolution, dated July 28, 2011, authorizing pursuit of the Project according to the terms and conditions herein, CITY Council approved Minutes of _____, approving this Agreement, the Loan Documents, the Act and HUD regulations at 24 CFR

Part 92, the Section 202 Program, 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 SCPH. SCPH covenants and agrees to comply with all the terms and conditions of this Agreement and SCPH covenants and agrees that the Project will comply with all the requirements of 24 CFR Part 92 and this Agreement. In the event of any conflict between the HOME requirements and the requirements of the HUD Capital Advance Documents, the matter shall be submitted to HUD for determination.

ARTICLE 3. GENERAL REPRESENTATIONS AND WARRANTIES OF SCPH

3.1 Existence and Qualification. SCPH agrees that upon receiving a Fund Reservation from HUD for the development of the Project, it shall diligently pursue the formation of Sierra Gateway II, which shall be established as a duly organized California non-profit public benefit corporation in good standing together therewith pursue a qualified charitable organization exemption from certain taxes under IRC 501(c)(3) and Cal. R&T 23701 (d). Sierra Gateway II shall neither be controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. Sierra Gateway II shall have among its corporate purposes the provision of decent housing that is affordable to Very Low- and Low-Income persons. Sierra Gateway II shall have the requisite power, right, and legal authority to execute, deliver, and perform its obligations under the HOME Agreement assignable to/assumable by Sierra Gateway II as provided herein and shall take 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 SCPH, assignable to/assumable by Sierra Gateway II as provided herein, enforceable against SCPH, and Sierra Gateway II upon any assignment/assumption thereby, 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, (b) the application of general principles of equity without the joinder of any other party.

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

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

3.4 No Legal Bar. SCPH represents and warrants as of the date hereof that the

execution, delivery, performance, or observance by SCPH of this Agreement will not, to the best of SCPH'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 SCPH; or (c) any mortgage, indenture, security agreement, contract, undertaking, or other agreement or instrument to which SCPH is a party or that is binding on any of its properties or assets, the result of which would materially or substantially impair SCPH's ability to perform and discharge its obligations or its ability to complete the Project under this Agreement.

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

3.6 No Litigation Material to Project. SCPH 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 SCPH 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 SCPH'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. SCPH represents and warrants, as of the date hereof, that SCPH has obtained and, to the best of SCPH'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 SCPH for the Project as of the date hereof, excluding the Project building and land use permits and approvals which shall be obtained before commencement of construction.

ARTICLE 4. HOME PROGRAM REPRESENTATION AND WARRANTIES BY SCPH

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

4.1 Accessibility. SCPH 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.

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

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

4.2 Affirmative Marketing. SCPH 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 in the rental of Project Units. SCPH shall be responsible for complying with the CITY's "Affirmative Marketing Policy" document as amended from time to time. SCPH shall maintain records of actions taken to affirmatively market units constructed in the future, and to assess the results of these actions. The CITY shall accept Section 202 Program marketing documents and records in lieu of those required by this section. SCPH shall furnish the CITY with a copy of the Section 202 Program marketing documents given to HUD. During the term of the HUD Capital Advance Documents, compliance with the HUD affirmative marketing requirements shall be deemed compliance with the requirements of this provision.

4.3 Availability of HOME Funds. SCPH 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 SCPH, 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 said Funds. No other funds owned or controlled by the CITY shall be obligated under this Agreement.

4.4 Compliance with Agreement. SCPH 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 SCPH within the meaning of Article 10.1 of this Agreement, the CITY may suspend or terminate this Agreement and all other agreements with SCPH without waiver or limitation of rights/remedies otherwise available to the CITY, subject to HUD prior approval during the term of the Capital Advance Documents.

4.5 Conflict of Interest. SCPH 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 SCPH, and no person, directly or indirectly owning or controlling any interest in SCPH, is an official, officer, agent, or employee of the CITY. SCPH 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 SCPH (other than an employee or agent of SCPH who occupies a unit as the project manager or maintenance worker) may occupy a Project Unit. SCPH 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 there under, 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. SCPH 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, SCPH 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 SCPH expressly warrant, covenant and agree to ensure that the covenants and restrictions set forth in this Agreement shall run with the land by Declaration of Restrictions and shall bind all successors in title to the Senior Rental Housing, provided, however that on expiration of this Agreement and the Affordable Housing requirements therein said covenants and restrictions shall expire. CITY and SCPH further warrant, covenant and agree that the covenants and restrictions set forth herein shall run in favor of the CITY.

A. The CITY and SCPH 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 Rental Housing by certain Very Low- and Low-Income Senior Households, and (b) by making possible the obtaining of advantageous financing for construction.

B. SCPH covenants and agrees that from the recording of the Certificate of Completion until the expiration of the Affordability Period it shall cause the Senior Rental Housing to be used for Affordable Housing.

C. In the event that SCPH fails to comply with the time period in which the Project must constitute Affordable Housing, the CITY shall, without waiver of limitation, be entitled to injunctive relief, as SCPH acknowledges that damages are not an adequate remedy at law for such breach.

D. 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.

E. 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 of this Agreement. 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.

F. 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.

G. This Agreement, the Deed of Trust and the Declaration of Restrictions shall be subject and subordinate to the HUD Capital Advance Documents including, but not limited to, the HUD Deed of Trust, the HUD Regulatory Agreement and the HUD Use Agreement.

H. In the event the HUD Project Rental Assistance Contract ("HUD operating subsidy") is discontinued during the term of the anticipated HUD Capital Advance Period, the then owner of the Project shall be entitled to rent to Low-Income Senior Households as defined herein and the income and rental restrictions shall be automatically modified to be consistent with this provision.

4.8 Displacement of Persons. SCPH 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 and Reporting. SCPH warrants,

covenants and agrees that it shall comply with the procedures for initial and annual income determinations at 24 CFR 92.203. SCPH, shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from each tenant Household renting any Unit. SCPH, 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) if the applicant is unemployed and has no such tax return, obtain another form of independent verification, or (5) conduct a credit agency or similar search. Copies of tenant income certification and verification must be available for review by the CITY upon request. CITY shall accept Section 202 Program certifications and reporting in lieu of that required by this section to the extent consistent therewith and in the event of a conflict the HUD requirements shall control. SCPH shall furnish CITY with a copy of the Section 202 Program certifications and reporting given to HUD.

4.10 Lead-Based Paint. SCPH 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), any amendment thereto, and EPA Section 402 (c)(3) of the Toxic Substances Control Act (TSCA) to address lead-based hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities. Contractors performing renovations in lead-based paint units must be EPA-certified renovators. These requirements apply to all units and common areas in the Rental Housing Project. SCPH 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. SCPH shall be responsible for all disclosure, inspection, testing, evaluation, control and abatement activities.

4.11 Minority Outreach Activities. SCPH 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 SCPH comply with the CITY's minority outreach program. During the term of the HUD Capital Advance Documents, compliance with HUD's Minority Outreach requirements for the Section 202 program shall satisfy the requirements of this provision.

4.12 Other Laws and Regulations. SCPH warrants, covenants and agrees that, in addition to complying with the federal laws and regulations already cited in this Agreement, SCPH has reviewed, and shall comply with, all other federal laws and regulations that apply to the HOME Program, including, without limitation, the following requirements follows:

A. The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), and all other regulations as identified in 24 CFR 58.6.

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

B. 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.

C. The property standards at 24 CFR 92.251.

D. 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).

E. 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.

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

G. 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").

H. 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.

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

J. The provision of Executive Orders 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24.

K. 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.

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

M. Executive Order 11063 on Equal Opportunity and Housing.

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

O. The Housing and Community Development Act of 1974.

4.13 Faith Based Activities. With regard to matters pertaining to the Project,

SCPH warrants, covenants and agrees that it shall not engage in any prohibited activities described in 24 CFR 92.257.

4.14 Reporting Requirements. SCPH warrants, covenants and agrees that it shall submit performance reports to the CITY as detailed in Section 7.18. Furthermore, SCPH agrees to provide, at the sole cost of SCPH, annual audited Financial Statements for the expenses and ongoing financial transactions which occur as a result of this Agreement as detailed in Section 5.5. SCPH agrees to account for the expenditure of HOME Funds using generally accepted accounting principles, which financial documentation shall be made available to the CITY and HUD upon their respective written request(s). The CITY shall accept the annual audited financial statement submitted to HUD under the HUD Section 202 Program as compliance with this section. SCPH shall furnish CITY with a copy of the Section 202 Program annual audited financial statement given to HUD.

4.15 Affordability Period. During the term of the HUD Capital Advance Documents, SCPH warrants, covenants and agrees that the Rental Housing will meet the Affordable 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 Very Low- and Low-Income Senior Households provided for in Exhibit "A" hereto 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 except as provided in Section 11.23 hereof. The CITY shall accept the HUD Capital Advance Documents as compliance with the provisions of this Section 4.15 and in the event of a conflict the HUD Capital Advance Documents shall control. In the event of any conflict between the HOME requirements and the HUD Capital Advance Documents the matter shall be submitted to HUD for determination.

4.16 Terminated Projects. SCPH understands and agrees that, if the Project is terminated before completion, either voluntarily or otherwise, such constitutes an ineligible activity and any HOME Funds disbursed hereunder must be repaid to the CITY's HOME Investment Trust Fund in accordance with 24 CFR 92.503(b) subject to HUD approval.

ARTICLE 5. COVENANTS AND AGREEMENTS OF SCPH

SCPH, for itself and its development team, covenants and agrees to the following, for the entire term of the Agreement.

5.1 Adequate Repair and Maintenance. SCPH shall, during the entire Affordability Period, maintain the Project and Property in compliance with all applicable codes, laws, and ordinances.

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

Additionally, SCPH 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 SCPH;

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 SCPH, or such properties relating to any loss or injury resulting from any hazardous or toxic chemicals, materials, substance, or waste; and

3. 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.

5.3 Compliance With Laws. SCPH shall be responsible for and promptly and faithfully comply with, conform to and obey all present and future federal, state and local statutes, regulations, rules, ordinances and other legal requirements applicable by reason of this Agreement or otherwise to the Project including without limitation prevailing wage and public bidding requirements. SCPH 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 steps as are required of SCPH to enable the CITY to comply with, conform to and obey) all federal statutes, regulations, rules and policies applicable to the Project. The CITY and SCPH acknowledge that: (i) pursuant to 24 CFR 92.354, a contract for the construction rehabilitation or new construction) of housing that includes fewer than 12 units assisted with HOME funds need not contain a

provision requiring the payment of wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing, or the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), and (ii) pursuant to Cal. Labor Code 1720, the public participation in the Project that would otherwise meet the criteria of a public work for which State prevailing wage is required under Cal. Lab. Code 1720 et seq. is exempt where the public funding is in the form of a below-market interest rate loans for a project in which occupancy of at least forty percent (40%) of the units is restricted for at least twenty (20) years, by deed or regulatory agreement, to seniors earning no more than eighty percent (80%) of the area median income. Nonetheless SCPH shall be solely responsible for determining and effectuating compliance. Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall be construed as imposing any independent prevailing wage requirements that are different from those imposed by applicable federal or state law. In the event of a conflict between the requirements of the HOME Program and the HUD 202 Program the matter shall be submitted to HUD for determination. Nothing in this section shall limit or constitute a waiver by SCPH of rights available to it under law.

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

5.5 Financial Statements and Audits. SCPH, 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, SCPH, 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.

C. CITY shall accept the annual audited financial statement submitted to HUD under the HUD Section 202 Program as compliance with this section. SCPH shall furnish CITY with a copy of the Section 202 Program annual audited financial statement given to HUD.

5.6 Inspection and Audit of Books, Records and Documents. SCPH 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 SCPH 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. SCPH will maintain books and records for the Project using generally accepted accounting principles. SCPH 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, except as provided in section 11.23.

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 SCPH in which case SCPH shall bear the cost of such audit. SCPH shall also comply with any applicable audit requirements of 24 CFR 92.506. This section shall survive the termination of this Agreement, except as provided in section 11.23.

C. SCPH 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.

5.7 Inspection of Property. Any duly authorized representative of the CITY, the State, or HUD shall, at all reasonable times and in any manner allowed by law, have access and the right to inspect the Property until completion of the Project and expiration of the applicable Affordability Period, provided reasonable effort shall be made to provide the property manager within seventy-two (72) hours written notice, subject to the rights of the tenants.

5.8 No Other Liens. SCPH 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 the Project's equity investment, deferred developer fee loan or grants and construction or pre-development loans in relation to the Project without the prior written consent of the CITY.

5.9 Nondiscrimination. SCPH 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 SCPH 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.

5.10 Ownership. Except as required in pursuit hereof, SCPH shall not sell, lease, transfer, assign or otherwise dispose of ("Transfer") all or any material part of any interest it might hold in the Property or the Project without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed and excluding: (i) a Transfer

to HUD or HUD's transferee and (ii) any Transfer approved by HUD. "Transfer" shall exclude the leasing of any single Unit in the Project.

5.11 Payment of Liabilities. SCPH 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.

5.12 Report of Events of Default. SCPH 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. SCPH warrants, covenants and agrees that it shall request HOME Program Funds limited to the amount needed for eligible costs, including costs allowable under 24 CFR 92.206, aggregating not more than Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00) and not otherwise paid by Section 202 Program Funds. The CITY's obligations shall in no event exceed the HOME Funds amount specified in this Agreement. Any Project costs exceeding Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00), whether or not the costs qualify as Eligible Costs, shall be the sole responsibility of SCPH.

A. If any such Funds shall be determined to have been requested and/or used by SCPH for something other than eligible land acquisition reimbursement or development costs, and subject to the notice and cure provisions of Section 10.2 hereunder, an equal amount from non-public funds shall become immediately due and payable by SCPH to the CITY; provided, however, that SCPH 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 Eligible Costs which subsequently lose eligibility as Eligible Costs, SCPH shall immediately return such HOME Funds to the CITY.

C. The CITY acknowledges that the Loan of HOME Funds is to pay for costs not included within the HUD Capital Advance and that all CITY Loan Funds are to be disbursed before any HUD Capital Advance funds.

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

C. SCPH, as to any eligible construction costs hereunder, has entered into, and provided the CITY copies of proposed Project surety bonds, and proposed agreements with all Funding Sources and contractors for the Project, provided fully executed bonds and agreements shall be provided when available. SCPH shall immediately notify the CITY of any event such bonds and agreements are terminated, cancelled or in default.

D. SCPH is current with its compliance of all reporting requirements set forth in this Agreement.

E. For any construction reimbursements, the CITY has approved the Project for commencement of construction.

F. SCPH has acquired insurance coverage and delivered to the CITY evidence of insurance as required in Article 9.

G. SCPH has provided the CITY with a written request for HOME Funds, as detailed in Section 6.3 below.

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

6.3 Request for Disbursement of Funds. SCPH shall request disbursement of HOME Funds using the CITY's Request for Disbursement of Funds Form. SCPH shall only request a maximum of Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00) in HOME Program assistance. All requests should provide in detail such Eligible Costs applicable to the request. The form of the HUD Section 202 Program disbursement shall be accepted by the CITY on and after the HUD Closing.

A. Along with the request for such disbursements, SCPH shall submit to the CITY such other documentation, including, but not limited to, invoices for work completed and in place and for materials purchased and suitably stored. Notwithstanding the foregoing, the parties acknowledge and agree that all of the CITY HOME funds will be disbursed before the Capital Advance funds.

B. Any request for HOME funds disbursement by SCPH shall be accompanied with the Certification required by Section 6.4 of this Agreement.

6.4 Certification. SCPH shall submit to the CITY a written certification signed by SCPH that, as of the date of the Request for Disbursement ("Certification"):

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

B. SCPH 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. SCPH 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 Eligible Costs identified in this Agreement. SCPH shall certify that the itemized obligations have been properly incurred and are properly chargeable in connection with the Project.

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

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. The CITY will schedule, and SCPH 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. SCPH shall begin construction of the Project no later than thirty (30) days following the HUD Closing. The Project shall be completed no later than the date identified in the Project Schedule in EXHIBIT "A", unless extended by HUD.

7.3 Contracts and Subcontracts. 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. SCPH shall provide the CITY with copies of all agreements it has entered into with any and all general contractors or subcontractors for this Project, as the CITY may reasonably request. SCPH shall notify the City immediately of any termination or cancellation of the construction contract on the Project, the filing of mechanic's/materialman lien on the Project, or an event of default under such construction contracts and subcontracts. SCPH 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 or provided in this Agreement, if any building or improvement constructed on the Property is damaged or destroyed by an insurable cause, SCPH 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. SCPH shall use its best efforts to commence such work or

repair within ninety (90) days after the insurance proceeds are made available to SCPH and SCPH shall use its best efforts to complete such work or repair 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, SCPH shall use its best efforts to make up the deficiency from the residual receipts of the Project with HUD's prior written approval.

7.5 Fees, Taxes and Other Levies. SCPH 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, SCPH 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, SCPH shall deposit with the CITY any funds or other forms of assurances that the CITY, in good faith, may determine from time to time are appropriate to protect the CITY from the consequences of the contest being unsuccessful. Nothing herein prohibits SCPH from applying for or obtaining any tax exemptions or abatements or relief allowed by law and consistent with HOME program requirements.

7.6 Financing. SCPH shall promptly inform the CITY of any new financing or funding, and SCPH shall provide the CITY copies of all agreements with any and all Funding Sources for this Project. SCPH agrees to notify the CITY immediately of termination or cancellation of any such agreement(s) or receipt of notice of default thereunder. SCPH 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 SCPH 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 except as provided in Section 11.23 hereof. There shall be no acceleration by the CITY of its Loan during the term of the HUD Capital Advance Documents without the prior written approval of HUD.

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

7.8 Inspections. SCPH shall permit, facilitate, and require its contractors and consultants to permit and facilitate observation and inspection at the job site by the CITY, during reasonable business hours, for the purpose of determining compliance with this Agreement, including without limitation those annual on-site inspections required of the CITY by 24 CFR 92.504(d).

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

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

7.11 Mechanic's Liens and Stop Notices. If any claim of lien is filed against the Property or a stop notice affecting any financing, HOME Program Funds or Funding Sources for the Project is served on the CITY or any other third party in connection with the Project, SCPH 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 SCPH fails to discharge, bond or otherwise satisfy the CITY with respect to any lien, encumbrance, charge or claim referred to in the Section above, then, in addition to any other right or remedy, the CITY may, but shall not be obligated to, discharge such lien, encumbrance, charge, or claim at SCPH's expense. Alternatively, the CITY may require SCPH 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 SCPH. SCPH 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. During the term of the HUD Capital Advance Documents, any monies owed under this provision shall be made only from residual receipts as defined by the HUD Regulatory Agreement and as approved in writing by HUD. In the event HUD acquires title to the Property, HUD shall have no liability under this provision.

7.12 Permits and Licenses. SCPH shall submit, for CITY approval, all the necessary permits and licenses required for Commencement of Construction. As the CITY may reasonably request, SCPH, 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 Housing Project, and for its stated purposes in accordance with all applicable building, environmental, ecological, landmark, subdivision, zoning codes, laws, and regulations. SCPH 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.

7.13 Plans and Specifications.

A. SCPH has submitted to the CITY preliminary plans and specifications for the Project under Conditional Use Permit (CUP) file number C-04-062 ("Affordable Preliminary Plans"). SCPH will construct the Project in full conformance with the CITY-approved CUP and plans and specifications and modifications thereto approved by the CITY. SCPH shall obtain the CITY's prior written approval for any modifications to the plans and specifications. Additionally, during the term of the HUD Capital Advance Documents Project change orders approved by HUD shall be deemed approved by City.

B. The HOME Agreement shall contain by reference the design and site plan

of the Project; such design must be approved by the City Council with the HOME Agreement.

7.14 Project Responsibilities/Public Work-Prevailing Wage Requirements. SCPH shall be solely responsible for all aspects of SCPH's conduct in connection with the Project, including but not limited to, compliance with all applicable local, state and federal laws, including, without limitation, as to applicable prevailing wage and public bidding requirements. This Project is a "public work" project for federal purposes including Davis-Bacon and Related Acts wage requirements absent written direction/determination otherwise by HUD or a court of competent jurisdiction. This project is a "public work" project for state purposes including California Labor Code Section 1720 et seq. wage requirements, to which Section 1771 applies, absent written direction/determination by the California Department of Industrial Relations or a court of competent jurisdiction. Based thereon SCPH 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 City Clerk. Actual wage schedules are available upon request at the CITY's Construction Management Office. Without limiting the foregoing, SCPH shall be solely responsible for the quality and suitability of the work completed and the supervision of all contracted work, qualifications and financial conditions of the 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 SCPH is properly discharging its obligation to the CITY, and shall not be relied upon by SCPH or by any third parties as a warranty or representative by the CITY as to governmental compliance and/or the quality of work completed for the Project.

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

7.16 Quality of Work. SCPH shall construct the Project and shall employ building materials of a quality suitable for the requirements of the Project. SCPH shall cause completion of construction of the Project on the Property in full conformance with applicable local, state and federal laws, statutes, regulations, and building and housing codes.

7.17 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, SCPH shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. SCPH 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.

7.18 Reporting Requirements. SCPH shall submit to the CITY the following Project reports provided the CITY accept Section 202 Program reports in lieu thereof:

A. From the date of execution of this Agreement, until issuance of the final Certificate of Completion, SCPH shall submit a Quarterly Report, in a form approved by the CITY, which will include, at a minimum, the following information: progress of the Project and affirmative marketing efforts. The Quarterly Reports are due fifteen (15) days after 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 Certificate of Completion, and continuing until the termination of the Agreement, SCPH 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: information as to the occupancy/tenancy of each Affordable Housing Unit including (as applicable): the annual income and the family size of the Household, the date the occupancy/tenancy commenced, certification from an officer of SCPH that the Project is in compliance with the Affordable Housing Requirements, and such other information the CITY may be required by law to obtain. SCPH 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, evidencing the construction of the Project, and continuing until the expiration of the Agreement, SCPH shall submit proof of insurance as required in Article 9.

7.19 Scheduling and Extension of Time; Unavoidable Delay in Performance. It shall be the responsibility of SCPH to coordinate and schedule the work to be performed so that the Commencement of Construction and issuance of the Certificate of Completion will take place in accordance with the provisions of the Agreement and Project Schedule, provided any extension approved by HUD shall be deemed approved by the City. The time for performance contained in the Project Schedule shall be automatically extended upon the following:

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

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

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

ARTICLE 8. OPERATION OF RENTAL HOUSING

8.1 Operation of the Project. SCPH, its development team, and authorized agents thereof shall, Lease, operate and manage the Project in full conformity with the terms of this Agreement. Compliance by SCPH with the requirements of the HUD Capital Advance Documents shall constitute compliance with the provisions of this Article 8 and in the event of a conflict between this Article 8 and the HUD Section 202 Program requirements, the HUD requirements shall control.

8.2 Occupancy Requirements. SCPH covenants and agrees that sixty-seven (67) Units of the Project shall constitute Affordable Housing for Senior Households consistent with the Section 202 Program, and shall be rented and occupied by, or if vacant, available for rental occupancy by: (a) Senior 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 size, and at an affordable rent consistent with the HOME Program regulations (as variously provided at 24 CFR 92.252) for the term of the HUD Capital Advance Documents and not greater than eighty percent (80%) of annual median income during the last fifteen (15) years of the Affordability Period. SCPH shall comply with the income targeting requirements of 24 CFR 92.216. Compliance by SCPH with the requirements of the HUD Capital Advance Documents shall constitute compliance with the foregoing provisions of this section and in the event of a conflict, the HUD requirements shall control. In the event of a conflict between 24 CFR 92.216 and the HUD 202 requirements, the matter shall be submitted to HUD for determination. One (1)

Project unit shall be reserved as an on-site manager unit.

8.3 Leasing the Project. Before leasing any Units, SCPH shall submit its proposed form of Lease for CITY's review and approval. SCPH covenants and agrees to utilize only Leases that have been approved in advance by CITY. The CITY shall respond to SCPH submission of a sample Lease within thirty (30) days. Should CITY not respond within thirty (30) days of Lease submittal, SCPH shall be authorized to use the submitted sample Lease. Additionally, SCPH agrees not to terminate the tenancy or to refuse to renew a Lease with a tenant of Rental Housing assisted with HOME Funds except for a 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 thirty (30) days written notice served by SCPH, or its authorized management entity, upon the tenant specifying the grounds for such action. SCPH 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. The CITY shall accept the form of lease required by HUD as compliance with the requirements of this Section 8.3 and 8.4.

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

A. SCPH shall include in Leases for all Units, provisions which authorize SCPH to immediately terminate the tenancy of any Household of whose one or more members misrepresented any fact material to the qualification as a Very Low-Income or Low-Income Senior Household . Each such Lease shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for a Very Low- to Low-Income Senior Household 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 Rental Housing and at least sixty (60) calendar days prior to the Project Completion Date, SCPH shall submit to CITY for review and approval a plan for marketing and managing the Rental Housing (hereinafter referred to as the "Final Management Plan"). The Final Management Plan shall address in detail how SCPH, or its designated management entity, plans to market the availability of Units to prospective tenants and how SCPH plans to certify the eligibility of potential tenants. The Final Management Plan shall also address how SCPH and/or the management entity plan to manage and maintain the Rental Housing, and shall include appropriate financial information and documentation. The Final Management Plan shall contain detailed descriptions of policies and procedures with respect to tenant selections and evictions. Topics to be covered in these procedures shall include at a minimum the following:

- Interviewing procedures for prospective tenants;
- Previous rental history of tenants with references;
- Credit reports and checks;
- Criminal background checks;
- Deposit amounts, purpose, use and refund policy;

- Employment/Income verification;
- Occupancy restrictions;
- Income Limit;
- Equal Housing Opportunity Statement;
- Restrictions on use of the premises; and
- Tenant/Landlord dispute resolution procedures.

The Final Management Plan shall contain copies of all standardized forms associated with the above listed topics. The Final Management Plan shall include a form Lease agreement that SCPH proposes to enter into with Project tenants. SCPH shall abide by the terms of this Final Management Plan, approved by the CITY, in marketing, managing and maintaining the Rental Housing. The CITY's shall accept Section 202 marketing and management plans/requirements in satisfaction of the requirements of this section.

At least ninety (90) calendar days prior to the Project Completion Date, SCPH 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.

The CITY shall have the right to require a change in the management agent at any time during the term of this Agreement, should the management agent in place fail to perform satisfactorily. Any contracting of management services by SCPH shall not relieve SCPH of its primary responsibilities for proper performance of management duties. The CITY shall accept the management contract and any amendments approved by HUD in satisfaction of the requirements of this section.

8.6 Property Management. With respect to the Project and during the entire Affordability Period, SCPH shall comply with the following:

A. Management Responsibilities. SCPH directly and/or through its designated management entity is specifically responsible for all management functions with respect to the Project and the Rental Housing including, without limitation, the selection of tenants, certification and re-certification of Household age, 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. SCPH shall during the entire Affordability Period: (i) at its own expense maintain the Rental Housing in good condition, in good repair and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of Unit occupants; (ii) not commit or permit any waste on or to the Rental Housing, and shall prevent and/or rectify any physical deterioration of the Rental Housing; and (iii) maintain the Project 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 six-seven (67) Affordable Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible seniors and are 62 years of age or above. Consistent with the Section 202 Program,

SCPH shall not illegally discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease or rental of any part of the 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. SCPH shall otherwise comply with all applicable local, state and federal laws concerning nondiscrimination in housing. Neither SCPH nor any person claiming under or through SCPH, 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, lessees, sub-lessees, subtenants or vendees of any Unit or in connection with employment of persons for the operation and management of any Unit. All deeds, leases or contracts made or entered into by SCPH as to the Units or the Rental Housing, or portion thereof, shall contain covenants concerning nondiscrimination consistent with this section. SCPH shall include a statement in all advertisements, notices and signs for availability of Units for rent to the effect that SCPH is an Equal Housing Opportunity Provider.

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

8.9 Rent Schedule and Utility Allowances. During the term of the HUD Capital Advance Documents, SCPH covenants and agrees not to charge rent for Units in excess of the rent established by HUD, and further covenants 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. SCPH agrees to furnish to 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. SCPH shall reexamine the income of each tenant Household living in the Units at least annually.

ARTICLE 9. INSURANCE AND INDEMNITY

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

9.1 Indemnification. SCPH 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, SCPH 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. SCPH's obligation under the preceding sentence shall apply regardless of whether the CITY or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of the CITY or any of its officers, officials, employees, agents or volunteers.

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

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

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

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

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

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

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

9.3 Bonds. SCPH shall pay for and maintain good and sufficient surety bonds, as follows, 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 one hundred percent (100%) of SCPH's estimated construction costs, as reflected in SCPH's pro forma budget, attached hereto as EXHIBIT "C", to guarantee faithful performance of the Affordable Project, within the time prescribed, in a manner satisfactory to the CITY, consistent with this Agreement, and that all materials and workmanship will be free from original or developed defects.

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

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

ARTICLE 10. DEFAULT AND REMEDIES

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

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

B. Failure to obtain and maintain the insurance coverage required under this Agreement;

C. Failure to make any payment according to the tenor and effect of this Agreement and the Loan Documents, including, but not limited to, any payment of principal, premiums, penalties, taxes, etc., when and as the same shall become due and payable, whether at maturity, by acceleration, or otherwise;

D. Except as otherwise provided in this Agreement, SCPH's failure to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) material deviation in the Project work specified in the Project Description as identified in this Agreement, without the CITY's prior written consent; (2) use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) commence or complete the Project, as specified in this Agreement, unless delay is permitted under Section 7.19 of this Agreement; (4) cessation of the Project for a period of more than fifteen (15) consecutive days (other than as provided at Section 7.19 of this Agreement) prior to submitting to the CITY certification that the Project is complete; (5) any material adverse change in the condition of SCPH or its development team, or the Project that gives the CITY reasonable cause to believe that the Project cannot be completed by the scheduled completion date according to the terms of this Agreement; (6) failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY's request; (7) failure to comply with any federal, state or local laws or applicable CITY restrictions governing the Project, including but not limited to provisions of this Agreement pertaining to equal employment opportunity, nondiscrimination and lead-based paint;

E. Any representation, warranty, or certificate given or furnished by or on behalf of SCPH or its development team shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that SCPH 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 SCPH's inadvertence, SCPH 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;

F. SCPH and its development team 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;

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

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

I. The failure of SCPH to cause completion of the construction and Development of the Project on or prior to August 1, 2014, unless extended by HUD;

J. SCPH's breach of any other material condition, covenant, warranty, promise or representation contained in this Agreement not otherwise identified within this Section; K. Any substantial or continuous breach by SCPH of any material obligation owed by SCPH 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 SCPH 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, SCPH shall have an additional reasonable period to cure so long as it commences cure within the specified time and thereafter diligently pursues the cure in good faith. The CITY acknowledges and agrees that SCPH shall have the right to cure any defaults hereunder and that notice and cure rights hereunder shall extend to any and all partners of SCPH that are previously identified in writing delivered to the CITY in the manner provided in this Agreement.

10.3 Remedies Upon an Event of Default. Upon the happening of an Event of Default and a failure to cure said Event of Default within the time specified, the CITY's obligation to disburse 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 ;
- B. Bring an action in equitable relief: (1) seeking specific performance of the terms and conditions of this Agreement, and/or (2) enjoining, abating or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief; and
- C. Pursue any other remedy allowed by law or in equity or under this Agreement.
- D. Notwithstanding the foregoing, during the term of the HUD Capital Advance Documents, City shall not terminate this Agreement, refuse to disburse HOME funds, declare a default or breach, or exercise any remedy herein without the prior written approval of HUD.

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. Under no circumstances shall HUD, its successors or assignees have any liability under this provision.

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

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

11.5 Disclaimer of Relationship. Nothing contained in this Agreement, nor any act of the CITY or of SCPH, 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 or any other statute, and other transactions contemplated by this Agreement are discretionary government actions. Nothing in this Agreement obligates the CITY or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. The CITY cannot take action with respect to such matters before completing the environmental assessment of the Project under NEPA and any other applicable statutes. The CITY cannot and does not commit in advance that it will give final approval to any matter. The CITY shall not be liable, in contract, law or equity, to SCPH or any of its executors, administrators, transferees, successors-in-interest or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

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

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. SCPH 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 SCPH 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 SCPH in, under, or to this Agreement, or the Project, may be assigned or transferred by SCPH 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. Notwithstanding the foregoing, no CITY approval shall be required to transfer the Project to HUD or its transferee or any transfer of the Project approved by HUD.

11.15 No Third-Party Beneficiary. No contractor, subcontractor, mechanic, materialman, laborer, vendor, or other person hired or retained by SCPH 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 SCPH 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 SCPH 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 SCPH in any case shall entitle SCPH 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. SCPH 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
Development and Resource Management Department
Housing and Community Development Division
Attn: Division Manager
2600 Fresno Street, Room 3070
Fresno, CA 93721-3605

If to SCPH: SCPH
c/o be.group
516 Burchett St.
Glendale, CA 91203
Attn: Benjamin F. Beckler, III, Vice President of Facilities and
Project Development

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

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

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

11.23 HUD Pre-emption. Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement tends to contradict, modify or in any way change the terms of the HUD Regulatory Agreement, HUD Use Agreement, HUD Deed of Trust, HUD Note and other HUD Section 202 Program documents ("HUD Documents") encumbering the Property to be entered into between the Secretary of HUD and SCPH (or SCPH's successor in interest), the terms of the HUD Documents shall prevail and govern; or if any provision of this Agreement in any way limits the Secretary of HUD in his administration of the Housing Act of 1959, as amended, or the Cranston-Gonzalez National Affordable Housing Act, or the regulations pursuant thereto, this Agreement shall be deemed amended so as to comply with the Acts, Regulations and HUD Documents. No

other amendment to this Agreement shall be effective without the prior written approval of the Secretary. Notwithstanding anything herein to the contrary, if the Secretary of HUD should take title to the Property through foreclosure, deed in lieu of foreclosure, or otherwise, all covenants, conditions and restrictions set forth in this Agreement shall cease and terminate and be of no further force and effect. During the term of the HUD Capital Advance Documents any monies owed City pursuant to the terms of this Agreement shall be payable only from residual receipts as defined in the HUD Regulatory Agreement subject to the prior written approval of HUD. In the event HUD acquires title to the Property, HUD shall have no liability under the terms of this Agreement. This Agreement shall be subject and subordinate to the HUD Capital Advance Documents to be recorded. SCPH shall maintain the existence, qualifications, and authority necessary to continue its business and shall comply with all laws and regulations applicable to it, its property, and its operations, the noncompliance with which could materially affect its business, its financial condition, or the Project.

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

CITY OF FRESNO, a Municipal Corporation

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

Date: _____

ATTEST:
REBECCA E. KLISCH
City Clerk

APPROVED AS TO FORM:
JAMES SANCHEZ
City Attorney

By: _____
Deputy

By: _____
Senior Deputy City Attorney

Date: _____

Date: _____

SOUTHERN CALIFORNIA PRESBYTERIAN HOMES, a California non-profit public benefit Corporation.

By: _____
Name: Benjamin F. Beckler, III
Title: Vice President
(Attach notary certificate of acknowledgment)

Date: _____

Attachments:

- EXHIBIT A: PROJECT DESCRIPTION AND SCHEDULE
- EXHIBIT B: PROPERTY DESCRIPTION
- EXHIBIT C: PROJECT BUDGET
- EXHIBIT D: SPECIMEN DECLARATION OF RESTRICTIONS
- EXHIBIT E: SPECIMEN CERTIFICATE OF COMPLETION
- EXHIBIT F: SPECIMEN PROMISSORY NOTE
- EXHIBIT G: SPECIMEN DEED OF TRUST
- EXHIBIT H: ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT "A": PROJECT DESCRIPTION AND SCHEDULE

I. PROJECT DESCRIPTION

The project consists of the construction of a sixty-seven (67) unit senior rental housing project under Section 202 of the Housing Act of 1959, related on-site and off-site improvements and amenities, and one (1) manager's unit. Amenities include a community room with a kitchen, library/computer room, hobby/craft room, laundry rooms, a game room, and an exercise room. Security will be provided by fencing and/or walls, in combination with vehicular and pedestrian controlled access gates/doors at all entrances. Sixty-seven (67) one-bedroom units will be available for rental to Senior Households (the primary occupant being at least 62 years of age), and one (1) two-bedroom manager's unit. Sixty-seven (67) will be HOME-Assisted and preserved as Very Low and Low-Income Senior Housing in accordance with the chart below:

HOME FUNDED UNITS (During HUD Capital Advance Documents Period)

% of Median	Units
50% or less	67
Totals	67

HOME FUNDED UNITS (After HUD Capital Advance Documents Period)

During the last fifteen (15) years of the Project's Affordability Period, but not before the end of the term of the HUD Capital Advance Documents Period, all sixty-seven (67) senior rental housing units shall be rented to Low-Income Senior Households with eighty percent (80%) or less median income.

The project will be designed to assist seniors' mobility and to encourage visitability by all people. Construction will provide for accessibility in selected parking spaces, ease of drop-off locations, types of doors and widths of doorways and ease of floor surfaces for walking and moving throughout the project site and building. Elevators will be conveniently located adjacent to the lobby/lounge areas. Both the guest and resident parking areas will have van-accessible parking for persons with disabilities. All site circulation paths and building entrances shall be fully ADA-compliant.

Each one-bedroom unit will be approximately 540 total square feet in area, and contain a kitchen with a full-size range and refrigerator, sink and sufficient cabinet and counter space. Adjustable countertops and removable base cabinets will allow for lowering of countertops to wheelchair accessible height. An easily accessible living/dining area will also be constructed in each unit. Additionally, each unit bathroom and bedroom will be provided with an emergency call system for the safety of residents.

II. PROJECT SCHEDULE

TASK	COMPLETION DATE
Plan Check, Contractor Bidding, Firm Documents, and all Tax Exemptions	December 1, 2012
HUD Closing	May 1, 2013
Commence Construction	May 30, 2013
Complete Construction	August 1, 2014
Lease Up	October 30, 2014

EXHIBIT "B": PROPERTY DESCRIPTION

The Property is located at the southwest corner of West San Jose Avenue and North Marty Avenues in northwest Fresno, CA 93711, as described below:

LEGAL DESCRIPTION

PARCEL B OF PARCEL MAP NO. 2004-30, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED DECEMBER 1, 2005, IN BOOK 65 AT PAGES 36 AND 37 OF PARCEL MAPS, FRESNO COUNTY RECORDS.

EXCEPT THEREFROM AN UNDIVIDED ONE-HALF OF ALL THE MINERALS, GAS, OILS, PETROLEUM, NAPHTHA, AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID PARCEL, AS RESERVED IN THE DEED FROM SECURITY FIRST NATIONAL BANK OF LOS ANGELES, A NATIONAL BANKING ASSOCIATION, TO W. E. ROBERTS AND CLARICE ROBERTS, HIS WIFE, AS JOINT TENANTS, DATED NOVEMBER 15, 1940, RECORDED DECEMBER 19, 1940, AS DOCUMENT NO. 37544, OFFICIAL RECORDS.

APN: 415-044-59

EXHIBIT "C": PROJECT BUDGET

ITEM	HUD FUNDING	HUD Predev	HOME	TOTAL
Construction:	\$ 7,038,892	\$300,000	\$680,000	\$8,018,892
Bond Premium:	\$ 70,597			\$ 70,597
Architect's fee:	\$ 400,000			\$ 400,000
Other fees:	\$ 934,379	\$100,000		\$1,034,379
Taxes:	\$ 8,000			\$ 8,000
Insurance:	\$ 40,000			\$ 40,000
Title & Recording	\$ 30,000			\$ 30,000
Legal:	\$ 35,000			\$ 35,000
Cost Certification:	\$ 8,000			\$ 8,000
Land:	\$ 392,000		\$ 70,000	\$ 462,000
Developer fee:	\$ 510,344			\$ 510,344
Offsite construction:	\$ 50,000			\$ 50,000
Offsite eng/permits:	\$ 20,000			\$ 20,000
TOTAL COSTS:	\$9,537,212	\$400,000	\$750,000	\$10,687,212

EXHIBIT "D": SPECIMEN DECLARATION OF RESTRICTIONS

Recorded at the Request of
and When Recorded Return to:

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

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

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

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this _____ day of _____, 2011, by _____, a California nonprofit public benefit corporation, ("DECLARANT"), in favor of the CITY OF FRESNO, a California municipal corporation ("CITY").

WHEREAS, DECLARANT is the owner of the real estate in the county of Fresno, state of California consisting of APN: 415-044-59, which is more particularly described in EXHIBIT "A", attached hereto and made a part hereof, including the improvements thereon (the "Property"), and by its subscription below consents to the recordation of this Declaration; and

WHEREAS, pursuant to and with primary funding under HUD's Supportive Housing for the Elderly Program under Section 202 of the Housing Act of 1959 as amended including related provisions at Section 811 of the Cranston-Gonzalez National Affordable Housing Act and its implementing regulations are 24 CFR 891 et seq. and related HUD Capital Advance Documents (collectively "Section 202 Program"), DECLARANT is developing upon the Property a sixty-eight (68) unit affordable rental housing project for senior households ("Project") of which sixty-seven (67) units shall be rented as affordable housing; and

WHEREAS, DECLARANT and CITY have entered into a certain HOME Investment Partnerships Program Agreement dated _____, 2011 ("HOME Agreement"), whereby CITY provides HOME Program Project funding variously in consideration of certain U.S. HUD HOME Program (24 CFR 92.252; 24 CFR 92.504(c)(3)(vii)) affordability requirements, covenants and restrictions upon the Project and Property, which affordability restrictions shall be enforceable for a fifty-five (55) year affordability period; and

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

NOW THEREFORE, DECLARANT declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the

covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the Project, the CITY's general, Consolidated Plan, Annual Action Plan, and Housing Element(s) 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 or other transferee of an interest covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration for the period of fifty-five (55) years running from the date the CITY has issued the Certificate of Completion for the Property. During the term of the HUD Capital Advance Documents, compliance by DECLARANT or its successor in interest to the Property with the affordability requirements of the HUD Capital Advance Documents shall constitute compliance with the provisions of Section 2 hereof and in the event of a conflict, the HUD requirements shall control. Any conflict between the HOME Agreement and the HUD Capital Advance Documents will be referred to HUD for determination.

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 of the CITY entering into the HOME Agreement with the 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 the CITY and shall run with the Property and be binding on any future owner's of the Property and inure to the benefit of and be enforceable by CITY. These covenants and restrictions are as follows:

a. DECLARANT for itself and its successor(s) on title covenants and agrees that from the date the Project is entered as complete in the City's Integrated Disbursement and Information System ("Project Completion Date"), until the expiration of the Affordability Period, it shall, for the first forty (40) years, be used as housing affordable to Very Low-Income Senior Households with fifty percent (50%) or less median income. During the last fifteen (15) years of the Project's Affordability Period, but not before the end of the HUD Capital Advance Documents period, the Project (except for the manager's unit) shall be rented to Low-Income Senior Households with eighty percent (80%) or less median income. DECLARANT further agrees to file a recordable document setting forth the Project Completion Date when determined by the CITY. Unless otherwise provided in the Agreement, the term Affordable Rental Senior Housing shall include, without limitation, compliance with the following requirements:

i. Nondiscrimination. Consistent with Section 202 of the Housing Act of 1959, 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, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall DECLARANT, establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Property.

ii. Principal Residence. Each of the Units constituting the Project upon the Property shall be leased only to natural persons, who shall occupy such as a principal residence. The forgoing requirements that the Property tenant occupy the Units as their principal residence does not apply to: 1) persons, other than natural persons, who acquire the Project Property or portion thereof by foreclosure or deed in lieu of foreclosure; or 2) HUD qualified entities that acquire the Property or portion thereof pursuant to the terms of the HOME Agreement.

iii. Income Requirements. During the term of the HUD Capital Advance Documents (the first forty (40) years following issuance of the Certificate of Completion), each of sixty-seven (67) 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 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 the HOME Program regulations. Notwithstanding the foregoing, during the last fifteen (15) years of the term of this Agreement, but not before the end of the term of the HUD Capital Advance Documents, not less than sixty-seven (67) units shall be rented to Low-Income Senior Households with eighty percent (80%) or less median income.

iv. Injunctive Relief. Should any of the sixty-seven (67) Units constituting Affordable Rental Senior Housing upon the Property, not continue to be the principal residence of a Household as set forth in subsection iii above, the CITY shall be entitled to seek any available injunctive relief.

v. In the Event of End to HUD Guaranty Subsidy. In the event the HUD Project Rental Assistance Contract (PRAC) (the "HUD operating subsidy") is discontinued during the anticipated term of the HUD Capital Advance Documents, the then owner of the Project shall be entitled to rent to Low-Income Senior Households at eighty percent (80%) or less median income and the terms of this instrument shall be automatically modified to be consistent with this provision.

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

c. Compliance with the terms of the HUD Capital Advance Documents (defined as the HUD Note, Deed of Trust, Use Agreement, Regulatory Agreement, Capital Advance Agreement and Project Rental Assistance Contract) during the term hereof shall constitute compliance with the Covenants and Restrictions of this Declaration, and in the event of a conflict the HUD Capital Advance Documents shall control. Any conflict between the HUD Capital Advance Documents and the HOME requirements shall be submitted to HUD for determination. During the term of the HUD Capital Advance Documents, no breach or default may be declared hereunder without the prior written approval of HUD.

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 Restriction. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Covenant and Restriction, as may be amended or supplemented from time to time, are accepted and ratified by future owners, tenant or occupant, and such Covenant and Restriction shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Covenant and Restriction was recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. Provided, however, if this Declaration has been subordinated to a Deed of Trust and the Property is transferred by foreclosure to the holder of the Deed of Trust or an assignee of such holder, who is not DECLARANT or an affiliate of DECLARANT, and to the extent consistent with this Section 4 and the HOME Agreement, and provided the Deed of Trust recognizes any contractual or legal rights of CITY to take actions that would avoid the termination of the Project's Affordability, then this Declaration shall be of no further force and effect except that if the Property is subsequently transferred to any party prior chargeable with this Declaration, then the Declaration shall revive. This Declaration is subject and subordinate to the HUD Capital Advance Documents including the Deed of Trust in favor of HUD and to the Regulatory Agreement and to the Use Agreement each between the DECLARANT and HUD.

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 Fresno, state of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of CITY and/or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof. The obligations and liabilities of DECLARANT and its transferee(s) and assignee(s) hereunder, shall be joint and several.

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

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

8. Severability. The invalidity of the Covenant and Restriction or any other covenant, restriction, condition, limitation, or other provision of this Declaration shall not

impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration and each shall be enforceable to the greatest extent permitted by law.

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

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

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

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

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

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

15. HUD Pre-emption. Notwithstanding anything to the contrary in this Declaration, if any provision of this Declaration tends to contradict, modify or in any way change the terms of the Regulatory Agreement encumbering the Property to be entered into between the Secretary of HUD and DECLARANT, the terms of the Regulatory Agreement shall prevail and govern; or if any provision of this Declaration in any way limits the Secretary of the United States Department of Housing and Urban Development ("HUD") in his administration of the Housing Act of 1959, as amended, or the Cranston-Gonzalez National Affordable Housing Act, or the regulations pursuant thereto, this Declaration shall be deemed amended so as to comply with the Acts, Regulations and Regulatory Agreement. No other amendment to this Declaration shall be effective without the prior written approval of the Secretary. Notwithstanding anything herein to the contrary, if the Secretary of HUD should take title to the Property through foreclosure, deed in lieu of foreclosure, or otherwise, all covenants, conditions and restrictions set forth in this Declaration shall cease and terminate and be of no further force and effect. During the term of the HUD Capital Advance Documents any monies owed the CITY by DECLARANT shall be payable only from residual receipts as defined in the HUD Regulatory Agreement subject to the prior written approval of HUD.

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

DECLARANT:

_____, a California nonprofit public benefit corporation, the owner of record of the Property, consents to recording this Declaration of Restrictions against the Property described herein.

By: _____

Name:

Title:

(Attach notary certificate of acknowledgment)

Date: _____

EXHIBIT "A" (To Declaration of Restrictions)

The Property is located adjacent to the property at the southwest corner of West San Jose Avenue and North Marty Avenues in northwest Fresno, CA 93711, as described below:

LEGAL DESCRIPTION

PARCEL B OF PARCEL MAP NO. 2004-30, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED DECEMBER 1, 2005, IN BOOK 65 AT PAGES 36 AND 37 OF PARCEL MAPS, FRESNO COUNTY RECORDS.

EXCEPT THEREFROM AN UNDIVIDED ONE-HALF OF ALL THE MINERALS, GAS, OILS, PETROLEUM, NAPHTHA, AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID PARCEL, AS RESERVED IN THE DEED FROM SECURITY FIRST NATIONAL BANK OF LOS ANGELES, A NATIONAL BANKING ASSOCIATION, TO W. E. ROBERTS AND CLARICE ROBERTS, HIS WIFE, AS JOINT TENANTS, DATED NOVEMBER 15, 1940, RECORDED DECEMBER 19, 1940, AS DOCUMENT NO. 37544, OFFICIAL RECORDS.

APN: 415-044-59

EXHIBIT "E": CERTIFICATE OF COMPLETION

Recorded at the Request of
and When Recorded Return to:

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

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

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: 415-044-59

City of Fresno

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

Date: _____

Certificate of Completion

APN: 415-044-59

Recitals:

A. By a City of Fresno ("CITY") HOME Investment Partnerships Program Agreement dated _____, 2011, ("HOME Agreement between the City of Fresno, a municipal corporation ("CITY"), and _____), a California non-profit corporation, ("_____"), incorporated herein, agreed to develop a sixty-eight (68) unit affordable senior rental housing project, including one (1) manager's unit, upon the premises legally described in EXHIBIT "A" attached to the HOME Agreement with primary funding under HUD's Supportive Housing for the Elderly Program under Section 202 of the Housing Act of 1959 as amended including related provisions at Section 811 of the Cranston-Gonzalez National Affordable Housing Act and its implementing regulations are 24 CFR 891 et seq. and related HUD Capital Advance Documents ("Project").

B. The HOME Agreement or a memorandum of it was recorded on _____, 2011, as Instrument No. _____ in the Official Records of Fresno County, California.

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

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

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

NOW THEREFORE:

1. CITY certifies that _____ commenced has done so in full compliance with the HOME Agreement.

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

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

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

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

CITY OF FRESNO

By: _____
Craig Scharon, Assistant Director
Development and Resource Management Department
(Attach notary certificate of acknowledgment)

Date: _____

ATTEST:
CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Deputy

By: _____
Assistant/Deputy

Date: _____

Date: _____

_____, a California nonprofit public benefit corporation, the owner of record of the Property, consents to recording this Declaration of Restrictions against the Property described herein.

By: _____
Name: _____
Title: _____
(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: \$750,000.00

Date: _____

Fresno, California

For value received, the undersigned, _____, a California non-profit public benefit company ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation ("Lender"), the sum of Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00) at zero percent interest¹, deferred, forgivable as provided hereunder, subject to the following conditions and limitations:

- (1) Principal on this note shall be due and payable on the maturity date of the note and deed of trust held by the Secretary of the U.S. Department of Housing and Urban Development ("Secretary") financing HUD Project No. _____, provided that if the aforesaid note is prepaid in full, the holder of this note, at its option and without notice, may declare the whole principal sum or any balance thereof, immediately due and payable. Notwithstanding the foregoing if the Borrower fully complies with the terms of the HOME Agreement between the Borrower and Lender, then all principal due shall be forgiven, this note cancelled and the Deed of Trust securing the same be reconveyed.
- (2) Prepayments to principal on this note may be made only from available residual receipts, as that term is defined in the Regulatory Agreement between the Borrower and the Secretary, executed in connection with the above Project, and only after obtaining the prior written approval of the Secretary. Such prepayments may be made only after final closing on the note by the Secretary and after the end of a semiannual or an annual fiscal period.
- (3) This note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Lender except with the prior written approval of the Secretary.
- (4) This note is made and delivered in payment of costs not included in the HUD Capital Advance.
- (5) This note, and any extensions or renewals hereof, is secured by a Deed of Trust and Assignment of Rents on real estate in Fresno County, California, that provides for acceleration upon stated events subject to HUD's written approval, dated as of the same date as this note, and executed in favor of and delivered to the Lender and insured by a title company as a not worse than second (2nd) position lien on the Property.
- (6) Presentation, demand and notice of demand, non-payment and protest of this note are waived.
- (7) See attached RIDER for additional provisions.

¹ Not to exceed the highest permissible rate established by the Secretary.

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 this.

Attest:

_____, a California nonprofit public benefit corporation

By: _____

Name:

Title:

(Attach notary certificate of acknowledgment)

Date: _____

The Lender hereby certifies that this is a bona fide transaction and that it fully understands all the requirements of this note, and that no prepayment of principal or interest shall be accepted without evidence that the Secretary has authorized such prepayment. If an unauthorized prepayment is accepted, the funds shall be held by the payee in trust for the project.

CITY OF FRESNO, a California municipal corporation

By: _____

Name: Mark Scott, City Manager

(Attach notary certificate of acknowledgment)

RIDER TO RESIDUAL RECEIPTS PROMISSORY NOTE

HUD Project No.: _____

1. Time is of the essence. It will be a default under this note if maker 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. 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, provided payment on the note shall not be accelerated without the prior written approval of HUD and any late charges and costs referred to in paragraphs 2 and 4 hereof shall be payable only from annual and available residual receipts as defined in the Regulatory Agreement between HUD and the Borrower and subject to the prior written approval of HUD.
2. The indebtedness evidenced by this note may, at the option of the maker, 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 principal balance.
3. All Loan payments are payable in lawful money of the United States of America at any place that payee or the legal holders of this note may, from time to time, in writing designate, and in the absence of that designation.
4. 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 maker. Borrower will pay to Lender all attorney fees and other costs referred to in this paragraph on demand.
5. 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.
6. 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 payee'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.
7. 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 payee will retain all rights and powers given by this note with respect to Property not transferred.

8. 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 maker, Lender, and their respective successors and assigns.

9. This note is made and delivered in payment of costs not included in the HUD Capital Advance for the Project described in the HOME Agreement. In the event of any conflict between this RIDER and HUD Section 202 Program Capital Advance Documents, the HUD Capital Advance Documents shall control. In the event of a conflict between this Rider and the HOME Agreement, any such dispute shall be resolved by the Secretary of HUD.

10. 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 and approved by the Secretary of HUD.

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IN WITNESS WHEREOF, Borrower has caused this Promissory Note Rider to be executed by its authorized agent(s) on _____, 20__.

Attest:

_____, a California nonprofit public benefit corporation

By: _____

Name:

Title:

(Attach notary certificate of acknowledgment)

Date: _____

LENDER

CITY OF FRESNO, a California municipal corporation

By: _____

Name: Mark Scott, City Manager

(Attach notary certificate of acknowledgment)

EXHIBIT "G": SPECIMEN DEED OF TRUST

Recorded at the Request of
and When Recorded Return to:

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

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

TITLE ORDER NO. _____
APN NO. : 415-044-59

ESCROW NO. _____

SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

This Deed of Trust, made this ____ day of _____, between _____, a California nonprofit public benefit corporation, herein called Trustor, whose address is 516 Burchett Street, Glendale, California 91203, and THE CITY OF FRESNO, a municipal corporation, herein called Beneficiary, and Lawyers Title Company, herein called Trustee.,

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in Fresno County, California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

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

For the Purpose of Securing: 1. Performance of each agreement of Trustor incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of \$750,000.00 executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record owner of said property may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

To Protect the Security of This Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the rate secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz.:

COUNTY	DATE	BOOK	PAGE	COUNTY	DATE	BOOK	PAGE	COUNTY	DATE	BOOK	PAGE
IMPERIAL	9/10/68	1267	574	ORANGE	9/6/68	8714	147	SAN BERNARDINO	9/6/98	7090	14SANTA
BARBARA	9/6/68	2244	922	KERN	9/6/68	4195	363	VENTURA	9/6/68	3363	84
SAN LUIS OBISPO	9/10/68	1489	429	LOS ANGELES	8/28/68	T5910	842	RIVERSIDE	9/10/68	ACCOUNT =	87097
YEAR 1968				SAN DIEGO	9/10/68	SERIES 9	BOOK 1968	PAGE 155820			

(which provisions, identical in all counties, are printed on the reverse hereof) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

DO NOT RECORD

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

To Protect the Security of This Deed of Trust, Trustor Agrees:

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

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

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

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

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

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

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

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

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

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

(10) That as additional security, Trustor hereby give to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees. Upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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

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

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

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting

hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

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

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

DO NOT RECORD
REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid:

To Lawyers Title Company, Trustee: Dated _____

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

MAIL RECONVEYANCE TO:

By _____

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

EXHIBIT "A" (To Deed of Trust)

The Property is located adjacent to the southwest corner of West San Jose Avenue and North Marty Avenues in northwest Fresno, CA 93711, as described below:

LEGAL DESCRIPTION

PARCEL B OF PARCEL MAP NO. 2004-30, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED DECEMBER 1, 2005, IN BOOK 65 AT PAGES 36 AND 37 OF PARCEL MAPS, FRESNO COUNTY RECORDS.

EXCEPT THEREFROM AN UNDIVIDED ONE-HALF OF ALL THE MINERALS, GAS, OILS, PETROLEUM, NAPHTHA, AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID PARCEL, AS RESERVED IN THE DEED FROM SECURITY FIRST NATIONAL BANK OF LOS ANGELES, A NATIONAL BANKING ASSOCIATION, TO W. E. ROBERTS AND CLARICE ROBERTS, HIS WIFE, AS JOINT TENANTS, DATED NOVEMBER 15, 1940, RECORDED DECEMBER 19, 1940, AS DOCUMENT NO. 37544, OFFICIAL RECORDS.

APN: 415-044-59

EXHIBIT "B" (To Deed of Trust)

(a) This Deed of Trust is second and junior in lien to a deed of trust made by Trustor in favor of the Secretary of Housing and Urban Development ("Secretary") to be recorded concurrently securing a Capital Advance made by the Secretary pursuant to Section 202 of the Housing Act of 1959, as amended, or Section 811 of the Cranston-Gonzales National Affordable Housing Act and to a Regulatory Agreement and Use Agreement between Trustor and the Secretary with respect to the Property referred to herein.

(b) During the period the HUD Regulatory Agreement or Use Agreement is in effect, no default under this deed of trust may be declared without the prior written approval of the Secretary.

(c) In the event that during the period the HUD Regulatory Agreement or Use Agreement is in effect, the Secretary acquires title to the property by foreclosure or by deed in lieu of foreclosure, or otherwise, the lien of this deed of trust shall automatically terminate.

(d) This deed of trust shall not be modified during the period the HUD Regulatory Agreement or Use Agreement is in effect without the prior written approval of the Secretary.

(e) During the period the HUD Regulatory Agreement or Use Agreement is in effect, in the event of any conflict between any provisions of this deed of trust and the Cranston-Gonzalez National Affordable Housing Act or the Housing Act of 1959, as amended, HUD regulations, or the HUD Regulatory Agreement, this deed of trust shall be deemed amended to comply with said Act, regulations and HUD Regulatory Agreement.

(f) Approval by the Secretary of a Transfer of Physical Assets ("TPA") of the Project referred to in the Note secured by this Deed of Trust shall constitute approval of the TPA by the Beneficiary.

(g) During the term of the HUD Capital Advance Documents the Beneficiary shall not exercise the remedies under the Deed of Trust without the prior written approval of HUD.

EXHIBIT "H": ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

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

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Assignment and Assumption 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.

APN: 415-044-59

City of Fresno

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

Date: _____

By

Southern California Presbyterian Homes

ASSIGNMENT/ASSUMPTION OF HOME PROGRAM AGREEMENT AND LOAN DOCUMENTS

Regarding

Development of Sierra Gateway Senior Residence II
Affordable Multi-Family Senior Housing
Adjacent to property located at the southwest corner of
West San Jose Avenue and North Marty Avenue
Fresno, CA 93711 (APN: 415-044-59)

Assignment and Assumption Agreement

APN: 415-044-59

This Assignment/Assumption Agreement (this "Assignment"), dated for convenience as of _____, 20__, is entered into between SOUTHERN CALIFORNIA PRESBYTERIAN HOMES, a California nonprofit public benefit corporation (herein referred to as "Assignor") and _____, a California nonprofit public benefit corporation (herein referred to as "Assignee"), as consented to by the CITY OF FRESNO, a California municipal corporation, by (herein referred to as "City") (sometimes Assignor and Assignee will be collectively referred to hereinafter as the "parties"), and further subject to any and all required HUD approvals.

Recitals

A. City and Assignor are parties to a certain _____, 2011, HOME Investment Partnerships Program Agreement and Loan Documents thereunder including a Promissory Note secured by a Deed of Trust (collectively "Agreement"), true and correct copies of which are attached hereto as EXHIBIT "A" and incorporated herein; and

B. Assignor desires to assign the Agreement and to Assignee and Assignee desires to assume such, upon the terms and conditions hereunder; and

C. City is willing to consent to a no cost assignment and assumption of the Agreement in the public interest and upon the terms and conditions herein, subject to any and all required HUD approvals.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, Assignor and Assignee agree as follows:

Section 1. Assignment of Agreement.

Assignor, from and after the effective date, assigns and transfers to Assignee, and Assignee accepts all right, title, interest and obligations in and to the Agreement subject to the terms and conditions set forth in this Assignment. Assignor and Assignee, without waiver or limitation, agree to take any and all action required to bind Assignee to the Agreement and all applicable attachments thereto, at the request of and as requested by the City and such is an express condition precedent to the effectiveness hereof.

Section 2. Assumption of Obligations under the Agreement.

Assignee, from and after the effective date, assumes and agrees to perform and fulfill the terms, covenants, conditions, and obligations required to be performed and fulfilled by Assignor under the Agreement.

Section 3. Assignor's Covenants.

Assignor covenants that this instrument constitutes the only assignment it has entered with regard to the rights it possesses under this Agreement.

Section 4. Litigation Costs.

If any litigation between Assignor and Assignee arises out of this Assignment or concerning the meaning of interpretation of this Assignment, the Assignee shall pay for costs and expenses of this litigation, including without limitation, reasonable attorneys' fees.

Section 5. Indemnification.

Assignee indemnifies and holds harmless Assignor from and against any loss, cost, or expense, including attorneys' fees relating to the failure of Assignee to fulfill obligations under the Agreement and accruing with respect to the period subsequent to the date of this Assignment.

Section 6. Successors and Assigns.

This Assignment shall be binding on and inure to the benefit of the parties to it, their heirs, executors, administrators, successors in interest, and assigns.

Section 7. Governing Law.

This Assignment shall be governed by and construed in accordance with California law.

Section 8. Effective Date.

The effective date of this Assignment shall be the date the City consents to this Assignment following the parties' complete execution thereof, subject to any and all required HUD approval(s). This Agreement controls any/all prior in time negotiations/agreements in the event of any conflict.

Section 10. HUD Provisions.

In no event shall HUD have any liability under the terms of this instrument.

///
///
///

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

ASSIGNOR: Southern California Presbyterian Homes

By: _____
(Attach notary certificate of acknowledgment)

Name: _____

Title: _____

Date: _____

ASSIGNEE: _____

By: _____
(Attach notary certificate of acknowledgment)

Name: _____

Title: _____

Date: _____

APPROVAL OF CITY TO ASSIGNMENT

The City of Fresno, through its Assistant Director of the Development and Resource Management Department, consents to the Assignment to Assignee of the Home Agreement, and Assignee's assumption thereof, , upon such assignment and assumption Assignor shall be automatically released from any further obligations or liabilities whatsoever under the Agreement and all facts and circumstances underlying the Agreement.

APPROVED:
CITY OF FRESNO

By: _____
(Attach notary certificate of acknowledgment)

Name: _____

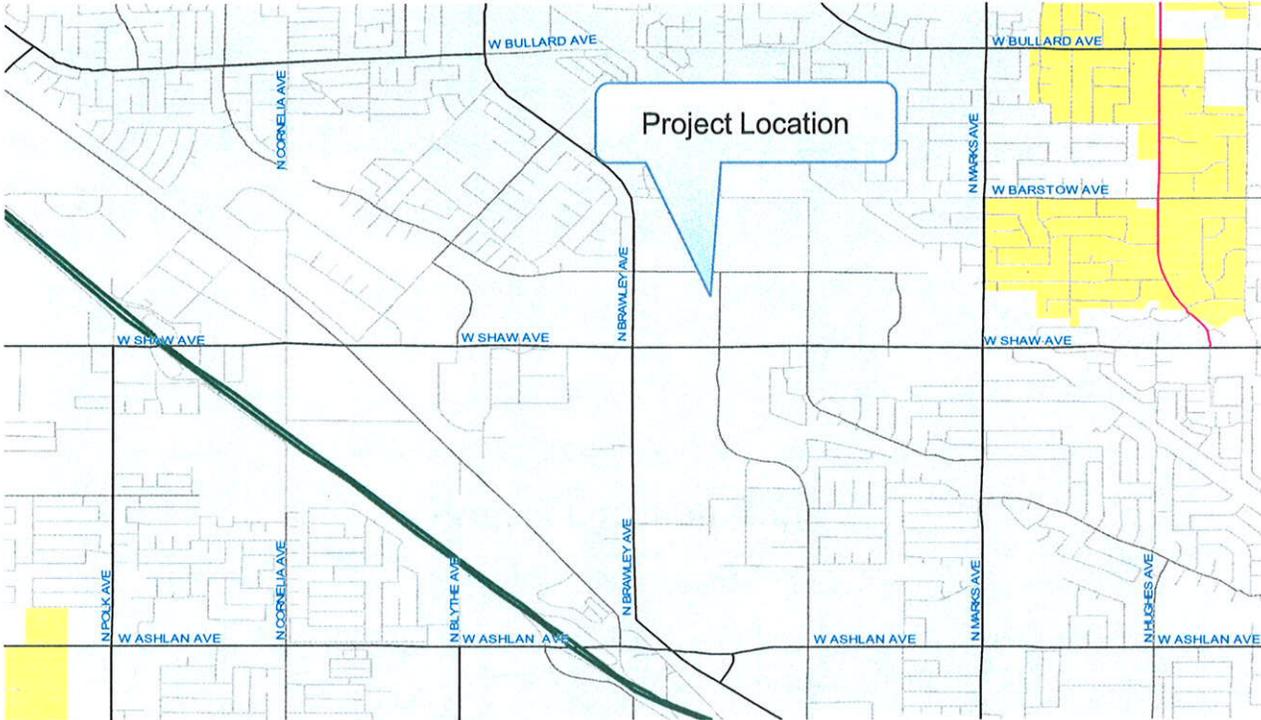
Title: _____

Date: _____

Exhibit: HOME Investment Partnerships Program Agreement

EXHIBIT "B"
PROJECT LOCATION MAPS

Project Location Maps



SIERRA GATEWAY SENIOR RESIDENCE II
SITE IS LOCATED ADJACENT TO
SIERRA GATEWAY SENIOR RESIDENCE I



EXHIBIT "C"
PROJECT SOURCES AND USES OF FUNDS

Sierra Gateway Senior Residence II
Sources and Uses of Funds

Sources

HUD 202 Program Funds	\$ 9,537,212
HUD Predevelopment	\$ 400,000
City HOME Program Funds	<u>\$ 750,000</u>
Total	\$10,687,212

Uses

Land/Title/Recording	\$ 492,000
Construction	\$ 8,088,892
Architectural Fees	\$ 400,000
Other/taxes/Ins.	\$ 1,160,976
Legal	\$ 35,000
Developer Fee	<u>\$ 510,344</u>
Total	\$10,687,212

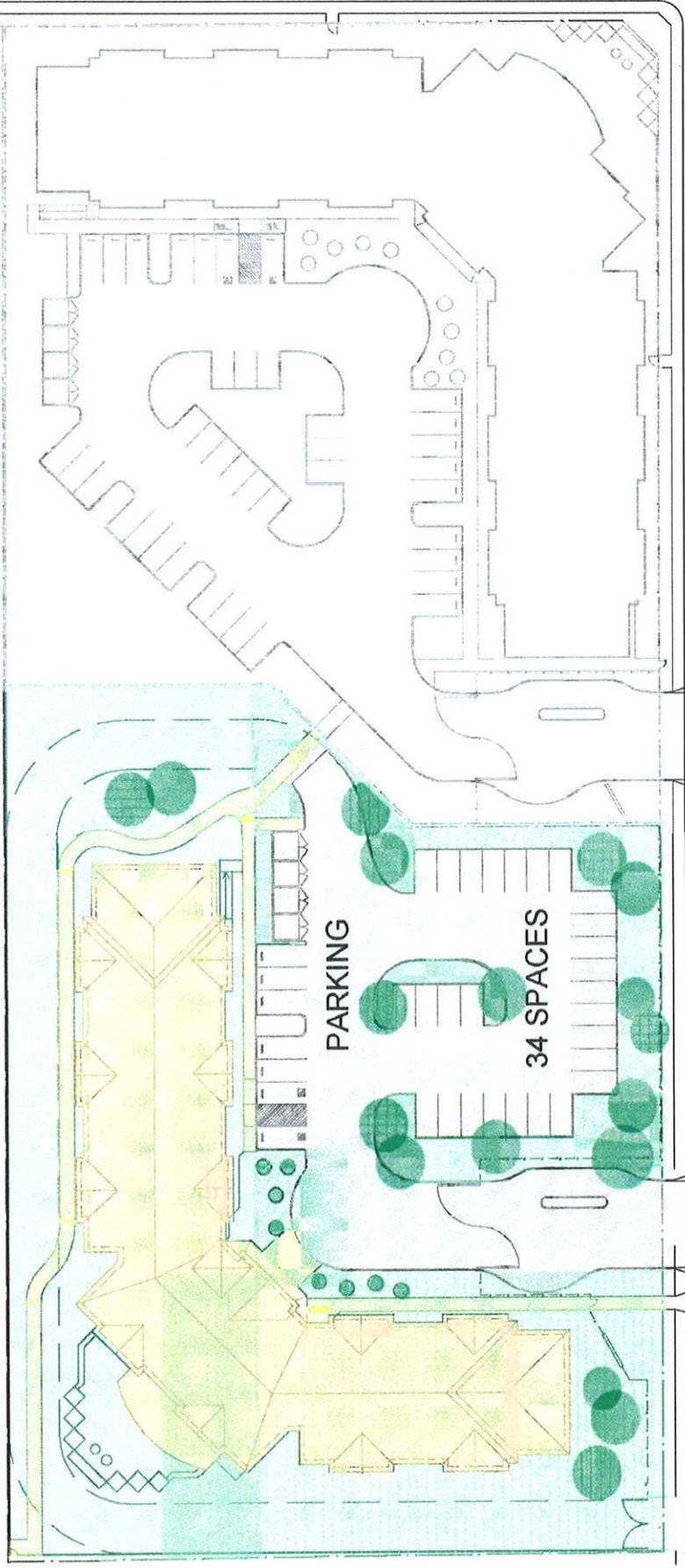
EXHIBIT "D"
PLANS AND ELEVATIONS



PROPOSED PROJECT
68 UNITS

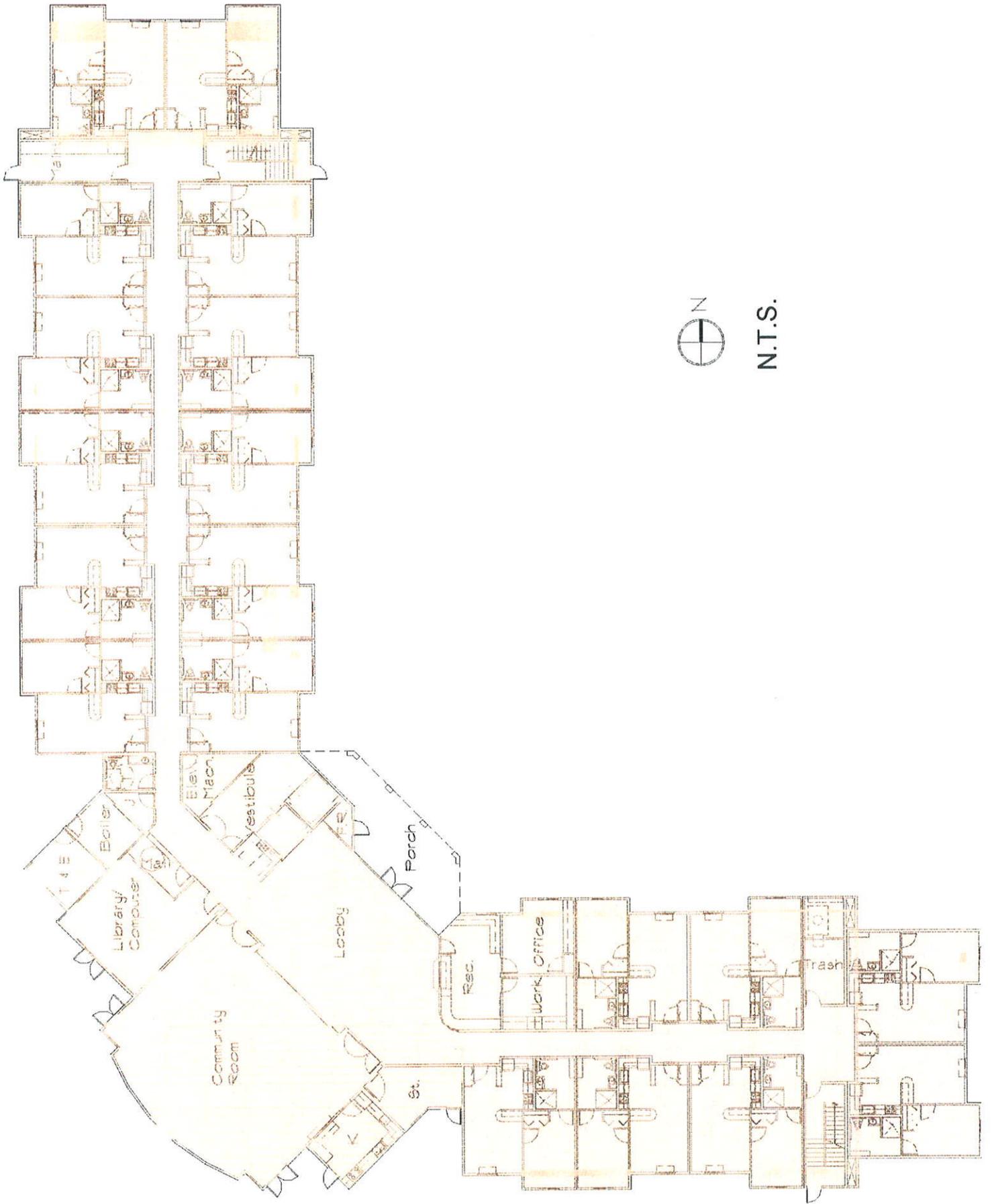
EXISTING APARTMENT PROJECT
80 UNITS

W. SAN JOSE AVE



N. MARTY AVE





N.T.S.

EXHIBIT "E"
RESOLUTION NO. 2011-77



RESOLUTION NO. 2011-77

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRESNO AUTHORIZING NEGOTIATION AND ENTRY OF A HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM AGREEMENT AND COMMITTING HOME PROGRAM FUNDS IN THE AMOUNT OF \$250,000, FOR A 68 UNIT SENIOR AFFORDABLE RENTAL HOUSING PROJECT

(SIERRA GATEWAY SENIOR RESIDENCE – PHASE II)

WHEREAS, the Sierra Gateway Senior Residence Phase II project, which is located at the southwest corner of San Jose and Marty Avenues in northwest Fresno will construct a 68 unit affordable senior living apartment project for Fresno's low and very low income senior community; and

WHEREAS, the developer, Southern California Presbyterian Homes (SCPH), a non-profit builder of affordable housing, intends to request construction funding through the U.S. Department of Housing and Urban Development (HUD) - Section 202 Supportive Housing for the Elderly Program for most of the project's construction cost, estimated to total \$10,363,109, through an application to HUD due in June 2011; and

WHEREAS, in order to assist the project's application for Section 202 HUD Program funds and facilitate the awarding of additional points, SCPH has requested the City commit HOME Program funds to the project as gap financing; and

WHEREAS, on December 8, 2010, the Housing and Community Development Commission of the City of Fresno (Commission) reviewed and recommended Council approval of \$250,000 in HOME Program funds to SCPH, for the Sierra Gateway Senior Residence – Phase II project in northwest Fresno, contingent on contract negotiation and approval as to form by the City Attorney's office; and

WHEREAS, the City has conducted an environmental review of the project pursuant to the National Environmental Policy Act, which included a Finding of No Significant Impact, and pursuant to the California Environmental Quality Act (CEQA) and determined that the project conformed to the Master Environmental Impact Report No. 10130 prepared for the 2025 General Plan; and

WHEREAS, the U.S. Department of Housing and Urban Development has provided the City with an Authorization to Use HOME Funds for the project.

Adopted 4-28-11
Approved 4-28-11
Effective 4-28-11



NOW, THEREFORE, the City Council of the City of Fresno does resolve as follows:

1. The Council, based upon the staff report and the record at hearing and consistent therewith, finds that the project is in furtherance of the public interest, and authorizes negotiation and entry of a Home Investment Partnership (HOME) Program Project Agreement, subject to City Attorney's approval to form

2. The Council hereby commits HOME Program funds in the amount of \$250,000 to the Sierra Gateway Senior Residence Phase II Project.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the 28th day of April, 2011.

AYES : Baines, Borgeas, Olivier, Quintero, Westerlund, Xiong, Brand
NOES : None
ABSENT : None
ABSTAIN : None

REBECCA E. KLISCH
City Clerk

BY: Rebecca E. Klisch
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

BY: R. Coyle 4-13-11
Robert R. Coyle
Senior Deputy

RRC:elb [55733elb/rrc]

EXHIBIT "F"
CEQA DOCUMENTS

ATTACHMENT NO. 1
NOTICE OF DETERMINATION

NOTICE OF DETERMINATION

TO: Office of Planning and Research 1400 Tenth Street, Room 121 Sacramento, CA 95814
FROM: CITY OF FRESNO Planning and Development Dept. 2600 Fresno St., Rm. 3043 Fresno, CA 93721-3604
[X] County Clerk County of Fresno 2221 Kern Street Fresno, CA 93721

DATE RECEIVED FOR FILING: FILED

SEP 01 2004

FRESNO COUNTY CLERK DEPUTY [Signature]

SUBJECT: Filing of Notice of Determination in compliance with Section 21152 of the Public Resources Code.

City of Fresno Environmental Assessment No. R-04-24/C-04-062, for Rezone No. R-04-24 and Conditional Use Permit No. C-04-062

Project Title

N/A City of Fresno Planning and Development Department Sandra Brock, Planner (559) 621-8041

State Clearinghouse Number (If subject to Clearinghouse)

Lead Agency Contact Person

Area Code/Telephone

3.72± acres located on the southwest corner of W. San Jose and N. Marty Avenues, City of Fresno, Fresno County

Project Location (include County)

Project Description: Rezone Application No. R-04-24 and Conditional Use Permit Application No. C-04-062 pertain to approximately 3.72 acres of property located on the southwest corner of West San Jose Avenue and North Marty Avenue, north of West Shaw Avenue and west of North Valentine Avenue. This site is currently vacant and undeveloped and is designated in the 2025 Fresno General Plan and Bullard Community Plan for office commercial land use. The rezoning application changes the zone district of the entire site from R-P/UGM/cz (Residential and Professional Office District/Urban Growth Management Area/conditions of zoning) to C-P/UGM/cz (Administrative and Professional Office District/UGM Area/conditions of zoning). Conditional Use Permit Application No. C-04-062 authorizes construction of two three-story buildings with 148 units of housing for the elderly with 74 parking spaces, and provides for completion of sidewalks and related improvements.

This is to advise that the Council of the City of Fresno, the Lead Agency, has approved the above-described project on August 31, 2004 and has made the following determinations regarding this project:

- 1. The project [] will [X] will not have a significant effect on the environment.
2. [] An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA. [] A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA. [X] A determination of project conformity to the 2025 Fresno General Plan Master Environmental Impact Report (City of Fresno MEIR No. 10130 / SCH No. 2001071097) was made.
3. Mitigation measures [X] were [] were not made a condition of the approval of the project.
4. A statement of Overriding Considerations [] was [X] was not adopted for this project.
5. Findings [] were [X] were not made pursuant to the provisions of CEQA.

This is to certify that the above-described Finding of Conformity with comments and responses and record of project approval is available to the general public at the City of Fresno Planning & Development Department, 2600 Fresno Street, Room 3043, Fresno, California 93721-3604.

[Signature] Darrell Unruh Planning Manager, City of Fresno

9/01/04 Date

Attachments: De Minimis Finding Project Vicinity Map Environmental Assessment No. R-04-24/C-04-062 Finding of Conformity

**CALIFORNIA DEPARTMENT OF FISH AND GAME
CERTIFICATE OF FEE EXEMPTION**

**DE MINIMIS IMPACT FINDING FOR
CITY OF FRESNO ENVIRONMENTAL ASSESSMENT No. R-04-24/C-04-062**

LEAD AGENCY:

City of Fresno, Planning and Development Department, 2600 Fresno Street, Fresno, California 93721

PROJECT TITLE AND LOCATION:

Rezone Application No. R-04-024 and Conditional Use Permit Application No. C-04-062

PROJECT DESCRIPTION:

Changes the zone district of 3.72 acres from R-P/UGM/cz (Residential and Professional Office District/Urban Growth Management Area/conditions of zoning) to C-P/UGM/cz (Administrative and Professional Office District/UGM Area/conditions of zoning); authorizes construction of two three-story buildings with 148 units of housing for the elderly and 75 parking spaces with related sidewalk and infrastructure improvements.

FINDING OF EXEMPTION:

Pursuant to the above-noted environmental assessment, Finding of Conformity to Master Environmental Impact Report No. 10130 for the 2025 Fresno General Plan has been prepared by the lead agency for the proposed project. There is no evidence in the record that the proposed project may have an adverse effect on wildlife resources.

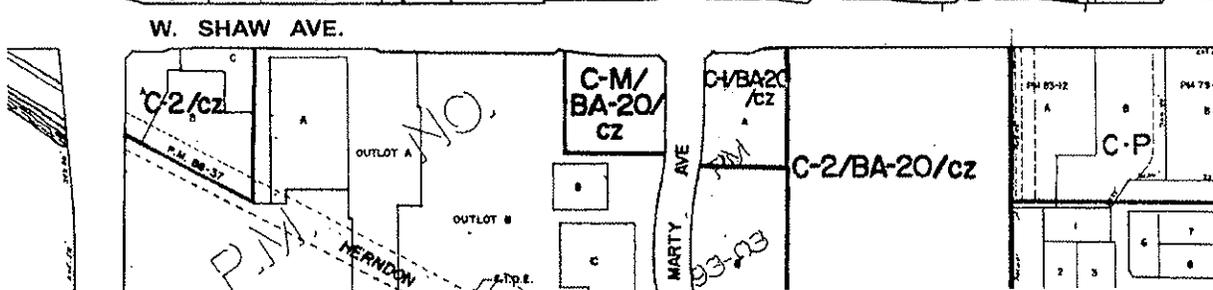
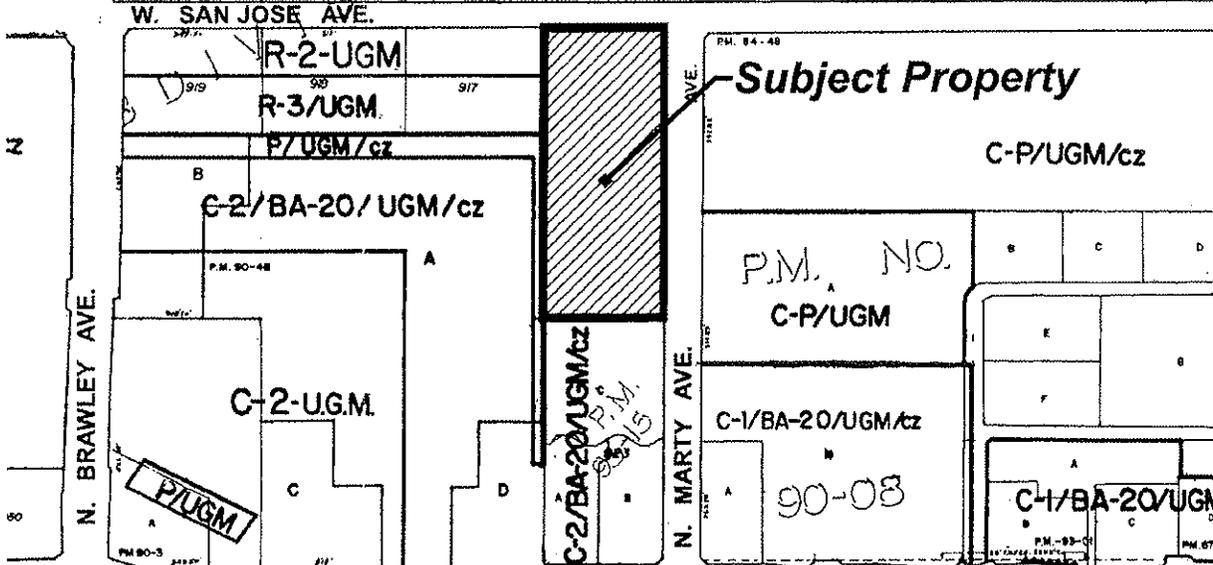
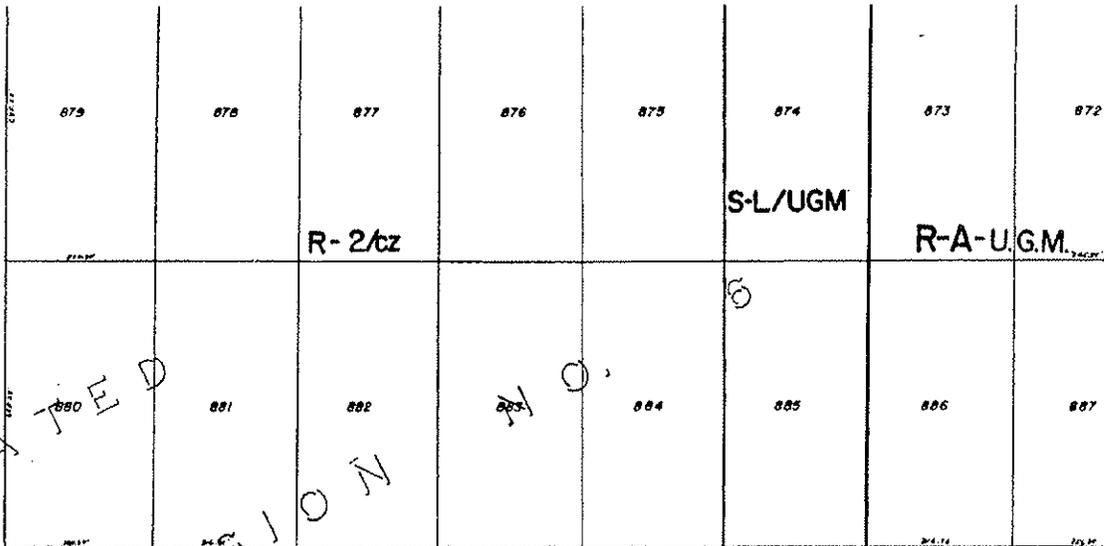
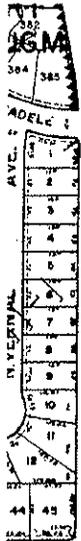
"I hereby certify that the public agency has made the above finding and that the project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.4 of the Fish and Game Code."



Darrell Unruh, Planning Manager
Advance Planning Division

Date: September 1, 2004

Section 711.4, Fish and Game Code



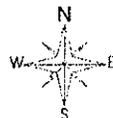
VICINITY MAP

CONDITIONAL USE PERMIT NO. C-04-062
 REZONE APPLICATION NO. R-04-024
 From R-P/UGM/cz to C-P/UGM/cz

Southwest corner N. Marty and W. San Jose Aves.

PLANNING & DEVELOPMENT DEPARTMENT

A.P.N.: 415-044-16S
 ZONE MAP: 1946
 BY/DATE: J.S. / 4-2-04



NOT TO SCALE



STATE OF CALIFORNIA - THE RESOURCES AGENCY
 DEPARTMENT OF FISH AND GAME
ENVIRONMENTAL FILING FEE CASH RECEIPT
 DFG 753.5a (8-03)

246217

Lead Agency: CITY OF FRESNO Date: 09/01/2004
 County / State Agency of Filing: CITY OF FRESNO Document No: 200410000376
 Project Title: CITY OF FRESNO ENVIRONMENTAL ASSESMENT NO. R-04-24/C-04-062
 Project Applicant Name: CITY OF FRESNO Phone Number: (559) 621-8041
 Project Applicant Address: 2600 FRESNO STREET, RM 3043, FRESNO, CA 93721-3604
 Project Applicant (check appropriate box): Local Public Agency School District Other Special District
 State Agency Private Entity

CHECK APPLICABLE FEES:

() Environmental Impact Report	\$850.00	\$	<u>-0-</u>
() Negative Declaration	\$1,250.00	\$	<u>-0-</u>
() Application Fee Water Diversion (State Water Resources Control Board Only)	\$850.00	\$	<u>-0-</u>
() Projects Subject to Certified Regulatory Programs	\$850.00	\$	<u>-0-</u>
(XX) County Administrative Fee	\$25.00	\$	<u>25.00</u>
() Project that is exempt from fees			

TOTAL RECEIVED \$ 25.00

Signature and title of person receiving payment:  DEPUTY

WHITE-PROJECT APPLICANT YELLOW-DFG/FASB PINK-LEAD AGENCY GOLDENROD-STATE AGENCY OF FILING

CLERK'S FEES

Transaction ID: 93097 By: VICTORIA
 09/01/2004 12:55:05 PM

Description	Qty	Am't
EIR		
NOTICE OF DETERMINATION	1	\$0.00
EIR COUNTY ADMINISTRATIO	1	\$25.00

Pay by M/C - Visa \$25.00

Total Amt. Due \$25.00
 Total Received \$25.00

ATTACHMENT NO. 2
FINDING OF CONFORMITY

**CITY OF FRESNO ENVIRONMENTAL ASSESSMENT / INITIAL STUDY
FINDING OF CONFORMITY / MEIR NO. 10130**

Pursuant to Section 21157.1 of the California Public Resources Code (California Environmental Quality Act) the project described below is determined to be within the scope of the Master Environmental Impact Report (MEIR) No. 10130 prepared for the 2025 Fresno General Plan.	DATE RECEIVED FOR FILING: RECEIVED 2004 APR 27 PM 3:55 CITY CLERK, FRESNO
Initial study is on file in the City of Fresno at the Planning and Development Department, City Hall, 2600 Fresno Street, Fresno, California 93721 (559) 621-8277	
Environmental Assessment Number: R-04-024 / C-04-062	Project Location (including APN): Southwest corner of North Marty and West San Jose Avenues APN 415-044-16S
Applicant: Southern California Presbyterian Homes	Initial Study Prepared By: Sandra Brock, Planner

Project Description:

Rezone Application No. R-04-024 proposes to amend the zoning of 3.72 acres on the southwest corner of North Marty and West San Jose Avenues from R-P/UGM/cz to C-P/UGM/cz, and Conditional Use Permit Application No. C-04-062 proposes to establish a 148-dwelling unit senior citizen independent living facility in two three-story buildings with on-site laundry and recreational facilities, and with parking provided at a ratio of 0.5 spaces per dwelling unit. This project is located within the Bullard Community Plan Area, which designates this property for office commercial uses. The proposed zoning is consistent with the planned land use designation.

Housing for the elderly, at a density of 3.33 times the density allowable by the underlying zone district and with parking reduced by as much as one-third, may be established in any zone district pursuant to approval of a conditional use permit under Fresno Municipal Code Section 12-304-B-15.

The subject site is currently vacant. It is bordered on the north and east by multi-family development, on the south and southwest by community commercial development, and on the southeast and northwest by vacant parcels of land which are planned and zoned for office commercial and multi-family and uses, respectively.

Conformance to Master Environmental Impact Report (MEIR NO. 10130):

As previously indicated, the recently adopted 2025 Fresno General Plan designates the subject parcel for office commercial development. The proposed zoning conforms to this land use designation as indicated by the 2025 Fresno General Plan "Planned Land Use and Zone District Consistency Matrix," and the proposed use is allowed in that zone district pursuant to a conditional use permit.

The Planning and Development Department staff has prepared an initial study and environmental checklist and evaluated the requested rezoning and conditional use permit in accordance with the land use and environmental policies and provisions of the 2025 Fresno General Plan and the related Master Environmental Impact Report (MEIR) No. 10130. The approval of the proposed rezoning and conditional use permit will not facilitate an additional intensification of uses beyond that which already exists or would be allowed by the above-noted planned land use designation. Moreover, it is not expected that the future development will adversely impact existing city service systems or the traffic circulation system that serves the subject parcel. These infrastructure findings have been verified by the Public Works and Public Utilities Departments. It has been further determined

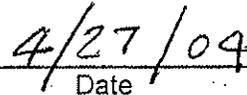
that all applicable mitigation measures of MEIR No. 10130 have been applied to the project as necessary to assure that the project will not cause significant adverse cumulative impacts, growth inducing impacts, and irreversible significant effects beyond those identified by MEIR No. 10130 as provided by CEQA Section 15178(a).

Per Section 21157.1 of the California Public Resources Code (California Environmental Quality Act), it may be determined that a subsequent project falls within the scope of a MEIR, provided that the project does not cause significant impacts on the environment that were not previously examined by the MEIR. Relative to this specific project proposal, the environmental impacts noted in the MEIR, per the 2025 Fresno General Plan land use designations, include impacts associated with the office commercial land use designation specified for the subject parcel and for elderly housing facilities. Based on this initial study, the project does not change the land use indicated for the subject parcels and will not generate additional significant effects not previously identified by the MEIR and no new additional mitigation measures are required. Therefore, the project proposal is within the scope of the MEIR as defined by Section 15177 of the CEQA Guidelines.

Moreover, as lead agency for this project, the Planning and Development Department, per Section 15177 (d) of the CEQA Guidelines, has determined that all feasible mitigation measures from MEIR No. 10130 shall apply to the project proposal as noted in the **attached mitigation monitoring checklist**. Public notice has been provided regarding staff's finding in a manner prescribed by this section of the Guidelines and by Section 21092 of the California Public Resources Code (CEQA provisions).



Darrell Unruh
Planning Manager, City of Fresno



Date

Attachments: Environmental Checklist/Initial Study for Environmental Assessment No. R-04-24 / C-04-062

Mitigation Monitoring Checklist (MEIR No. 10130) for Environmental Assessment
No. R-04-024 / C-04-08

ENVIRONMENTAL ASSESSMENT CHECKLIST

EA No. R-04-029 / C-04-062

Potential Environmental Effects

- 1 1.0 TOPOGRAPHIC, SOIL, GEOLOGIC
- 1 1.1 Geologic hazards, unstable soil conditions
- 1 1.2 Adverse change in topography or ground surface relief
- 1 1.3 Destruction of unique geologic or physical features
- 1 1.4 Increased water erosion
- 1 2.0 AIR QUALITY
- 1 2.1 Generates substantial indirect source pollution
- 1 2.2 Direct on-site pollution generation
- 1 2.3 Generation of objectionable odors
- 1 2.4 Generation of dust except during construction
- 1 2.5 Adverse local climatic changes
- 1 3.0 WATER
- 1 3.1 Insufficient groundwater for long-term project use
- 1 3.2 Uses large quantities of ground water
- 1 3.3 Wasteful use of water
- 1 3.4 Pollution of surface water or groundwater supplies
- 1 3.5 Reduces groundwater recharge
- 1 4.0 PLANT LIFE
- 1 4.1 Reduces numbers of any rare/unique/ endangered species
- 1 4.2 Reduction in acreage of agricultural crop
- 1 4.3 Premature or unnecessary conversion of prime agricultural land
- 1 5.0 ANIMAL LIFE
- 1 5.1 Reduces numbers of any rare/unique/ endangered species
- 1 5.2 Deterioration/displacement of valuable habitat
- 1 6.0 HUMAN HEALTH--Potential for causing illnesses
- 1 7.0 NOISE
- 1 7.1 Increases existing noise levels
- 1 7.2 Increases exposure to high noise levels
- 1 8.0 LIGHT AND GLARE
- 1 8.1 Production of glare, which will adversely affect residential areas
- 1 8.2 Exposure of residences to high levels of glare
- 1 9.0 LAND USE
- 1 9.1 Incompatible with adopted plans and policies
- 1 9.2 Accelerates growth rate
- 1 9.3 Induces unplanned growth
- 1 9.4 Causes adverse change in existing or planned area characteristics
- 1 10.0 TRANSPORTATION AND CIRCULATION
- 1 10.1 Generation of vehicle traffic sufficient to cause capacity deficiencies on existing street system
- 1 10.2 Cumulative increase in traffic on a major street for which capacity deficiencies are projected
- 1 10.3 Specific traffic hazard to motorists, bicyclists, or pedestrians
- 1 10.4 Routes non-residential traffic through residential area
- 1 10.5 Insufficient or poorly located parking
- 1 10.6 Substantial increase in rail and/or air traffic
- 1 11.0 URBAN SERVICES
- 1 11.1 Availability of fire protection
- 1 11.2 Lack of emergency vehicle access
- 1 11.3 Adequacy of design for crime prevention
- 1 11.4 Overcrowding of school facilities
- 1 11.5 Availability of water mains of adequate size
- 1 11.6 Availability of sewer line and sewage treatment capacity
- 1 11.7 Availability of storm water drainage facilities (on or off-site)
- 1 11.8 Availability of adequate park and recreation areas
- 1 11.9 Unusually high solid waste generation

- 1 12.0 HAZARDS
- 1 12.1 Risk of explosion or release of hazardous substances
- 1 12.2 Site subject to flooding
- 1 12.3 Adverse change in course of flow of flood waters
- 1 12.4 Potential hazards from aircraft accidents
- 1 12.5 Potential hazards from landfill and/or toxic waste sites
- 1 13.0 AESTHETICS
- 1 13.1 Obstructs public/ scenic vista or view
- 1 13.2 Creates aesthetically offensive conditions
- 1 13.3 Removes street trees or other valuable vegetation
- 1 13.4 Architecturally incompatible with surrounding area
- 1 14.0 CULTURAL/PALEONTOLOGICAL
- 1 14.1 Removal of historic building, or disruption of archaeological site
- 1 14.2 Construction or use activity incompatible with adjacent historic site
- 1 15.0 ENERGY
- 1 15.1 Uses substantial amounts of fuel or energy
- 1 15.2 Substantial increase in demand upon existing sources of energy
- 1 15.3 Wasteful use of energy

Explanation of Ratings

"0" Insufficient Information

Insufficient information is available for this category and project to determine the potential environmental effects which may result from the proposed project.

"1" No Significant Environmental Effect

In this category, the proposed project will not have an adverse environmental effect, or any such effect is not substantially unusual or of undesirable magnitude. This rating is also utilized in cases where the category is not applicable to the project under consideration.

"2" Moderate Environmental Effect

In this category, the proposed project could have an adverse environmental effect which is of sufficient magnitude to be of some concern. However, this effect is not substantial enough in itself to require preparation of an Environmental Impact Report, and is mitigable through project changes and conditions.

"3" Significantly Adverse Environmental Effect

The environmental effect identified in this category substantiates in itself, or contributes toward, a finding that the proposed project has a potentially significant adverse effect on the environment sufficient to require the preparation of an Environmental Impact Report.

ATTACHMENT NO. 3
MEIR MITIGATION MONITORING CHECKLIST

**MASTER ENVIRONMENTAL IMPACT REPORT (MEIR) NO. 10130
2025 FRESNO GENERAL PLAN**

Project/EA No. R-04-024, C-04-062

Date: 4/27/04

Mitigation Monitoring Checklist

- A - Incorporated into Project
- B - Mitigated
- C - Mitigation in Progress
- D - Responsible Agency Contacted
- E - Part of City-wide Program
- F - Not Applicable

Following is the mitigation monitoring checklist from MEIR No. 10130 as applied to the above-noted Project Environmental Assessment as required by City Council Resolution No. 2002-378 and Exhibit "E", thereof, adopted on November 19, 2002, certifying the MEIR for the 2025 Fresno General Plan Update.

NOTE: Letters B-Q in mitigation measures refer to the respective section of Chapter V of MEIR No. 10130

MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
<p>B-1. Development projects that are consistent with plans and policies but that could affect conditions on major street segments predicted by the General Plan MEIR traffic analysis to perform at an Average Daily Traffic (ADT) level of service (LOS) D or better in 2025, with planned street improvements, shall not cause conditions on those segments to be worse than LOS E before 2025 without completing a traffic and transportation evaluation. This evaluation will be used to determine appropriate project-specific design measures or street/transportation improvements that will contribute to achieving and maintaining LOS D.</p>	<p>Prior to approval of land use entitlement application</p>	<p>Public Works Dept./ Transportation Planning/Planning and Development Dept.</p>						X
<p>B-2. Development projects that are consistent with plans and policies but that could affect conditions on major street segments predicted by the General Plan MEIR traffic analysis to perform at an ADT LOS E in 2025, with planned street improvements, shall not cause conditions on those segments to be worse than LOS E before 2025 without completing a traffic and transportation evaluation. This evaluation will be used to determine appropriate project-specific design measures or street/transportation improvements that will contribute to achieving and maintaining LOS E.</p>	<p>Prior to approval of land use entitlement application</p>	<p>Public Works Dept./ Transportation Planning/Planning and Development Dept.</p>						X
<p>B-3. Development projects that are consistent with plans and policies but that could affect conditions on major street segments predicted by the General Plan MEIR traffic analysis to perform at an ADT LOS F shall not cause further substantial degradation of conditions on those segments before 2025 without completing a traffic and transportation evaluation.</p> <p>This evaluation will be used to determine appropriate project-specific design measures or street/ transportation improvements that will contribute to achieving and maintaining a LOS equivalent to that anticipated by the General Plan. Further substantial degradation is defined as an increase in the peak hour vehicle/capacity (v/c) ratio of 0.15 or greater for roadway segments whose v/c ratio is estimated to be 1.00 or higher in 2025 by the General Plan MEIR traffic analysis.</p>	<p>Prior to approval of land use entitlement application</p>	<p>Public Works Dept./ Transportation Planning/Planning and Development Dept.</p>						X

MASTER ENVIRONMENTAL IMPACT REPORT (MEIR) NO. 10130
2025 FRESNO GENERAL PLAN

Project/EA No. R-04-024, C-04-062

Date: 4/27/04

Mitigation Monitoring Checklist

MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
<p>B-4. For development projects that are consistent with plans and policies, a site access evaluation shall be required to the satisfaction of the Public Works Director. This evaluation shall, at a minimum, focus on the following factors:</p> <p>a. Disruption of vehicular traffic flow along adjacent major streets, appropriate design measures for on-site vehicular circulation and access to major streets (number, location and design of driveway approaches), and linkages to bicycle/pedestrian circulation systems and transit services.</p> <p>b. In addition, for development projects that the City determines may generate a projected 100 or more peak hour vehicle trips (either in the morning or evening), the evaluation shall determine the project's contribution to increased peak hour vehicle delay at major street intersections adjacent or proximate to the project site. The evaluation shall identify project responsibilities for intersection improvements to reduce vehicle delay consistent with the LOS anticipated by the 2025 Fresno General Plan. For projects which affect State Highways, the Public Works Director may direct the site access evaluation to reference the criteria presented in Caltrans Guide for the Preparation of Traffic Impact Studies.</p>	<p>Prior to approval of land use entitlement application</p>	<p>Public Works Dept./ Transportation Planning/Planning and Development Dept.</p>	X					
<p>B-5. Circulation and site design measures shall be considered for development projects so that local trips may be completed as much as possible without use of, or with reduced use of, major streets and major street intersections. Appropriate consideration must also be given to compliance with plan policies and mitigation measures intended to promote compatibility between land uses with different traffic generation characteristics.</p>	<p>Prior to approval of land use entitlement application</p>	<p>Public Works Dept./ Transportation Planning/Planning and Development Dept.</p>	X					
<p>B-6. New development projects and major street construction projects shall be designed with consideration and implementation of appropriate features (considering safety, convenience and cost-effectiveness) to encourage walking, bicycling, and public transportation as alternative modes to the automobile.</p>	<p>Prior to approval or prior to funding of major street project.</p>	<p>Public Works Dept./ Transportation Planning/Planning and Development Dept.</p>	X					

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MASTER ENVIRONMENTAL IMPACT REPORT (MEIR) NO. 10130
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Project/EA No. R-04-024, C-04-062

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Mitigation Monitoring Checklist

MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
<p>B-7. Bicycle and pedestrian travel and use of public transportation shall be facilitated as alternative modes of transportation including, but not limited to, provision of bicycle, pedestrian and public transportation facilities and improvements to connect residential areas with public facilities, shopping and employment. Adequate rights-of-way for bikeways, preferably as bicycle lanes, shall be provided on all new major streets and shall be considered when designing improvements for existing major streets.</p>	<p>Ongoing</p>	<p>Public Works Dept./ Transportation Planning/Planning and Development Dept.</p>	<p>X</p>					
<p>C-1. In cooperation with other jurisdictions and agencies in the San Joaquin Valley Air Basin, the City shall take the following necessary actions to achieve and maintain compliance with state and federal air quality standards and programs.</p> <p>a. Develop and incorporate air quality maintenance considerations into the preparation and review of land use plans and development proposals.</p> <p>b. Maintain internal consistency within the General Plan between policies and programs for air quality resource conservation and the policies and programs of other General Plan elements.</p> <p>c. City departments preparing environmental review documents shall use computer models (software approved by local and state air quality and congestion management agencies) to estimate air pollution impacts of development entitlements, land use plans and amendments to land use regulations.</p> <p>d. Continue to route information regarding land use plans, development projects, and amendments to development regulations to the SJVAPCD for that agency's review and comment on potential air quality impacts.</p>	<p>Ongoing</p>	<p>Planning and Development Department</p>					<p>X</p>	

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MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
<p>C-2. The City shall continue efforts to improve technical performance, emissions levels and system operations of the Fresno Area Express transit system, through such measures as:</p> <p>a. Selecting and maintaining bus engines, transmissions, fuels and air conditioning equipment for efficiency and low air pollution emissions.</p> <p>b. Siting new transit centers and other multi-modal transportation transfer facilities to maximize utilization of mass transit.</p> <p>c. Continuing efforts to improve transit on-time performance, increase frequency of service, extend hours of operation, add express bus service and align routes to capture as much new ridership as possible.</p> <p>d. Initiating a program to allow employers and institutions (e.g., educational facilities) to purchase blocks of bus passes at a reduced rate to facilitate their incentive programs for reducing single-passenger vehicle use.</p>	Ongoing	Fresno Area Express					X	
<p>C-3. The City shall implement all of the Reasonably Available Control Measures (RACM) identified in Exhibit A of Resolution No. 2002-119, adopted by the Fresno City Council on April 9, 2002. These measures are presented in full detail in Table VC-3 of the MEIR.</p>	Ongoing	Various city departments					X	
<p>D-1. The City shall monitor impacts of land use changes and development project proposals on metropolitan water supply facilities and the groundwater aquifer.</p>	Ongoing	Dept of Public Utilities and Planning and Development Dept					X	

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MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
D-2. The City shall ensure the funding and construction of facilities to mitigate the direct impacts of land use changes and development within the 2025 General Plan boundaries. Groundwater wells, pump stations, recharge facilities, water treatment and distribution systems shall be expanded incrementally to mitigate increased water demands. Site specific environmental evaluations shall precede the construction of these facilities. Results of this evaluation shall be incorporated into each project to reduce the identified environmental impacts.	Ongoing	Department of Public Utilities and Planning and Development Department					X	
D-3. The City shall implement the Fresno Metropolitan Water Resources Management Plan and update this plan as necessary to ensure the cost-effectiveness use of water resources and continued availability of good-quality groundwater and surface water supplies.	Ongoing	Department of Public Utilities					X	
D-4. The City shall work with the Fresno Metropolitan Flood Control District to prevent and reduce the existence of urban stormwater pollutants to the maximum extent practical and ensure that surface and groundwater quality, public health, and the environment shall not be adversely affected by urban runoff, and shall comply with NPDES standards.	Ongoing	Planning and Development Department					X	
D-5. The City shall preserve undeveloped areas within the 100-year floodway within the city and its general plan area, particularly the San Joaquin Riverbottom, for uses that will not involve permanent improvements which would be adversely affected by periodic floods.	Ongoing	Planning and Development Department						X

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Mitigation Monitoring Checklist

MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
<p>D-6. The city shall establish special building standards for private structures, public structures and infrastructure elements in the San Joaquin Riverbottom that will protect:</p> <p>a. Construction in this area from being damaged by the intensity of flooding in the riverbottom; and,</p> <p>b. Water quality in the San Joaquin River watershed from flood damage-related nuisances and hazards (e.g., the release of raw sewage); and,</p> <p>c. Public health, safety and general welfare from the effects of flood events.</p>	Ongoing	Planning and Development Department						X
<p>D-7. The City shall advocate that the San Joaquin River not be channelized and that levees shall not be used in the river corridor for flood control, except those alterations in river flow that are approved for surface mining and subsequent reclamation activities for mined sites (e.g., temporary berms and small side-channel diversions to control water flow through ponds).</p>	Ongoing	Planning and Development Department						X
<p>D-8. The City shall maintain a comprehensive, long-range water resource management plan that provides for appropriate management of all sources of water available to the planning area which is periodically updated to ensure that sufficient and sustainable water supplies of good quality will be economically available to accommodate existing and planned urban development.</p>	Ongoing	Department of Public Utilities					X	
<p>D-9. If the City is unable to renew its 60,000-acre foot USBR water supply contract due to the city's Charter meter prohibition, replacement water supplies and/or conservation measures of equal benefit shall be secured.</p>	Ongoing	Department of Public Utilities					X	
<p>D-10. The City will conform to the requirements of Waste Discharge Requirements Order No. 5-01-254, including groundwater monitoring and subsequent Best Practical Treatment and Control (BPTC) assessment and findings.</p>	Ongoing	Department of Public Utilities					X	

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Mitigation Monitoring Checklist

MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
E-1. The City shall continue to implement and pursue strengthening of urban growth management service delivery requirements and annexation policy agreements, including urging that the county continue to implement similar measures within the boundaries of the 2025 Fresno General Plan, to promote contiguous urban development and discourage premature conversion of agricultural land.	Ongoing	Planning and Development Department					X	
E-2. To minimize the inefficient conversion of agricultural land, the City shall pursue the appropriate measures to ensure that development within the planned urban boundary occurs consistent with the General Plan and that urban development occurs within the city's incorporated boundaries.	Ongoing	Planning and Development Department	X					
E-3. The City shall pursue appropriate measures, including recordation of right to farm covenants, to ensure that agricultural uses of land may continue within those areas of transition where planned urban areas interface with planned agricultural areas.	Ongoing	Planning and Development Department						X
E-4. Development of agricultural land, or fallow land adjacent to land designated for agricultural uses, shall incorporate measures to reduce the potential for conflicts with the agricultural use. Implementation of the following measures shall be considered: a. Including a buffer zone of sufficient width between proposed residences and the agricultural use. b. Restricting the intensity of residential uses adjacent to agricultural lands. c. Informing residents about possible exposure to agricultural chemicals. d. Where feasible and permitted by law, exploring opportunities for agricultural operators to cease aerial spraying of chemicals and use of heavy equipment near proposed residences. e. Recordation of right to farm covenants to ensure that agricultural uses of land can continue.	Ongoing	Planning and Development Department						X

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Mitigation Monitoring Checklist

MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
<p>F-1. The City shall ensure the provision for adequate trunk sewer and collector main capacities to serve existing and planned urban and economic development, including existing developed uses not presently connected to the public sewer system, consistent with the Wastewater Master Plan. Where appropriate, the City will coordinate with the City of Clovis and other agencies to ensure that planning and construction of facilities address regional needs in a comprehensive manner.</p>	<p>Ongoing</p>	<p>Dept. of Public Utilities and Planning and Development Department</p>					X	
<p>F-2. The City shall continue the development and use of citywide sewer flow monitoring and computerized flow modeling to ensure the availability of sewer collection system capacity to serve planned urban development.</p>	<p>Ongoing</p>	<p>Dept. of Public Utilities</p>					X	
<p>F-2-a. The City shall provide for containment and management of leathers and sludge adequate to prevent groundwater degradation.</p>	<p>Ongoing</p>	<p>Dept. of Public Utilities</p>					X	
<p>F-3. The City shall ensure the provision of adequate sewage treatment and disposal by using the Fresno-Clovis Regional Wastewater Reclamation Facility as the primary facility when economically feasible for all existing and new development within the General Plan area. Smaller, subregional wastewater treatment facilities may also be constructed as part of the regional wastewater treatment system, when appropriate. Site specific environmental evaluation and development of Waste Discharge Requirements by the Regional Water Quality Control Board shall precede the construction of these facilities. Mitigation measures identified in these evaluations shall be incorporated into each project to reduce the identified environmental impacts.</p>	<p>Ongoing</p>	<p>Dept. of Public Utilities</p>					X	
<p>F-4. The City shall ensure that adequate trunk sewer capacity exists or can be provided to serve proposed development prior to the approval of rezoning, special permits, tract maps and parcel maps, so that the capacities of existing facilities are not exceeded.</p>	<p>Ongoing/prior to approval of land use entitlement application</p>	<p>Dept. of Public Utilities and Planning and Development Department</p>	X					

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Mitigation Monitoring Checklist

MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
<p>F-5. The City shall provide adequate solid waste facilities and services for the collection, transfer, recycling, and disposal of refuse for existing and planned development within the City's jurisdiction. Site specific environmental evaluation shall precede the construction of these facilities. Results of this evaluation shall be incorporated into each project to reduce the identified environmental impacts.</p>	<p>Ongoing/prior to construction</p>	<p>Dept. of Public Utilities</p>	X					
<p>G-1. Site specific environmental evaluation shall precede the construction of new police and fire protection facilities. Results of this evaluation shall be incorporated into each project to reduce the identified environmental impacts.</p>	<p>Ongoing/prior to construction</p>	<p>Fire Dept/Police Dept/ Planning and Development Dept.</p>	X					
<p>H-1. Site specific environmental evaluation shall precede the construction of new public parks. Results of this evaluation shall be incorporated into the park design to reduce the environmental impacts.</p>	<p>Ongoing/prior to construction</p>	<p>Parks and Recreation Dept./Planning and Development Dept.</p>					X	
<p>I-1. Projects that could adversely affect rare, threatened or endangered wildlife and vegetative species (or may have impacts on wildlife, fish and vegetation restoration programs) may be approved only with the consent of the California Department of Fish and Game (and the U.S. Fish and Wildlife Service, as appropriate) that adequate mitigation measures are incorporated into the project's approval.</p>	<p>Ongoing/prior to approval of land use entitlement application</p>	<p>Planning and Development Dept.</p>					X	
<p>I-2. Where feasible, development shall avoid disturbance in wetland areas, including vernal pools and riparian communities along rivers and streams. Avoidance of these areas shall include siting structures at least 100 feet from the outermost edge of the wetland. If complete avoidance is not possible, the disturbance to the wetland shall be minimized to the maximum extent possible, with restoration of the disturbed area provided. New vegetation shall consist of native species similar to those removed.</p>	<p>Ongoing/prior to approval of land use entitlement application</p>	<p>Planning and Development Dept.</p>					X	

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Mitigation Monitoring Checklist

MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
<p>I-3. Where wetlands or other sensitive habitats cannot be avoided, replacement habitat at a nearby off-site location shall be provided. The replacement habitat shall be substantially equivalent in nature to the habitat lost and shall be provided at a ratio suitable to assure that, at a minimum, there is no net loss of habitat acreage or value. Typically, the U.S. Fish and Wildlife Service and California Department of Fish and Game require a ratio of three replacement acres for every one acre of high quality riparian or wetland habitat lost.</p>	<p>Ongoing/prior to approval of land use entitlement and application and during construction</p>	<p>Planning and Development Dept.</p>						X
<p>I-4. Existing and mature riparian vegetation shall be preserved to the extent feasible, except when trees are diseased or otherwise constitute a hazard to persons or property. During construction, all activities and storage of equipment shall occur outside of the drip lines of any trees to be preserved.</p>	<p>Ongoing/prior to approval of land use entitlement and application and during construction</p>	<p>Planning and Development Dept.</p>						X
<p>I-5. Within the identified riparian corridors, environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and only uses consistent with these values shall be allowed (e.g., nature education and research, fishing and habitat enhancement and protection).</p>	<p>Ongoing/prior to approval of land use entitlement and application and during construction</p>	<p>Planning and Development Dept.</p>						X
<p>I-6. All areas within identified riparian corridors shall be maintained in a natural state or limited to recreation and open space uses. Recreation shall be limited to passive forms of recreation, with any facilities that are constructed required to be non-intrusive to wildlife or sensitive species.</p>	<p>Ongoing/prior to approval of land use entitlement and application and during construction</p>	<p>Planning and Development Dept.</p>						X

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MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
<p>J-1. If the site of a proposed development or public works project is found to contain unique archaeological or paleontological resources, and it can be demonstrated that the project will cause damage to these resources, reasonable efforts shall be made to permit any or all of the resource to be scientifically removed, or it shall be preserved in situ (left in an undisturbed state). In situ preservation may include the following options, or equivalent measures:</p> <p>a. Amending construction plans to avoid the resources.</p> <p>b. Setting aside sites containing these resources by deeding them into permanent conservation easements.</p> <p>c. Capping or covering these resources with a protective layer of soil before building on the sites.</p> <p>d. Incorporating parks, green space or other open space into the project to leave these resources undisturbed and to provide a protective cover over them.</p> <p>e. Avoiding public disclosure of the location of these resources until or unless the site is adequately protected from vandalism or theft.</p>	Ongoing/prior to approval of land use entitlement application	Planning and Development Dept.	X					
<p>J-2. An archaeological assessment shall be conducted for the project if prehistoric human relics are found that were not previously assessed during the environmental assessment for the project. The site shall be formally recorded, and archaeologists' recommendations shall be made to the City on further site investigation or site avoidance/ preservation measures.</p>	Ongoing/prior to submittal of land use entitlement application	Planning and Development Dept.	X					
<p>J-3. If there are suspected human remains, the Fresno County Coroner shall be contacted immediately. If the remains or other archaeological materials are possibly of Native American origin, the Native American Heritage Commission shall be contacted immediately, and the California Archaeological Inventory's Southern San Joaquin Valley Information Center shall be contacted to obtain a referral list of recognized archaeologists.</p>	Ongoing	Planning and Development Dept./ Historic Preservation Commission staff	X					

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MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	A	B	C	D	E	F
<p>J-4. Where maintenance, repair stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (Weeks and Grimmer, 1995), the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus not significant.</p>	<p>Ongoing</p>	<p>Planning and Development Dept./ Historic Preservation Staff</p>						X
<p>K-1. The City shall adopt the land use noise compatibility standards presented in Figure VK-2 for general planning purposes.</p>	<p>Ongoing</p>	<p>Planning and Development Dept.</p>					X	
<p>K-2. Any required acoustical analysis shall be performed as required by Policy H-1-d of the 2025 Fresno General Plan for development projects proposing residential or other noise sensitive uses as defined by Policy H-1-a, to provide compliance with the performance standards identified by Policies H-1-a and H-1-k. (Note: all are policies of the 2025 General Plan.)</p> <p>The following measures can be used to mitigate noise impacts; however, impacts may not be fully mitigated within the 70 dBA noise contour areas depicted on Figure VK-4.</p> <ul style="list-style-type: none"> • Site Planning. See Chapter V for more details. • Barriers. See Chapter V for more details. • Building Designs. See Chapter V for more details. <p>K-3. The City shall continue to enforce the California Administrative Code, Title 24, Noise Insulation Standards. Title 24 requires that an acoustical analysis be performed for all new multi-family construction in areas where the exterior sound levels exceed 60 CNEL. The analysis shall ensure that the building design limits the interior noise environment to 45 CNEL or below.</p>	<p>Ongoing/upon submittal of land use entitlement application</p>	<p>Planning and Development Dept.</p>						X

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MITIGATION MEASURE	WHEN IMPLEMENTED	COMPLIANCE VERIFIED BY	COMPLIANCE STATUS						
			A	B	C	D	E	F	
L-1. Any construction that occurs as a result of a project shall conform with current Uniform Building Code regulations which address seismic safety of new structures and slope requirements. As appropriate, the City shall require a preliminary soils report prior to subdivision map review to ascertain site specific subsurface information necessary to estimate foundation conditions. This report shall reference and make use of the most recent regional geologic maps available from the California Department of Conservation, Division of Mines and Geology.	Ongoing	Planning and Development Dept.							X
N-1. The City shall cooperate with appropriate energy providers to ensure the provision of adequate energy generated and distribution facilities, including environmental review as required.	Ongoing	Planning and Development Dept.						X	
Q-1. The City shall establish and implement design guidelines applicable to all commercial and manufacturing zone districts. These design guidelines will require consideration of the appearance of non-residential buildings that are visible to pedestrians and vehicle drivers using major streets or are visible from proximate properties zoned or planned for residential use.	Ongoing	Planning and Development Dept.						X	

K:\Master Files - 2004\REZONE\IR-04-024,C-04-062 Sr Housing NIMarty -- SB\IR-04-024, C-04-062 06 MEIR Mit Cklist.wpd

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ATTACHMENT NO. 4
ORDINANCE NO. 2004-84

Recording Requested by:
City Clerk, Fresno, California
No Fee-Govt. Code 6103

Return to City Clerk, Fresno



FRESNO County Recorder
Robert C. Werner

DOC- 2005-0026409

Thursday, FEB 03, 2005 09:00:00
Ttl Pd \$0.00 Nbr-0001728542
APR/R1/1-6

APN 415-044-16S

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ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO

PROPOSED AND INITIATED BY _____

MOVED BY Calhoun SECONDED BY Dages

BILL NO. B-86

ORDINANCE NO. 2004-84

AN ORDINANCE AMENDING THE OFFICIAL ZONE MAP OF THE CITY OF FRESNO HERETOFORE ADOPTED BY ARTICLES 1 TO 4.5 INCLUSIVE, CHAPTER 12, OF THE FRESNO MUNICIPAL CODE, BEING THE ZONING ORDINANCE OF THE CITY OF FRESNO

WHEREAS, Rezone Application No. R-04-024 was filed with the City of Fresno by Southern California Presbyterian Homes, Incorporated, to rezone 3.72 acres of land located on the southwest corner of North Marty and West San Jose Avenues, as described hereinbelow; and,

WHEREAS, the purpose of Rezoning Application No. R-04-024 is to rezone the subject site consistent with adopted plans and policies of the 2025 Fresno General Plan and the Bullard Community Plan to accommodate proposed development; and,

WHEREAS, the Bullard Community Plan Advisory Committee reviewed the proposed rezone and its accompanying Conditional Use Permit Application No. C-04-062 on April 19, 2004 and recommended approval of these applications; and,

Adopted 8-31-04
Approved 8-31-04
Effective 10-1-04

2004-84

WHEREAS, pursuant to the provisions of Article 4, Chapter 12, of the Fresno Municipal Code, the Planning Commission of the City of Fresno held a noticed public hearing on the 7th day of July, 2004, to consider Rezone Application No. R-04-024; the Planning and Development Director's determination to approve Conditional Use Permit Application No. C-04-062; and Environmental Assessment No. R-04-024/C-04-062 prepared for these related applications; and,

WHEREAS, the Fresno City Planning Commission affirmed the staff's finding that the requested C-P/UGM/cz (*Administrative and Professional Office District/ Urban Growth Management Area/conditions of zoning*) zone district is consistent with the office commercial land use designation adopted for this property pursuant to the 2025 Fresno General Plan and the Bullard Community Plan; and

WHEREAS Conditional Use Permit Application No. C-04-062 has been filed to depict development of two three-story buildings containing 148 units of affordable senior citizen housing, independent living facilities with on-site managers and with landscaped open space within the property, and along North Marty and West San Jose Avenue; and,

WHEREAS, the senior citizen housing development depicted in Conditional Use Permit Application No. C-04-062 provides housing for lower-income senior citizens, a protected group whose housing needs are addressed by policies of the City of Fresno General Plan Housing Element; and

WHEREAS, the Fresno City Planning Commission affirmed the Planning and Development Director's decision to approve Conditional Use Permit Application No. C-04-062 for this senior citizen housing use on the subject property; and

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WHEREAS, the Fresno City Planning Commission adopted a recommendation that the Council of the City of Fresno amend the City's Zoning Ordinance on real property described hereinbelow from the R-P/UGM/cz (*Residential and Professional Office District/Urban Growth Management Area/conditions of zoning*) to the C-P/UGM/cz (*Administrative and Professional Office District/ Urban Growth Management Area/conditions of zoning*) zone district, with the C-P zoning being assigned contingent upon the property developing with senior citizen housing as approved in Conditional Use Permit Application No. C-04-062; and,

WHEREAS, the Council of the City of Fresno, on the 31st day of August, 2004, received the recommendation of the Planning and Development Department staff and the Fresno City Planning Commission and concurs therein.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Based upon the testimony and information presented at the hearing and upon review and consideration of the environmental documentation provided, the adoption of the proposed rezoning is in the best interests of the City of Fresno. The Council finds, in accordance with Councilmembers' own independent judgment, that Environmental Assessment No. R-04-024/C-04-062 shows that there is no substantial evidence in the record that the rezoning of the subject property may have any significant adverse impacts upon the environment. The environmental assessment prepared for this

project is hereby approved, and its finding of conformity with City of Fresno Master Environmental Impact Report No. 10130 is the appropriate action to take and is hereby approved.

SECTION 2. The Council of the City of Fresno finds that the proposed C-P/UGM/cz (*Administrative and Professional Office District/Urban Growth Management Area/conditions of zoning*) zone district is consistent with the 2025 Fresno General Plan and the Bullard Community Plan and implements these plans and the City of Fresno General Plan Housing Element through its facilitation of the senior citizen housing project proposed pursuant to Conditional use Permit Application No. C-04-062.

SECTION 3. The zone district of the real property described hereinbelow, located in the City of Fresno, and shown on the Official Zone Map of the City of Fresno, is reclassified from R-F/UGM/cz (*Administrative and Professional Office District/Urban Growth Management Area/conditions of zoning*) to C-P/UGM/cz (*Administrative and Professional Office District/Urban Growth Management Area/conditions of zoning*):

LOT 916 OF BULLARD LANDS IRRIGATED SUBDIVISION NO. 6, IN SECTION 12, TOWNSHIP 13 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 8 PAGES 25 AND 26 OF PLATS, FRESNO COUNTY RECORDS,

EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF OF ALL THE MINERALS, GAS, OILS, PETROLEUM, NAPHTHA, AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID PARCEL, AS RESERVED IN THE DEED FROM SECURITY FIRST NATIONAL BANK OF LOS ANGELES, A NATIONAL BANKING ASSOCIATION, TO W. E. ROBERTS AND CLARICE ROBERTS, HIS WIFE, AS JOINT TENANTS, DATED NOVEMBER 15, 1940 RECORDED DECEMBER 19, 1940 AS DOCUMENT NO. 37544;

ALSO EXCEPTING THE EAST 30.00 FEET OF SAID LOT 916 AND THAT PORTION OF SAID LOT 916 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 916; THENCE, NORTH 89° 58' 00" WEST, 30.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 0° 23' 15" WEST, 24.50 FEET; THENCE NORTH 44° 47' 23" WEST, 10.57 FEET; THENCE NORTH 89° 58' 07" WEST, 12.59 FEET; THENCE NORTH 0° 02' 00" EAST, 17.00 FEET; THENCE, SOUTH 89° 58' 00" EAST, 20.20 FEET TO THE TRUE POINT OF BEGINNING.

SECTION 4. The Council of the City of Fresno finds that the following condition of zoning is necessary to ensure compliance with adopted plans and policies pertaining to the subject property:

- a. Development and use of the subject property consistent with Conditional Use Permit Application No. C-04-062, depicting two three-story buildings containing 148 units of affordable senior citizen independent living housing; on-site managers; usable on-site landscaped areas, and landscape strips along North Marty and West San Jose Avenues.

SECTION 5. This ordinance shall become effective and in full force and effect at 12:00 a.m. on the thirty-first day after its passage.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, California, at a regular meeting held on the 31st day of 2004, by the following vote:
August

Ayes: Boyajian, Calhoun, Dages, Perea, Sterling, Castillo
Noes: None
Absent: Duncan
Abstained: None

REBECCA E. KLISCH
City Clerk

By Rebecca E. Klisch

Deputy

APPROVED AS TO FORM:

HILDA CANTÚ-MONTOY
City Attorney

By Hilda Cantú-Montoy

Rezone Application No. R-04-024
Filed by Southern California Presbyterian
Homes, Inc.
Assessor's Parcel No 415-044-16S