

DISPOSITION AND DEVELOPMENT AGREEMENT

PREPARED BY:

City of Merced

PREPARED FOR:

**MERCED CA APARTMENTS, L.P.,
A DELAWARE LIMITED PARTNERSHIP**

PROJECT:

**CHILDS AND B STREET TRANSIT-ORIENTED DEVELOPMENT (“TOD”)
AFFORDABLE HOUSING PROJECT**

COUNCIL DATE:

_____, 20__

RECORDING REQUESTED BY:

City of Merced, A California Charter Municipal Corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk's Office
678 West 18th Street
Merced, California 95340

MAIL TAX STATEMENTS TO:

City of Merced
City Clerk's Office
678 West 18th Street
Merced, California 95340

(Above for Recorder's Use Only)

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT is entered into as of the ____ day of _____, 2020 by and between the City of Merced, a charter city of the State of California (the "City"), in its own capacity and acting in its capacity as housing successor pursuant to Health and Safety Code Section 34176(b) ("Housing Successor") to the former Merced Redevelopment Agency ("Agency") and Merced CA Apartments, L.P., a Delaware limited partnership (the "Developer"). In consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the City and the Developer agree as follows:

I. {SECTION 100} SUBJECT OF AGREEMENT

A. {Section 101} Purpose of the Agreement

The purpose of this Agreement is to provide for the disposition and development of certain real property located within the City and County of Merced. City has acquired that certain real property consisting of approximately 5.06 acres and generally known as 1137 "B" Street, Merced, California 95341 (APN 035-010-071) (the "Project Area") pursuant to the terms of that certain Ground Lease and Option to Purchase Agreement dated June 19, 2018 (the "County Transfer Agreement"). Pursuant to this Agreement, the Developer will acquire 4.03 acres of the Property from the City (the "Site"). Previously, the parties entered into that certain Option to Purchase and Extension Agreement, dated January 6, 2020 (the "Option Agreement"). The parties intend for this Agreement to supersede and replace the Option Agreement.

B. {Section 104} The Site

The Site is that portion of the Project Area shown on the “Map of the Site” attached to this DDA as Attachment No. 1 and incorporated herein by reference, and as more particularly described in the “Legal Description of the Site” incorporated herein and attached hereto as Attachment No. 2.

C. {Section 105} Parties to the DDA

1. {Section 106} The City

The City is a public body, corporate and politic, of the State of California. The office of the City is located at 678 West 18th Street, Merced, California 95340. “City,” as used in this DDA, includes the City of Merced and any assignee of or successor to its rights, powers, and responsibilities. Without limiting the generality of the foregoing, the City of Merced acts as the Housing Successor to the Agency. Pursuant to Health and Safety Code Section 34176, the City elected to retain the housing assets and functions previously performed by the Redevelopment Agency, including all rights, powers, assets, liabilities, duties and obligations associated with the housing activities of the Agency excluding any amounts on deposit in the Low and Moderate Income Housing Fund, to the Agency, as provided in Resolution No. 2012-5 adopted on January 12, 2012.

2. {Section 107} The Developer

The Developer is Merced CA Apartments, L.P., a Delaware limited partnership, authorized to transact business in the State of California, whose address of record is c/o JDF, LLC, 777 West Putnam Avenue, Greenwich CT 06830. The Managing General Partner of Developer is Merced Childs & B Street, LLC, a California limited liability company (the “Managing General Partner”), the Managing Member of the Managing General Partner is Central Valley Coalition for Affordable Housing. The Administrative General Partner of the Developer is Merced CA GP, LLC. Wherever the term “Developer” is used herein, such term shall include any permitted nominee, assignee, transferee, or successor-in-interest as herein provided. Whenever notice is required to be given to City or Developer hereunder, notice shall be provided to the City at the address stated above and to the Developer as follows:

Merced CA Apartments, L.P., a Delaware
limited partnership
c/o JDF, LLC
777 West Putnam Avenue
Greenwich CT 06830

With a copy to:

c/o The Richman Group of California
Development Company LLC
420 31st Street Suite B1
Newport Beach, CA 92663
Attn: Rick Westberg

With a copy to :

Central Valley Coalition for Affordable
Housing
3351 "M" Street, Ste. 200
Merced, CA 95348
Attention: Christine Alley

With a copy to :

U.S.A. Institutional Tax Credit Fund
CXXXIV L.P.
c/o JDF, LLC
777 West Putnam Avenue
Greenwich CT 06830

Notices shall also be provided to limited partner of Developer at the address on file with the City. Any party may change its address for notices by providing written notice thereof to the City.

Wherever the term "Developer" is used herein, such term shall include any permitted nominee, assignee, or successor-in-interest as herein provided.

The qualifications and identity of the Developer are of particular concern to the City, and it is because of these qualifications and identity that the City has entered into this DDA with the Developer. No voluntary or involuntary successor-in-interest of the Developer shall acquire any rights or powers under this DDA except as expressly set forth herein.

The Developer shall not assign all or any part of this DDA without the prior written approval of the City, which approval shall not be unreasonably withheld. Any attempted assignment not in compliance with the provisions of this Section shall be void and constitute a material breach of this DDA. This DDA may be terminated by the City without recourse by the Developer if there is any change in the Developer without complying with the terms of this provision prior to the completion of the development of the Site, provided, however, the following changes are expressly permitted:

(a) Any change in the general partner of Developer, including without limitation the admission of a nonprofit general partner as the managing general partner of Developer, so long as an affiliate of The Richman Group of California Development Company LLC, a Limited Liability Company or an affiliate of the tax credit investor is a general partner of Developer.

(b) Any change in the identity of the limited partners of the Developer for the purposes of admitting the low income housing tax credit investor to the Developer pursuant to the terms of an amended and restated limited partnership agreement of Developer ("LPA").

(c) Future transfers of the limited partner interests of the Developer so long as such transfers do not materially or adversely affect the timing and amount of the limited partner capital contributions provided for in and subject to the terms of the LPA.

(d) Any transfer approved in writing by the City Manager or designee, at his or her sole discretion.

II. {SECTION 200} DISPOSITION OF THE SITE

A. {Section 201} Sale and Purchase

In accordance with and subject to all the terms, covenants and conditions of this DDA, the City agrees to sell the Site to the Developer, and the Developer agrees to purchase the Site for development under the provisions of this DDA, for the sum of \$1,080,000 (the "Purchase Price"). The Purchase Price shall be financed by the City through a carryback loan to the Developer in the amount of the Purchase Price (the "Acquisition Loan"), which Acquisition Loan shall be evidenced by a promissory note in the form attached hereto as Attachment No. 8 (the "Acquisition Note"), which Acquisition Note shall be secured by the Deed of Trust attached hereto as Attachment No. 9 (the "Acquisition Deed of Trust").

1. {Section 201A} Deposit

Developer shall deposit the sum of One Hundred Dollars (\$100.00) (the "Deposit") into escrow within three (3) business days following the mutual execution of this DDA.

B. {Section 202} Escrow

The City agrees to open an escrow (the "Disposition Escrow") with Fidelity National Title, National Commercial Services, 4370 La Jolla Village Drive, Suite 240, San Diego, CA 92122, Attn: Samatha Maestas, ("Escrow Agent"), or any other escrow company approved by the City and the Developer, as escrow agent within the time established in the "Schedule of Performance," incorporated herein and attached to this DDA as Attachment No. 3. This DDA constitutes the joint escrow instructions of the City and the Developer, and a duplicate original of this DDA shall be delivered to the Escrow Agent upon the opening of escrow. The City and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this DDA. The Escrow Agent is hereby empowered to act under this DDA and, upon indicating its acceptance of the provisions of this Section 202 in writing, delivered to the City and to the Developer, within

five (5) business days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder. For the avoidance of doubt, Developer's obligations with respect to fees and costs associated with the Disposition Escrow shall not include any fees and costs incurred by the City in connection with the County Transfer Agreement

The City and Developer shall deposit the amounts and deeds with the Escrow Agent in accordance with the provisions of Sections 201 and 207 of this DDA.

The Developer shall also pay in escrow to the Escrow Agent the following fees, charges, and costs promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges, and costs, but not earlier than ten (10) business days prior to the scheduled date for the close of escrow:

1. All of the escrow fee;
2. Notary fees;
3. Recording fee;
4. The entirety of the premium for the title insurance policy or special endorsements as set forth in Section 208 of this DDA;
5. All usual and customary costs typically incurred by a purchaser in a real estate transaction;
6. All fees, costs, and charges for services ordered or required by the Developer in connection with the purchase of the Site; and
7. Costs of drawing the deed.

The City shall timely and properly execute, acknowledge, and deliver a deed conveying to the Developer title to the Site in accordance with the requirements of Section 204 of this DDA, together with an estoppel certificate certifying that the Developer has completed all acts necessary to entitle the Developer to such conveyance, if such be the fact.

The City shall pay in escrow to the Escrow Agent the following fees, charges, and costs promptly after the Escrow Agent has notified the City of the amount of such fees, charges, and costs, but not earlier than ten (10) business days prior to the scheduled date for the close of escrow:

1. Costs necessary to place the title to the Site in the condition for conveyance required by the provisions of this DDA;
2. Ad valorem taxes, if any, upon the Site for any time prior to conveyance of title; except as provided in Section 209.
3. Any applicable state, county, or city documentary stamps; and

4. Any applicable transfer tax.

Upon delivery of a deed to the Escrow Agent by the City, the Escrow Agent shall record such deed when title can be vested in the Developer in accordance with the terms and provisions of this DDA. The Escrow Agent shall buy, affix, and cancel any transfer stamps required by applicable law and pay any transfer tax required by law. Any insurance policies governing the Site are not to be transferred.

Escrow shall not close until conditions in Section 704 of this DDA are satisfied, and Developer has given its written approval of the environmental condition of the Site.

The Escrow Agent is authorized and instructed to:

1. Pay and charge the City and the Developer, respectively, for any fees, charges, and costs payable under this Section 202 of this DDA. Before such payments are made, the Escrow Agent shall notify the City and the Developer of the fees, charges, and costs necessary to clear title and close the escrow;
2. Disburse funds and deliver the deed and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the City and the Developer; and,
3. Record any instruments delivered through this escrow, if necessary or proper, to vest title in the Developer or to perfect City's security interest in the Site, if any, in accordance with the terms and provisions of this DDA.

All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general interest bearing escrow account or accounts with any state or national bank doing business in the State of California, provided that a strict accounting is made separately for this transaction. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made on the basis of a 30- day month.

If this escrow is not in condition to close before the time for conveyance established in Section 203 of this DDA, either party who then shall have fully performed the acts to be performed before the closing of escrow may by notice to the other party and Escrow Agent, terminate this DDA, and demand the return of its money, papers, or documents in accordance with the provisions of Section 509. Thereupon all obligations and liabilities of the parties under this DDA shall cease and terminate. If neither the City nor the Developer shall have fully performed the acts to be performed before the time for conveyance established in Section 203 of this DDA, no termination or demand for return shall be recognized until ten (10) business days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the 10-day period, the Escrow Agent is authorized to hold all money, papers, and documents with respect to the Site until instructed by mutual agreement of the parties or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible.

Unless otherwise provided in this DDA, the Escrow Agent shall not be obligated to return any such money, papers, or documents except upon the written instructions of both the City and the Developer, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

Any amendment of these escrow instructions shall be in writing and signed by both the City and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the City or the Developer shall be directed to the addresses and in the manner established in Sections 106, 107, and 601 of this DDA for notices, demands, and communications between the City and the Developer. Nothing in this Section 202 shall be construed to impair or affect the rights or obligations of the City or the Developer to specific performance.

The liability of the Escrow Agent under this DDA is limited to performance of the obligations imposed upon it under Sections 201 to 208, inclusive, of this DDA.

Neither the City nor the Developer shall be liable to the other for any real estate commissions or brokerage fees which may arise here from. The City and the Developer each represent that they have not engaged any broker, agent, or finder in connection with this transaction. Developer represents and warrants that there is no real estate or similar commission due or owed for this transaction and agrees that any commission due or owed as a result of Developer's close of escrow on the Site shall be the financial responsibility of the Developer. The Developer shall indemnify, protect, defend, save and hold City and the Agency, as well as their respective officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Developer or Developer's officers, employees, volunteers, and agents concerning any claim, charge, suit, or proceeding pertaining to brokerage commissions in connection with this transaction.

Notwithstanding the above, escrow shall not close until the Conditions in Section 704 are satisfied.

C. {Section 203} Conveyance of Title and Delivery of Possession

1. Subject to any mutually agreed upon extensions of time, which shall not be unreasonably withheld, conveyance to the Developer of title to the Site (in accordance with the provisions of Sections 204 and 205 of this DDA) shall be completed on or prior to the date specified in the "Schedule of Performance," incorporated herein and attached to this DDA as Attachment No. 3. . The City and the Developer agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

2. Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access shall be permitted before conveyance of title as permitted in

Section 213 of this DDA. Subject to the provisions of this DDA, the Developer shall accept title and possession on or before the said date.

D. {Section 204} Form of Deed

The City shall convey to the Developer title to the Site in the condition provided in Section 205 of this DDA by Grant Deed in a form mutually satisfactory to the Developer, the title company, which will insure the title herein, and the City, consistent with the terms of this DDA. Said deed shall make specific reference to the City's rights and options under Section 510 and 511 of this DDA.

E. {Section 205} Condition of Title

The City shall convey to the Developer fee simple merchantable title to the Site free and clear of all recorded and unrecorded liens, encumbrances, assessments, leases, and taxes as shown in the Preliminary California Land Title Association Title Report of the title to the Site to be furnished by the Escrow Agent, together with each document shown as an exception or encumbrance in the report, except as are consistent with this DDA, provided, however, that the Site shall be subject to all existing public and private easements of record. No later than 30 days prior to the anticipated date of conveyance, Developer shall notify City in writing of any objections to any exception therein. City and Developer shall work in good faith to resolve any of Developer's objection to any exception therein. Developer's failure to object to any exception shall be deemed an approval by Developer of that exception.

Notwithstanding any provision to the contrary, no warranty or representation is made by the City concerning the condition of the title to the Site. The Developer shall exercise due diligence and independently verify to its satisfaction the conditions of title pertaining to the Site.

F. {Section 206} Time for and Place of Delivery of Deed

Subject to any mutually agreed upon extension of time, the City shall deposit its deed for the Site with the Escrow Agent on or before the date established for the conveyance of the Site in the Schedule of Performance (Attachment No. 3).

G. {Section 207} Payment of the Purchase Price and Recordation of Deed

As stated in Section 201A, Developer shall deposit the sum of One Hundred Dollars (\$100.00) into escrow within three (3) business days following the mutual execution of this DDA. The Escrow Agent shall notify the Developer in writing that the deed, properly executed and acknowledged by the City, has been delivered to the Escrow Agent and that title is in condition to be conveyed in conformity with the provisions of Sections 202 and 205 of this DDA. So long as Developer is satisfied with the condition of the Site and has obtained acceptable financing commitments for the Project, Developer shall deposit the Acquisition Note and Acquisition Deed of Trust with Escrow Agent. Upon the close of escrow, the Escrow Agent shall (i) file the deed for recordation among the land records in the Office of the County Recorder for Merced County, (ii)

deliver to the Developer a title insurance policy insuring title in conformity with Section 208 of this DDA, and (iii) deliver the Acquisition Note to the City.

H. {Section 208} Title Insurance

Concurrently with recordation of the deed, Escrow Agent shall provide and deliver to the Developer a title insurance policy issued by the Title Company insuring that the title is vested in the Developer in the condition required by Section 205 of this DDA. The Title Company shall provide the City with a copy of the title insurance policy, and the title insurance policy shall be in the amount of the Purchase Price of the Site, and shall be issued as an ALTA policy.

The City shall pay only for that portion of the title insurance premium attributable to an ALTA standard form policy of title insurance in the amount of the Purchase Price of the Site. The Developer shall pay for all other premiums for title insurance coverage or special endorsements.

Concurrently with the recording of the deed conveying title to the Site, the Title Company shall, if requested by the Developer, provide the Developer with an endorsement to insure the amount of the Developer's estimated development costs of the improvements to be constructed upon the Site. The Developer shall pay the entire premium for any such increase in coverage requested by it.

I. {Section 209} Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Site and taxes upon this DDA or any rights thereunder, levied, assessed, or imposed for any period commencing prior to conveyance of title shall be borne by the City. All ad valorem taxes and assessment levied or imposed for any period commencing after closing of the escrow shall be paid by the Developer.

J. {Section 210} Conveyance Free of Possession

Except as otherwise provided in the "Scope of Development," incorporated herein and attached to this DDA as Attachment No. 4, the Site shall be conveyed free of any possession or right of possession by any person except that of the Developer and the easements of record.

K. {Section 211} Zoning of the Site

The City hereby acknowledges and agrees that the zoning for each parcel comprising the Site is Planned Development #6, and that such zoning will permit the development and operation of the Project as described in Attachment No. 4, "Scope of Development" without any need for a change in zoning, variance or conditional use permit. City shall ensure that the City does not modify the zoning for the Site without the express written consent of the Developer.

L. {Section 212} Condition of the Site

Except as may be otherwise specifically provided in the Scope of Development, the Site shall be conveyed from the City to the Developer "AS-IS". It shall be the sole responsibility of the

Developer, at the Developer's sole expense, to investigate and determine the environmental conditions of the Site and the suitability of such conditions for the improvements to be constructed by the Developer prior to the close of escrow. If the conditions are not in all respects entirely suitable for the use or uses to which the Site will be put, then it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the conditions of the Site in a condition suitable for the development of the Site.

The Developer and its agents, representatives, lenders and investors shall have unrestricted access to the Site to conduct all reasonable inspections, investigations, tests, surveys, analysis, and other studies necessary to carry out this DDA, including, but not limited to environmental studies, immediately upon execution of this DDA, with all risks associated with such entry and access to the Site to be borne by the Developer. Prior to any entry onto the Site by Developer and Developer's agents, representatives, lenders and investors, Developer shall: (A) procure and maintain a policy of commercial general liability insurance, on an occurrence basis, with a combined single limit of not less than One Million Dollars (\$1,000,000) and Developer shall cause the City to be named as an additional insured on such policy; and (B) deliver, or cause to be delivered, to City a certificate of insurance evidencing the liability insurance coverage described in clause (A) above. Developer agrees that such liability coverage shall not be canceled or the coverage thereunder modified without at least thirty (30) days prior written notice to the City. The City shall have the right to accompany Developer and Developer's agents and representatives in connection with any entry upon the Site.

The Developer shall indemnify, protect, defend, save and hold City and the Agency, as well as their respective officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Developer or Developer's officers, employees, representatives, lenders, investors and, agents during performance of the inspection, investigation, test, survey, analysis, and other study on the Site. If the Developer does not purchase the Site for any reason, the Developer shall restore the Site to the condition which existed as of the date of this DDA at Developer's sole expense. Developer's indemnity obligation set forth in this provision shall survive the close of escrow or termination of this DDA.

Developer shall have one hundred eighty (180) calendar days from the date this DDA is mutually executed to undertake and complete any and all studies, reports, investigations, inspections, and analysis Developer deems necessary regarding the Site, and to approve all conditions pertaining to the Site. Developer's failure to object to any specific condition of the Site by writing to the City within said one hundred eighty (180) calendar day period shall be deemed approval by Developer of that condition. All studies, reports, investigations, and analysis undertaken by Developer or any representative of Developer shall be performed at Developer's own and sole cost and expense, and Developer shall forward a copy of said studies, reports, investigations, and analysis to City upon completion thereof for use by City at the written request of City should Developer not purchase the Site.

M. {Section 213} Preliminary Work by the Developer

Any work undertaken on the Site by the Developer prior to conveyance of title thereto shall be done only after written consent of the City and at the sole expense of the Developer. The Developer shall indemnify, protect, defend, save and hold harmless the City and Agency against any claims resulting from such work, access, or use of the Site, pursuant to the indemnification provision in Section 212. The Developer shall have access to all data and information on the Site available to the City; however, copies of data, surveys, and tests obtained or made by the Developer on the Site shall be filed with the City. Any work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies, and the result of all such work shall become property of the City if escrow fails to close under this DDA.

N. {Section 214} Submission of Evidence of Equity Capital and Mortgage Financing

Subject to Section 201, if the Developer finances the acquisition and development of the Site and related activities, such financing shall be subject to the approval of the City, which approval will not be unreasonably withheld.

No later than the time specified in the Schedule of Performance, the Developer shall submit to the City evidence satisfactory to the City that the Developer has the equity capital, if required, and commitments for mortgage financing necessary for acquisition and development of the Site.

III. {SECTION 300} DEVELOPMENT OF THE SITE AND FINANCING THE DEVELOPMENT

A. {Section 301 } Development of the Site by the Developer

The Developer is responsible for the entire cost of the development of the Site.

1. {Section 302} Scope of Development

The Site shall be developed as provided in the Scope of Development, attached hereto as Attachment No. 4. The City requires, as a condition of its City Council's approval of this Agreement, that the Developer carry out the Offsite Improvements (defined below) as an essential component of the Project. The construction of the Offsite Improvements will directly benefit the residents of the Project. For purposes hereof, the "Off-Site Improvements" means the improvements described in the Scope of Work that will be owned by and dedicated to the City.

2. {Section 303} Site Plans

The Site shall be developed as generally established in the Site Plan and related documents approved by the Site Plan Review Committee on January 24, 2019 by Modified Resolution #429 as set forth in Attachment No. 5, except as changes may be mutually agreed upon between the Developer and City staff. The Basic Concept Drawings and related documents and any changes shall be within the limitations of the Scope of Development.

3. {Section 304} Construction Plans, Drawings and Related Documents

The Developer shall prepare and submit construction plans, drawings, and related documents to City staff for architectural review and written approval as and at the times established in the Schedule of Performance. The construction plans, drawings, and related documents shall be submitted in two stages: preliminary and final working drawings. Final drawings and plans are hereby defined as those in sufficient detail to obtain a building permit. Approval of progressively more detailed drawings and specifications will be promptly granted by City staff if they are not in conflict with the Basic Concept Drawings or specifications theretofore approved. Any items so submitted and approved in writing by the City staff shall not be subject to subsequent disapproval. Site development shall not proceed without prior written approval by the City staff provided herein, which shall not be unreasonably withheld.

Developer shall construct the facilities on the Site using consultants and agents of its choice for design, engineering, and project management, and using a contractor(s) of its choice. The City shall not contract for any design, demolition, construction, or related services.

During the preparation of all drawings and plans, City staff and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by City staff. City staff and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to City staff can receive prompt and speedy consideration.

If any revisions or corrections of plans approved by City staff shall be required by any government official, City, department, or bureau having jurisdiction, or any lending institution involved in financing, the Developer and City staff shall cooperate in efforts to obtain waiver of such requirements or to develop a mutually acceptable alternative.

4. {Section 305} City Approval of Plans, Drawings, and Related Documents

Subject to the terms of this DDA, City staff shall have the right of reasonable architectural review of all plans and drawings, including any changes therein. Developer shall obtain any architectural review required by the City or any City department, board, or commission of the City within the times required hereunder for review of such plans and submissions and changes therein by City staff and nothing herein shall relieve Developer of any obligation to submit plans and submissions for building permits to City departments or other agencies.

City staff shall approve or disapprove the plans drawings and related documents referred to in Section 304 of this DDA within the times established in the Schedule of Performance. Failure by City staff to either approve or disapprove within the times established in the Schedule of Performance shall be deemed an approval. Any disapproval shall state in writing the reasons for disapproval. The Developer, upon receipt of a disapproval based upon powers reserved by the City hereunder, shall revise such plans, drawings, and related documents and resubmit them to City staff as soon as possible after receipt of the notice of disapproval. Site development shall not proceed without prior written approval by City staff provided herein, which shall not be unreasonably withheld.

If the Developer desires to make any substantial change in the construction plans after their approval by City staff, the Developer shall submit the proposed change to City staff for their approval. If the construction plans, as modified by the proposed change, conform to the requirements of Section 304 of this DDA and the Scope of Development, City staff shall approve the proposed change and notify the Developer in writing within ten (10) business days after submission to the City. Such change in the construction plans shall, in any event, be deemed approved by the City unless rejected, in whole or in part, by written notice thereof by the City staff to the Developer setting forth in detail the reasons therefore, and such rejection shall be made within the said ten (10) business day period.

5. (Section 306) Cost of Construction

Developer shall pay all costs of construction and development including, but not limited to, architecture and engineering, demolition, Site preparation, building construction, public improvement repairs required as a condition of building permit, and fees and permits, except as specifically provided herein or as otherwise agreed to in writing by the City (including without limitation any agreed upon fee deferrals).

6. {Section 307} Schedule of Performance

The Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the improvements and the development on the Site. The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance or such reasonable extension of said dates as may be granted by City staff. The Schedule of Performance is subject to revision from time-to-time as mutually agreed upon in writing between the Developer and City staff.

7. {Section 308} Bodily Injury, Property Damage and Workers' Compensation Insurance

Prior to commencing any work or construction on the Site, the Developer shall furnish or cause to be furnished to the City appropriate certificates of bodily injury and property damage insurance policies in the amount of at least \$5,000,000 for any person, \$5,000,000 for any occurrence and \$5,000,000 property damage naming the City, the Agency and their respective officers, agents, and employees as additional insureds under the policies, and the policies shall stipulate that this insurance will operate as primary insurance for work performed by Developer and its contractors and sub-contractors, and that no other insurance effected by the City, the Agency or other named insureds will be called on to cover a loss covered thereunder. The Developer shall also furnish, or cause to be furnished, to the City and Agency evidence satisfactory to the City and Agency that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance with a limit of at least \$100,000 for any one person and as required by law, including Employer's Liability limits of \$1,000,000 per accident. The workers' compensation insurance policy shall be endorsed to waive the insurer's subrogation rights against the City and/or the Agency. The obligations set forth in this Section shall remain in effect only until a final Notice of Satisfaction of Obligations has been furnished for the Site as hereinafter provided in Section 323 hereof.

8. {Section 309} City and Other Governmental City Permits

Before commencement of construction of development of any buildings, structures, or other work of improvement upon the Site (but not necessarily before the conveyance of title unless such construction, development, or work is to be commenced before the conveyance of title), the Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City or any other governmental Agency affected by such construction, development, or work.

9. {Section 310} Rights of Access

For the purpose of assuring compliance with this DDA, representatives of the City shall have reasonable right of access to the Site without charges or fees, at normal construction hours, during the period of construction for the purposes of this DDA, including, but not limited to, the inspection of the work being performed in constructing the improvements.

10. {Section 311} Local State and Federal Laws

The Developer shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable federal, state, and municipal laws, rules, regulations, and ordinances, as well as all applicable federal and state labor standards, including prevailing wage laws, if applicable.

In this respect, Developer acknowledges such obligation and agrees to comply with any applicable prevailing wage laws and regulations by assuring payment of such wages if required by law, keeping appropriate records and documents of such payment, and incorporating this requirement into its contracts and agreements with contractors and sub-contractors.

11. {Section 312} Antidiscrimination During Construction

The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this DDA, the Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation or identity, disability, ancestry, national origin or any other reason protected by local, state, or federal law.

B. {Section 313} Responsibilities of the City

The City, without expense to the Developer or assessment or claim against the Site, shall perform all work specified in the Scope of Development for the City to perform within the times specified in the Schedule of Performance.

C. {Section 314} Taxes Assessment Encumbrances and Liens

The Developer shall pay prior to delinquency all real estate taxes and assessments assessed and levied on the Site for any period subsequent to close of escrow, prior to issuance of the Notice

of Satisfaction of Obligations, the Developer shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance, or lien not specifically authorized by this DDA. Prior to issuance of the Notice of Satisfaction of Obligations, the Developer shall remove, have removed, bond against or have insured through title insurance any levy or attachment made on the Site, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale or transfer of the whole or any part of the Site thereunder or the buildings or structures thereon. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance, or lien, nor to limit the remedies available to the Developer in respect thereto.

The Developer understands that under certain conditions its control of the Site or portion thereof under this DDA may give rise to the imposition of a possessory interest tax on said property and, in such event, Developer agrees to pay when due any such possessory interest tax.

Developer agrees and pledges to “self-accrue” sales and use taxes for any and all machinery, equipment, and materials delivered to or used on the Site or for the Development.

D. {Section 315} Prohibition Against Transfer of Site, the Buildings or Structures and Assignment of Agreement

Prior to the recordation by the City of a Notice of Satisfaction of Obligations pursuant to Section 323, the Developer shall not, except as permitted by this DDA, sell, transfer, convey, assign, or lease the whole or any part of the Site or the buildings or structures thereon without the prior approval of the City Manager. This prohibition shall not apply subsequent to the recordation of the Notice of Satisfaction of Obligations with respect to the improvements upon the Site. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed or under construction.

In the absence of specific written agreement by the City Manager, no such sale, transfer, conveyance, assignment, or approval by the City shall be deemed to relieve the Developer or any other party from any obligations under this DDA until completion of development as evidenced by a Notice of Satisfaction of Obligations.

E. {Section 316} Mortgages and Deeds of Trust

1. {Section 317} No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development

Notwithstanding Sections 314 and 315, mortgages, deeds of trust, sales and leases-back, or any other form of conveyance required for any reasonable method of financing, are permitted before issuance of a Notice of Satisfaction of Obligations, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Site, the construction of improvements on the Site, and any other expenditures necessary and appropriate to develop the Site under this DDA. The Developer shall notify the City in advance of any mortgage, deed of trust, sale and lease-back, or other form of conveyance for financing if the Developer proposes to enter into the

same before issuance of a Notice of Satisfaction of Obligations. The Developer shall not enter into any such conveyance for financing without the prior written approval of the City, which approval the City agrees to give if any such conveyance is given to a responsible financial or lending institution or otherwise to any other person or entity acceptable to the City in the City's sole and complete discretion. Such lender and transaction shall be deemed approved if they otherwise meet the requirements of this Section, unless rejected in writing by the City within ten (10) calendar days after notice thereof to the City by the Developer. In any event, the Developer shall promptly notify the City of any mortgage, deed of trust, sale and lease-back, or other financing conveyance, encumbrance, or lien that has been created or attached thereto prior to issuance of the Notice of Satisfaction of Obligations whether by voluntary act of the Developer or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction, and land development.

The City shall agree to subordinate the lien of this DDA and Agreement Containing Covenant Affecting Real Property (and of any other agreement or deed of trust with or in favor of the City that is recorded in connection with the City financing described herein below) to the lien of any construction or permanent financing obtained by Developer for the Apartment Complex so long as the subordination agreement(s) are in form and substance reasonably acceptable to the City, as applicable. Notwithstanding any provision to the contrary, no subordination of the City's loans secured by the Site or any improvements thereon shall be allowed if Developer refinances the Project and uses any of the proceeds thereof to return equity to its investor(s), if the objective of such equity reduction is for purposes other than making direct physical improvements to the Site. All subordination authorized under this DDA shall not affect or alter the applicability or enforceability of any conditions, covenants, restrictions, and restrictive and use covenants recorded prior to or after the subordination. This provision shall survive the termination of this DDA.

2. {Section 318} Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust, or other security interest authorized by this DDA shall in no way be obligated by the provisions of this DDA to construct or complete the improvements or to guarantee such construction or completion, nor shall any covenant or any other provision in the deed for the Site be construed so as to obligate such holder. Nothing in this DDA shall be deemed to construe, permit, or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this DDA.

3. {Section 319} Notice of Default to Mortgage, Deed of Trust, or Other Security Interest Holders; Right to Cure

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the improvements, the City shall, at the same time, deliver to each holder of record of any mortgage, deed of trust, or other security interest authorized by this DDA (and to the investor limited partner of Developer) a copy of such notice or demand. Each such holder and investor limited partner shall (insofar as the rights of the City are concerned) have the right, at its option within ninety (90) calendar days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to

add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this DDA shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. The holder or investor limited partner, in that event, must agree to complete, in the manner provided in this DDA, the improvements to which the lien or title of such holder relates and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the City, to a Notice of Satisfaction of Obligations from the City.

4. {Section 320} Failure of Holder to Complete Improvements

In any case where, sixty (60) calendar days after default by the Developer in completion of construction of improvements under this DDA, the investor limited partner or the holder of any mortgage, deed of trust, or other security interest creating a lien or encumbrance upon the Site has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the City may purchase the mortgage, deed of trust, or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest if written notice of intent is provided to the holder of the security interest within ninety (90) calendar days after the sixty (60) day period and payment is tendered within thirty (30) calendar days thereafter. If the ownership of the Site has vested in the holder, the City, if it so desires, shall be entitled to a conveyance from the holder to the City upon payment to the holder of an amount equal to the sum of the following:

- (a) The unpaid mortgage, deed of trust, or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (b) All expenses with respect to foreclosure or deed in lieu of foreclosure;
- (c) The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site;
- (d) The cost of any improvements made by such holder; and,
- (e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

5. {Section 321} Right of City to Cure Mortgage, Deed of Trust, or Other Security Interest Default

In the event of a default or breach by the Developer of a mortgage, deed of trust, or other security instrument with respect to the Site prior to the completion of development, and the holder

has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer of all reasonable costs and expense incurred by the City in curing the default as set forth in a written notice detailing the costs and expenses for which reimbursement is sought. The City shall also be entitled to a lien upon the Site to the extent of such unreimbursed costs and disbursements which shall be released upon payment in full. Any such lien shall be subject to mortgages, deeds of trust, or other security instruments executed for the sole purpose of obtaining funds to purchase and develop the Site as authorized herein.

F. {Section 322} Right of the City to Satisfy Other Liens on the Site After Title Passes

After close of escrow and prior to the recordation of a Notice of Satisfaction of Obligations for construction and development, and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site, other than liens or encumbrances that are or become of record at the time of close of escrow or are otherwise approved in writing by City, the City shall have the right, but shall not be obligated, to satisfy any such liens or encumbrances; provided, however, that nothing in this DDA shall require the Developer to pay or make provision for the payment of any tax, assessment, lien, or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site to forfeiture or sale.

G. {Section 323} Notice of Satisfaction of Certain Obligations

Promptly after completion of the Project by the Developer in accordance with the Scope of Development set forth in Attachment No. 4, and upon verification of completion by the City and execution of Agreement Containing Covenant Affecting Real Property by the Developer, concurrently with the delivery of the certificate of occupancy for the Project, the City shall furnish the Developer with a Notice of Satisfaction of Certain Obligations upon written request therefore by the Developer. Such Notice of Satisfaction of Certain Obligations shall be substantially in the form as set forth on Attachment No. 6, attached hereto and incorporated herein by reference, as to permit it to be recorded with the County Recorder of the County of Merced. The Agreement Containing Covenant Affecting Real Property shall be substantially in the form as set forth on Attachment No. 7, attached hereto and incorporated herein by reference.

A Notice of Satisfaction of Certain Obligations shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this DDA upon the Site and of full compliance with terms hereof. After issuance of such Notice of Satisfaction of Certain Obligations, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Site covered by said Notice of Satisfaction of Certain Obligations shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this DDA, except that such party shall be bound by any covenants contained in the deed, lease, mortgage, deed of trust, contract, or other instrument of transfer in accordance with the provision of Sections 401 through 408 of this DDA. Except as otherwise provided herein, after the issuance of a Notice of Satisfaction of Certain Obligations for the Site, neither the City nor any other person shall have any rights, remedies or controls with respect to the Site that it would otherwise have or be entitled

to exercise under this DDA as a result of a default in or breach of any provision of this DDA, and the respective rights and obligations of the parties with reference to the Site shall be as set forth in the deed of the Site from the City to the Developer, which shall be in accordance with the provisions of Sections 401 through 408 of this DDA.

The City shall not unreasonably withhold any Notice of Satisfaction of Certain Obligations. If the City refuses or fails to furnish a Notice of Satisfaction of Certain Obligations for the Site after written request from the Developer, the City shall, within ten (10) business days of the written request, provide the Developer with a written statement of the reasons the City refused or failed to furnish a Notice of Satisfaction of Certain Obligations. The statement shall also contain the City's opinion of the action the Developer must take to obtain a Notice of Satisfaction of Certain Obligations. If the reason for such refusal is confined to the immediate availability of specific items of materials for landscaping, the City will issue its Notice of Satisfaction of Certain Obligations upon the posting of a bond by the Developer with the City in an amount representing a fair value of the work not yet completed. If the City shall have failed to provide such written statement within said ten (10) day period, the Developer shall be deemed entitled to the Notice of Satisfaction of Certain Obligations.

Such Notice of Satisfaction of Certain Obligations shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. Such Notice of Satisfaction of Certain Obligations is not notice of completion as referred to in the California Civil Code Section 3093.

H. {Section 324} Indemnification Provision

The Developer shall indemnify, protect, defend, save and hold the City and Agency, their respective officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of the Developer or its officers, employees, volunteers, and agents during performance of this DDA, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the misconduct, acts, or omissions of the Developer or its employees, subcontractors, or agents, or by the quality or character of the Developer's work, or resulting from the negligence of the City, their respective officers, employees, volunteers and agents, except for loss caused solely by the gross negligence or misconduct of the City. It is understood that the duty of the Developer to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by the City of insurance certificates and endorsements required under this DDA does not relieve the Developer from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this DDA and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this DDA, the Developer acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

If the City is a financial participant in the Project and a lien, claim, cause of action, or suit is filed (due to no gross negligence or misconduct of the City) which may impact the City's security

for such financial participation or the City's ability to be repaid, Developer agrees to indemnify, protect, defend, and hold harmless the City and Agency and its officers, employees, and agents. If after thirty (30) calendar days of demand of Developer from City and Agency to accept the defense and indemnity obligation, including identifying retained legal counsel, Developer has not so accepted and advised City and Agency, City and Agency may retain its own legal counsel and Developer agrees to pay any and all reasonable fees, costs, and expenses therewith upon written demand from City.

I. {Section 325} Affordability Covenants

The Site will be used for one hundred nineteen (119) rental dwelling units (89 affordable housing units, consisting of 17 – 1 bedroom, 36 – 2 bedroom, and 36 – 3 bedroom units restricted to fifty (50%) of the Area Median Income and 30 permanent supportive housing units) and shall have affordability covenants placed on the title of the Site (the “Affordable Housing Project” and together with the Affordable Infrastructure Improvements (as defined below), the “Project”) for fifty-five (55) years and shall include any other requirements required by the Project funding sources including, but not limited to, tax credits, HOME Program, Low and Moderate Income Housing Funds, HUD 108 Program, and AHSC Program. The covenants associated with the Agency Loan (Attachment No. 7) shall provide that twenty-eight (28) units in the Project will be rented to “Very Low Income households” as set forth in California Health and Safety Code Section 50105 as it may be amended from time-to-time (the “VLI Units”), and thirty (30) units in the Project shall designated as permanent supportive housing units for those who are homeless or at risk of homelessness (the “Occupancy Standards”) and restricted to “extremely low income households” as defined in California Health and Safety Code Section 50106 and accompanying regulations of the California Department of Housing and Community Development (the “ELI Units” and together with the VLI Units, the “Affordable Units”). The maximum rent for such ELI Units shall not exceed the affordable rent for “extremely low income households” as defined in California Health and Safety Code Section 50053(b)(1) and accompanying regulations of the California Department of Housing and Community Development and the maximum rent for such VLI Units shall not exceed the affordable rent for “very low income households” as defined in California Health and Safety Code Sections 50053(b)(2) and accompanying regulations of the California Department of Housing and Community Development, as such law or regulations may hereafter be amended, replaced or renumbered from time-to-time, with allowance for utilities.

If, during the term of this Agreement, there is a loss of project based rental subsidy to the Project through no fault of Developer, then Developer may request, and City shall grant, an increase on the rents for the ELI Units and eliminate any Occupancy Standards, to an adjusted income that does not exceed the rent applicable to “very low income households” as defined in California Health and Safety Code Section 50053(b)(2) and accompanying regulations of the California Department of Housing and Community Development (“VLI Units”) and so long as the increase is consistent with the County Transfer Agreement.

Developer shall develop the Project on the Site in conformity with this Agreement and in the event of inconsistency among such provisions and covenants of record, the most restrictive

restrictions then in effect shall apply. Should the Developer have multiple restrictions on unit affordability required by other funding sources, the Developer shall adhere to the more restrictive (lower) income and rent limits.

J. {Section 326} Assistance to Developer

1. {Section 327} Intent

Due to land prices, inflation, material costs, and interest, many persons of low or moderate income cannot afford housing. It is the intent and purpose of the City and the Developer in entering into this DDA that the Site is developed with new high-quality apartment units and such units are made available to low and moderate income tenants. In order to accomplish these goals, it will be necessary for the City to loan construction financing money to Developer at a rate below fair market.

Assistance and/or loans are contingent upon satisfactory financial condition of Developer to be substantiated by submission of financial reports to City. The Developer and the City agree to mutually consider reasonable requests for amendments to this DDA for reduction in the rate of interest of the City loans referenced below, made by any of the parties hereto, lending institutions, equity or tax credit investors, bond counsel or financial consultants to the City necessitated by requirements of the assistance programs involved in the financing of the Project. Such amendments shall be in writing and approved by the parties hereto, including the Board of the City.

2. {Section 328} City Enterprise Funds.

The parties agree that additional assistance in the Project is being provided by the City in the form of a grant of Enterprise Funds to Central Valley Coalition for Affordable Housing, a California nonprofit corporation and the Managing Member of the Managing General Partner of Developer (the "Sponsor") in the amount of \$1,470,000 ("Enterprise Grant") to fund certain infrastructure work to be undertaken by the Developer as required by this Agreement and the City planning approvals and requirements as a condition of the building permit and/or certificate of occupancy for the Project (the "Affordable Infrastructure Work"). The Sponsor shall use the Enterprise Grant to make a non-interest bearing loan with a term of 55 years to the Developer with no payments due until maturity. Subject to the terms and conditions of this Agreement and Sponsor's receipt of the Enterprise Grant and receipt of the building permit for the Project, the Affordable Infrastructure Work shall be an obligation of the Developer; provided, however, Developer shall have no obligation to fund costs of the Affordable Infrastructure Work in excess of the amount of the Enterprise Grant. Notwithstanding the foregoing, the Developer and the City have agreed that the Developer will retain the City to undertake and perform a certain portion of the Affordable Infrastructure Work, as agent for the Developer, pursuant to terms of an Agreement for Professional Services in a form agreed to by the Developer and City (the "Affordable Infrastructure Agreement").

3. {Section 329} City of Merced HOME Loan

The parties agree that additional assistance in the Project is being provided by the City in the form of a loan to Sponsor from HOME Funds in the amount of \$1,145,000 (“HOME Loan”). The HOME Loan shall be funded to the Sponsor, and the Sponsor shall make a loan to the Developer in the amount of the HOME Loan (the “Sponsor Loan”). The HOME Loan and the Sponsor Loan shall be nonrecourse to the Developer, bear simple interest at a rate of 3% commencing upon the issuance of the certificate of occupancy for the Project (the “Conversion Date”) and an interest rate of 0% prior to the Conversion Date. The HOME Loan’s and Sponsor Loan’s term shall be 55 years, and have all the same terms and conditions including the affordability restrictions set forth in this DDA, with payments deferred until the Net Cash Flow of the Project shall provide for payments to begin. The annual principal and interest payment by Developer to Sponsor and from Sponsor to City shall be from Net Cash Flow made by the 1st of the sixth month following the conclusion of each fiscal year of the Project.

4. {Section 330} HUD 108 Loan

The parties agree that additional assistance in the Project is being provided by the City in the form of a HUD Section 108 loan to Sponsor in the amount of \$2,000,000 (“HUD 108 Loan”). The HUD 108 Loan shall be funded to the Sponsor (or an affiliate thereof), and the Sponsor (or an affiliate thereof) shall make a loan to the Developer in the amount of the HUD 108 Loan (the “HUD 108 Mirror Loan”). The HUD 108 Loan shall be nonrecourse to the Sponsor, and the HUD 108 Mirror Loan shall be nonrecourse to the Developer, bear simple interest at a rate of 2% commencing upon the issuance of the certificate of occupancy for the Project. The HUD 108 Loan and the HUD 108 Mirror Loan shall have all the same terms and conditions, including the affordability restrictions, set forth in this DDA. The HUD 108 Loan’s repayment amount including issuance costs and interest is estimated to be \$2,500,000, the term shall be 55 years, with payments deferred until the Conversion Date and the annual principal and interest payment shall be from City’s annual allocation of CDBG Entitlement funds subject to City’s receipt of its annual allocation of CDBG Entitlement funds in sufficient amount to pay the principal and interest payment, otherwise, the annual principal and interest payment on the HUD 108 Loan and HUD 108 Mirror Loan shall be paid by Developer from Net Cash Flow made by the 1st of the sixth month following the conclusion of each fiscal year of the Project.

5. {Section 331} Agency Loan

The parties agree that additional assistance in the Project is being provided by the City, in its capacity as Housing Successor in the form of a loan to the Developer from Low and Moderate Income Housing Asset Funds (“Housing Asset Funds”) in the amount of \$1,200,000 (“Agency Loan”). The Agency Loan shall be nonrecourse to the Developer, bear simple interest at a rate of 3% commencing upon the Conversion Date and an interest rate of 0% prior to the Conversion Date. The Agency Loan’s term shall be 55 years, with payments deferred until the Conversion Date and shall be payable by Developer from Net Cash Flow. The annual principal and interest payment shall be from Net Cash Flow made by the 1st of the sixth month following the conclusion of each fiscal year of the Project.

6. {Section 332} AHSC Loan

The State of California, the Strategic Growth Council ("SGC") and the Department of Housing and Community Development ("HCD") issued a Notice of Funding Availability dated November 1, 2018 (the "AHSC NOFA"), under the Affordable Housing and Sustainable Communities ("AHSC") Program established under Division 44, Part 1 of the Public Resources Code, commencing with Section 75200. Developer and the City, as co-applicants, applied for AHSC Program Funds in response to the AHSC NOFA to provide funding for the Project as well as funding for public improvements to be constructed by the City.

HCD awarded the Developer and the City an aggregate amount of \$13,950,000 in AHSC Program Funds consisting of (A) \$11,087,700 of AHSC Program Loan Funds for a permanent loan to the Developer for the Project ("AHSC Loan") and (B) \$2,862,300 AHSC Program Grant Funds for a grant which will be disbursed to the City (the "AHSC Grant", and collectively with the AHSC Loan, the "AHSC Financing"), of which (i) \$700,050 shall be used for the City's AHSC-Transportation Related Amenities and (ii) \$2,162,250 for AHSC-Program Grant Funds which will be disbursed to the City for Sustainable Transportation Infrastructure ("STI Work" and together with the TRA Work, the "City AHSC Work"). Repayment of the AHSC Loan shall be governed by the terms and conditions of the documents governing the AHSC Loan. The City shall complete the City AHSC Work by the date set forth in the Schedule of Performance.

7. {Section 333} Funding Commitment.

Developer understands and acknowledges that the funding commitments for the Project are expressly contingent upon the City's receipt of approval and actual receipt of funds from the funding sources including, but not limited to, the U.S. Department of Housing and Urban Development. The commitment for City funding shall be solely provided from the funding sources outlined in this Agreement. In the event that the City's funding allocation from any of the funding sources including, but not limited to, the U.S. Department of Housing and Urban Development is less than the amount outlined and anticipated in Section 328 through 332 of this Agreement, the City is not obligated to fund the difference for the Project or provide any additional funding from its general fund or any other funding source. This Commitment is not intended to describe all of the requirements, terms, conditions and documents necessary for the Loan or construction of the Project.

8. {Section 334} Net Cash Flow

For the purposes described in Sections 329-331 of this DDA, Net Cash Flow shall be defined as follows:

Gross Income Less Total Operating Expenses & Reserves and Third Party Loan and Asset Management Fee and Deferred Development Fee.

Gross Income shall mean and include all revenue, income, receipts, and other consideration actually received by Developer from operation of leasing of the Apartment Complex shall include all rental receipts, laundry income, tenant charges and interest, but shall specifically exclude

tenants' security deposits, interest on security deposits, loan proceeds, capital contributions or similar advances, amounts released from reserves or interest on reserves, condemnation proceeds, or insurance proceeds (other than the proceeds from any business interruption insurance).

Third Party Loans shall include debt service on senior project debt and partner loans made pursuant to Developer's Amendment and Restated Partnership Agreement.

Total Operating Expenses & Reserves shall include all taxes and assessments, insurance, license, utilities, building maintenance and repairs, landscaping, management fees, on site manager, payroll, cleaning supplies, all benefits and legal and accounting and all deposits to replacement, operating and transition reserves required by the Project lenders and equity investors.

Asset Management Fee is the annual fee(s) to pay the limited partner and/or the general partners for all management and oversight of the project, including any and all regulatory filings and surveys required of the Developer by the City in accordance to the project's funding sources. Said fee shall remain at \$25,000 increasing at 3% per year.

Deferred Development Fee shall be defined as the portion of the development fee that had not been paid upon the completion of the construction of the Project. The total development fee shall be capped at the maximum amount permitted by the California Tax Credit Allocation Committee.

The uses of each annual Net Cash Flow shall be as follows:

- (i) 50% to the Developer
- (ii) 50% (allocated to the HUD 108 Loan, Agency Loan, AHSC Loan, and HOME Loan, on a pro rata basis and used to pay residual receipts loans for the Project).

9. {Section 335} Subordination of Agency Loan, HOME Loan, Enterprise Grant, AHSC Loan, and HUD 108 Loan

The City agrees that each of the deeds of trust securing the Acquisition Loan, Agency Loan, HOME Loan, Enterprise Grant, AHSC Loan, and HUD 108 Loan shall at all times be subject and subordinate to the terms and conditions of a construction and/or permanent deeds of trust and regulatory agreements or affordability restrictions of said financing shall at all times be subject and subordinate to the terms and conditions of the regulatory agreements securing low-income housing tax credits financing (collectively, the "Senior Loans") subject to the following conditions: (1) the City shall receive copies of any notices of default issued by the Senior Lenders to the Developer; and (2) the City shall have the right to cure any default by the Developer within ninety (90) days after a notice of default.

10. {Section 335} Rental Subsidy; Bus Pass Subsidy

On or before the date set forth in the Schedule of Performance, the City will obtain a commitment for the appropriate public agency to provide project-based Section 8 rental subsidies for 30 of the permanent supportive housing units in the Project, which subsidy will be evidenced by a Housing Assistance Payment Contract. In addition, pursuant to that certain City of Merced Bus Pass Subsidy Commitment Letter, dated February 8, 2019, the City will provide a 50% bus pass subsidy for all of the units in the Project for a term of 30 years.

11. {Section 336} Fee Deferral

The City has agreed to defer at least \$1,607,988.88 in development impact fees, building permit fees, plan check fees, and sewer and water connection and facility charges until completion of the Project as determined by the City.

IV. {SECTION 400} USE OF THE SITE

A. {Section 401} Uses

The Developer covenants and agrees for itself, its successors, its assigns, and every successor-in-interest that during construction and thereafter, to devote the Site to residential uses that are restricted 50% of the area median income and permanent supportive units as set forth herein. The foregoing covenant shall run with the land and may only be subordinated by following the requirements in Health and Safety Code Section 33334.14.

B. {402} Obligation to Refrain from Discrimination

The Developer covenants by and for itself and any successors-in-interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, disability, religion, sex, marital status, ancestry, national origin, or sexual orientation or identity in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees of the Site. The foregoing covenants shall run with the land.

C. {Section 403} Form of Nondiscrimination and Non-segregation Clauses

The Developer shall refrain from restricting the rental, sale, or lease of the Site on the basis of race, color, creed, disability, religion, sex, marital status, ancestry, national origin, or sexual orientation or identity of any person. All such deeds, leases, subleases, agreements, or contracts pertaining to the sale, lease, sublease, transfer, assignment, use, occupancy, tenure, or enjoyment of the Site, or any portion thereof, shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

1. In deeds: “The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, disability, religion, sex, marital status, ancestry, national origin or sexual orientation or identity in the sale, lease, sublease, transfer, assignment, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through them, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

2. In leases and subleases: “The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, disability, religion, sex, marital status, ancestry, national origin, or sexual orientation or identity in the lease, sublease, transfer, assignment, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sub-lessees, subtenants, or vendees in the land herein leased.”

3. In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, disability, religion, sex, marital status, ancestry, national origin, or sexual orientation or identity in the sale, lease, sublease, transfer, assignment, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees of the land.”

D. {Section 404} Transfer Requirements

The Developer agrees the units constructed pursuant to this DDA shall remain available and restricted to persons and families that at or below 50% of the area median income and persons or families that qualify for permanent supportive housing as set forth herein for the longest feasible time, but for not less than fifty-five (55) years. City and Developer agree that agreements detailing the terms of this Section shall be recorded in the form attached hereto as Attachment No. 7.

E. {Section 405} Rights of Access-Public Improvements and Facilities

The City, for itself and other public agencies, at their sole risk and expense, reserves the right to enter the Site, or any part thereof, at all reasonable times, with at least 48 hours prior written notice, and with as little interference as possible for the purposes of construction, reconstruction, maintenance, repair, or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notice to the Developer or its transferee, assignee, or successor-in-interest, and the City shall indemnify and hold the

Developer harmless from any claims or liabilities pertaining to any entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the public City responsible for the entry.

F. {Section 406} Effect and Duration of Covenants

Except as otherwise provided, the covenants contained in this DDA and the deeds shall remain in effect for at least 55 years. The covenants against discrimination shall remain in effect in perpetuity. The covenants established in this DDA and the deeds shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City and Agency, its successors and assigns, the City and any successor-in-interest to the Site or any part thereof.

The City and Agency are deemed the beneficiaries of the terms and provisions of this DDA and of the covenants running with the land, for and in its own rights and for the purpose of protecting the interests of the community and other parties, public and private, in whose favor and for whose benefit this DDA and the covenants running with the land have been provided. This DDA and covenants running in favor of the Agency and City without regard to whether the Agency or City has been, remains, or is an owner of any land or interest therein in the Site, any parcel or sub-parcel. The Agency and City shall have the right, but not the obligation, if the DDA and covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at-law or in-equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of the DDA and covenants may be entitled.

V. {SECTION 500} DEFAULTS, REMEDIES AND TERMINATION

A. {Section 501} Defaults- General

Subject to the extensions of time set forth in Section 604 of this DDA, failure or delay by either party to perform any term or provision of this DDA constitutes a default under this DDA. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy with reasonable diligence. The party who so commences to cure, correct, or remedy any failure or delay immediately and with reasonable diligence shall not be deemed in default during any period of curing.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages and except as otherwise expressly provided in Sections 507 and 508 of this DDA, the injured party may not institute proceedings against the party in default until thirty (30) calendar days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Except as otherwise expressly provided in this DDA, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any

default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

B. {Section 502} Legal Actions

1. {Section 503} Institution of Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this DDA. It is agreed between the parties that any such legal actions must be instituted in the state court located within the County of Merced, State of California. Developer and City each hereby agrees and hereby consents to personal jurisdiction in the Merced County Superior Court.

2. {Section 504} Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this DDA.

3. {Section 505} Acceptance of Service of Process

In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the Secretary of the City, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by any manner authorized by law, including, but not limited to, personal service or substituted service upon the Developer, and it is hereby agreed that such service shall be valid whether made within or without the State of California.

C. {Section 506} Rights and Remedies are Cumulative

Except as otherwise expressly stated in this DDA, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

D. {Section 507} Damages

If the Developer or the City defaults with regard to any of the provisions of this DDA, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) calendar days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such default; provided, however, that if the cure cannot be effectuated within such thirty (30) day period, the defaulting party shall have a reasonable additional time period to effectuate such cure

so long as it commences such cure within the initial 30 day period, but in no event shall such cure period exceed ninety (90) calendar days after service of the notice of default; and provided, however, the non-defaulting party may, at its sole and complete discretion, waive any damage from the defaulting party by written notice to the defaulting party.

In the event that a party to this DDA brings an action against the other party hereto by reason of the breach of any condition, covenant, representation, or warranty in this DDA, or otherwise arising out of this DDA, the prevailing party in such action shall be entitled to recover from the other expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

E. {Section 508} Specific Performance

If the Developer or the City defaults under any of the provisions of this DDA, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time period described in Section 507, the non-defaulting party, at its option, may institute an action for specific performance of the terms of this DDA.

F. {Section 509} Termination by the City

In the event that prior to the conveyance of title to the Site to the Developer, but subject to the notice and cure provisions of Section 507:

- a) The Developer assigns or attempts to assign this DDA or any rights therein or in the Site, except as expressly permitted herein or consented to in writing by City; or,
- b) There is any significant change in the identity of the Developer or the parties in control of the Developer or the degree thereof contrary to the provisions of Section 107 hereof; or,
- c) The Developer does not submit evidence that it has the necessary equity capital, if required, and/or mortgage financing for acquisition and development of the Site in satisfactory form and in the manner and by the dates provided in this DDA; or,
- d) The Developer fails to submit to the City construction plans, drawings, and related documents as required by this DDA; or,
- e) The Developer does not deliver the Acquisition Note and take title to the Site under tender of conveyance by the City pursuant to this DDA; and,

if any default or failure referred to in subdivisions (c), (d) and (e) of this Section shall not be cured within ninety (90) calendar days after the date of written demand by the City, then this DDA, and any rights of the Developer or any assignee or transferee in this DDA pertaining thereto or arising therefrom with respect to the City, shall, at the option of the City, be terminated by the City.

In the event of such termination under this Section 509, the Deposit may be retained by the City as liquidated damages and as its property without any deduction, offset, or recoupment whatsoever as City's sole and exclusive remedy. If the Developer should default upon its obligations making it necessary for the City to terminate this DDA or to procure another party or parties to redevelop the Site in substantially the manner and within the period that such Site would be redeveloped under the terms of this DDA, then the damages suffered by the City by reason thereof would be uncertain. Such damages would involve such variable factors as the consideration which such party would pay for the Site; the expenses of continuing the ownership and control of the Site; of interesting and negotiating with such parties; postponement of tax revenues therefrom to the community; and the failure of the City to effect its purposes and objectives within a reasonable time, resulting in additional immeasurable damage and loss to the City and the community. It is impractical and extremely difficult to fix the amount of such damages to the City, but the parties are of the opinion, upon the basis of all information available to them, that such damages would approximately equal the amount of the Deposit held by the City at the time of the default of the Developer, and the amount of such Deposit shall be paid to the City upon any such occurrence as the total of all liquidated damages for any and all such defaults and not as a penalty. In the event that this paragraph should be held to be void for any reason by a court of competent jurisdiction, the City shall be entitled to the full extent of damages otherwise provided by law.

The Developer specifically acknowledges this liquidated damages provision by its signature here:

G. {Section 510} Option to Repurchase, Reenter and Repossess

The City shall have the additional right at its option to repurchase, reenter, and take possession of the Site with all improvements thereon if, after conveyance of title to the Site and prior to the recordation of the Notice of Satisfaction of Obligations therefore, the Developer shall:

1. Fail to proceed with the actual physical construction of the improvements as required by this DDA for a period of three (3) months after written notice thereof from the City; or,
2. Abandon or substantially suspend construction of the improvements, as determined by the City, for a period of three (3) months after written notice of such abandonment or suspension from the City; or,
3. Transfer, assign, or suffer any involuntary transfer or assignment of the Site or any part thereof in violation of this DDA.

Such right to repurchase, reenter, and repossess, to the extent provided in this DDA, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust, or other security instrument permitted by this DDA;

2. Any rights or interests provided in this DDA for the protection of the holder of such mortgages, deeds of trust, or other security instruments.

To exercise its right to repurchase, reenter, and take possession with respect to the Site, the City shall pay to the Developer in cash an amount equal to the Purchase Price without interest or reimbursement for taxes, assessments, work or improvements made by Developer to the Site.

H. {Section 511} Right of Reverter

The City shall have the additional right, at its option, to reenter and take possession of the Site with all improvements thereon and re-vest in the City the estate theretofore conveyed to the Developer if, after conveyance of title to the Site and prior to recordation of the Notice of Satisfaction of Obligations, the Developer shall:

1. Fail to proceed with the actual physical construction of the improvements as required by this DDA for a period of three (3) months after written notice thereof from the City; or,

2. Abandon or substantially suspend construction of the improvements, as determined by the City, for a period of three (3) months after written notice of such abandonment or suspension from the City; or,

3. Transfer, assign, or suffer any involuntary transfer or assignment of the Site or any part thereof in violation of this DDA.

Such right to reenter, repossess, and re-vest to the extent provided in this DDA shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

1. Any mortgage, deed of trust, or other security instrument permitted by this DDA; or

2. Any rights or interest provided in this DDA for the protection of the holder of such mortgages, deeds of trust, or other security instruments.

To exercise its right to reenter, repossess, and re-vest in the City the estate with respect to the Site theretofore conveyed to the Developer, the City shall execute a deed containing the appropriate reference and provision to give effect to the City's right, as set forth in this Section under specified circumstances prior to the recordation of the Notice of Satisfaction of Obligations, to reenter and take possession of the Site with all improvements thereon and to terminate and re-vest in the City the estate conveyed to the Developer.

Upon the re-vesting in the City of title to the Site or any part thereof as provided in this Section, the City shall, pursuant to its responsibilities under State law, use its best efforts to resell the Site or part thereof as soon and in such manner as the City shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as determined by

the City) who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the City and in accordance with the uses specified for the Site. Upon such resale of the Site, the proceeds thereof shall be applied:

1. First, to reimburse the City for all costs and expenses incurred by the City, including, but not limited to, salaries to personnel in connection with the recapture, management, and resale of the Site or part thereof (but less any income derived by the City from the Site or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Site or part thereof; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site or part thereof; and any amounts otherwise owing the City by the Developer; and,

2. Second, to reimburse the Developer up to the amount equal to: (1) the sum of the Purchase Price paid to the City by the Developer for the Site (or allocable to the part thereof); plus (2) the costs incurred for the development of the Site if the same have value following resale and for the improvements existing on the Site at the time of the reentry and repossession if the same are usable in the development of the Site following the resale; less (3) any gains or income withdrawn or made by the Developer from the Site or the improvements thereon. Any balance remaining after such reimbursements shall be retained by the City as its property.

The rights established in this Section are to be interpreted in light of the fact that the Site is to be conveyed to the Developer under this DDA for a specific development project and not for speculation in undeveloped land.

VI. {SECTION 600} GENERAL PROVISIONS

A. {Section 601} Notices Demands and Communications Between the Parties

Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if dispatched by hand delivery, overnight courier, or registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Developer as set forth in Section 105 hereof. Such notices, demands, and communications shall be deemed received upon actual receipt if given by hand delivery, one (1) business day after delivery if given by overnight courier, and three (3) business days after deposit if given by mail in accordance with this Section. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time-to-time designate by mail.

B. {Section 602} Conflict of Interests

No member, official, or employee of the City shall have any personal interest, direct or indirect, in this DDA, nor shall any such member, official, or employee participate in any decision relating to this DDA which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

The Developer represents and warrants that it has not paid or given, and will not pay or give, any third persons any money or other consideration for obtaining this DDA.

C. {Section 603} Non-liability of City Officials and Employees

No member, official, or employee of the City shall be personally liable to the Developer in the event of any default or breach of this DDA or for any amount which may become due to the Developer or on any obligations under the terms of this DDA.

D. {Section 604} Enforced Delay: Extension of Times of Performance

1. In addition to specific provisions of this DDA, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or supplier; acts of another party; acts or failures to act of any public or governmental City or entity (other than that acts or failures to act of the City shall not excuse performance by the City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) calendar days after the commencement of the cause, the period shall commence to run only thirty (30) calendar days prior to the giving of such notice. Time of performance under this DDA may also be extended in writing by the City and the Developer.

2. Prior to conveyance of title to the Site to the Developer, and notwithstanding any provision of this DDA to the contrary, if the Developer is unable to finance its obligations under this DDA due to causes beyond its control and is therefore unable to submit financing commitments within sixty (60) calendar days after the opening of escrow, then upon submitting written evidence of such inability to the City, Developer shall receive an automatic extension of time for the sole purpose of obtaining adequate financing for a period of sixty (60) calendar days. "Causes" beyond its control shall mean only that construction or permanent financing is not available to Developer on terms and conditions at such time for developments similar to the proposed development at the Site. If, at the end of the extension, said causes still exist, then the City may terminate this DDA at its sole and absolute discretion in the manner provided in Section 509 hereof.

E. {Section 605} Inspection of Books and Records

The City has the right at its sole cost and expense, upon not less than forty-eight (48) hours' notice at all reasonable times to inspect the books and records of the Developer pertaining to the Site as pertinent to the purposes of this DDA. The Developer shall make all such books and records available for inspection under this provision. The City shall use reasonable efforts to keep all information obtained confidential, except as otherwise provided by law.

The Developer also has the right, upon not less than forty-eight (48) hours' notice at all reasonable times to inspect the books and records of the City pertaining to the Site as pertinent to the purposes of this DDA. The City shall make all such books and records available for inspection under this provision. The Developer shall use reasonable efforts to keep all information obtained confidential, except as otherwise provided by law.

F. {Section 606} Plans and Data

Where the Developer does not proceed with the purchase and development of the Site, and when this DDA is terminated hereof for any reason, the Developer shall deliver to the City any and all plans and data concerning the Site, and upon approval of any third party preparer thereof, the City or any other person or entity designated by the City is free to use such plans and data.

G. {Section 607} Approval by City

Wherever this DDA requires the City to approve any contract, document, plan, specification, drawing, or other matter, such approval shall not be unreasonably withheld.

H. {Section 608} Attorney Fees

In the event that a party to this DDA brings an action against the other party hereto by reason of the breach of any condition, covenant, representation, or warranty in this DDA, or otherwise arising out of this DDA, the prevailing party in such action shall be entitled to recover from the other expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

VII. {SECTION 700} SPECIAL PROVISIONS

A. {Section 701} Submission of Documents to the City for Approval

Whenever this DDA requires the Developer to submit plans, drawings, or other documents to the City for approval, which shall be deemed approved if not acted on by the City within a specified time, said plans, drawings, or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected by the City within the stated time. If there is no time specified herein for such City action, the Developer may submit a letter requiring City approval or rejection of documents within thirty (30) calendar days after submission to the City or such documents shall be deemed approved.

B. (Section 702) Amendments to this DDA

The Developer and the City agree to mutually consider reasonable requests for amendments to this DDA which may be made by any of the parties hereto, lending institutions, equity investors, bond counsel or financial consultants to the City, provided said requests are consistent with this DDA and would not substantially alter the basic terms and conditions included

herein. The City's Executive Director is hereby authorized by the City to execute any amendments that the Executive Director deems reasonably necessary to effectuate the sale of the Site to Developer and development of the Project.

C. {Section 703} Due Diligence

The City shall share the results of any environmental testing of the Site with Developer, to the extent such results are in the City's possession. Subject to the insurance and indemnification provisions in Section 212, the Developer may, at its own and sole cost and expense, conduct other testing, investigations, or preliminary work, including but not limited to: environmental conditions, title conditions, construction feasibility, financing, tenant commitment, and entitlements (design review and CEQA). Developer shall have a period of thirty (30) calendar days to perform all such additional testing, inspection, investigations, and review as deemed necessary to complete the acquisition of the Site, to determine the feasibility of the Project, and to approve all conditions pertaining to the Site. Upon conclusion of the due diligence, Developer shall either exercise its option to terminate this DDA and the Good Faith Deposit shall be returned to Developer or proceed in accordance with the Schedule of Performance. Developer's failure to object to any specific condition of the Site by writing to the City within said thirty (30) calendar day period shall be deemed approval by Developer of that condition.

D. {Section 704} Conditions Precedent to Close of Escrow

City shall not be obligated to sell, and Developer not obligated to buy, the Site until the following conditions are met, unless the same is waived in writing by the party to be benefitted thereby:

1. Approval of Site environmental conditions by Developer.
2. Acceptance of condition of title by Developer.
3. Approval of Developer's financial commitments by City.
4. Conceptual approval of Site and building plans by the City of Merced Design Review Commission, or final review of the Site and building plan by the Planning Commission, if required.
5. Approvals are obtained for the Project pursuant to the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 et seq. and the National Environmental Policy Act ("NEPA").

VIII. {SECTION 800} ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This DDA comprises pages 1 through 40, inclusive, and Attachment Nos. 1 through 8, attached hereto and incorporated herein by reference and made a part hereof, all of which constitute the entire understanding and agreement of the parties.

This DDA integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this DDA must be in writing and signed by the appropriate authorities of the City and the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer.

IX. {SECTION 900} TIME FOR ACCEPTANCE OF AGREEMENT BY CITY

This DDA, when executed by the Developer and delivered to the City, must be authorized (and executed and delivered as soon thereafter as feasible) by the City within forty-five (45) calendar days after the date of signature by the Developer, or this DDA shall be void, except to the extent that the Developer shall consent in writing to further extensions of time for the authorization, execution and delivery of this DDA.

X. {SECTION 1000} TIME IS OF THE ESSENCE

Time is of the essence in this DDA.

XI. {SECTION 1100} COUNTERPARTS

This DDA may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof

XII. {SECTION 1200} AUTHORITY TO EXECUTE

The person or persons executing this DDA on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this DDA on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

XIII. DISPUTE RESOLUTION. IF A DISPUTE ARISES OUT OF OR RELATES TO THIS AGREEMENT, OR THE BREACH THEREOF, AND IF THE DISPUTE CANNOT BE SETTLED THROUGH NEGOTIATION, THE MEMBERS AGREE FIRST TO ATTEMPT IN GOOD FAITH TO SETTLE THE DISPUTE BY MEDIATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA") UNDER ITS COMMERCIAL MEDIATION RULES, BEFORE RESORTING TO ARBITRATION, LITIGATION, OR SOME OTHER DISPUTE RESOLUTION PROCEDURE. THE SELECTION OF THE MEDIATOR SHALL BE MADE IN ACCORDANCE WITH THE AAA. IF MEDIATION IS NOT SUCCESSFUL, ANY MEMBER MAY THEN, AT ITS SOLE DISCRETION, ELECT TO SEEK RELIEF FROM ANY COURT OR OTHER TRIBUNAL, OR WITH THE CONSENT OF ALL MEMBERS SUBJECT TO THE DISPUTE, ELECT TO SUBMIT THE MATTER TO A THREE ARBITRATOR PANEL ARBITRATION OF THE AAA, TO BE

CONDUCTED UNDER ITS COMMERCIAL ARBITRATION RULES. IN THE EVENT THE MEMBERS AGREE TO SUBMIT THEIR DISPUTE TO ARBITRATION, THE MEMBERS AGREE THAT THEY WILL ABIDE BY AND PERFORM ANY AWARD RENDERED BY THE ARBITRATORS, AND THAT A JUDGMENT OF ANY COURT HAVING JURISDICTION MAY BE ENTERED ON THE AWARD. THE ARBITRATOR WILL ALSO DETERMINE THE PREVAILING PARTY, WHO WILL BE ENTITLED TO RECOVER, IN ADDITION TO ALL OTHER RELIEF OBTAINED, ITS, HIS OR HER REASONABLE COSTS, EXPENSES AND FEES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPERT WITNESS FEES, INCURRED IN SUCH ARBITRATION.

The effective date of this DDA shall be the date when the DDA has been signed by the City.

Date: _____, 2020

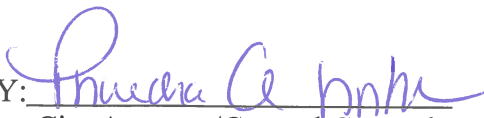
CITY OF MERCED, a public body, corporate and politic, of the State of California and CITY OF MERCED as the Merced Housing Successor Agency

BY: _____

ATTEST:

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: 
City Attorney/General Counsel

Funds/Accounts Verified

BY: _____
Finance Officer

“DEVELOPER”

Merced CA Apartments, L.P., a
Delaware limited partnership

By: Merced Childs & B Street, LLC, a
Delaware limited liability company

Its Managing General Partner

By: Central Valley Coalition for Affordable
Housing, a California nonprofit
corporation, Managing Member

Christina Alley, Chief Executive
Officer

By: Merced CA GP, LLC, a Delaware
limited liability company

Its Administrative General Partner

By: TRG Merced CA Member LLC, a
Delaware limited liability company

Its Sole Member

By: _____
Samantha Anderes, its Treasurer

By: The Richman Group of California
Development Company LLC, a
California limited liability company,
its Co-General Partner

By: _____
Samantha Anderes, its Treasurer

Taxpayer I.D. No. _____

ADDRESS:

c/o JDF, LLC
777 West Putnam Avenue
Greenwich CT 06830
Attention: Joanne D. Flanagan, Esq.

TELEPHONE: (203) 869-0900

FACSIMILE: (203) 496-8569

E-MAIL: flanaganj@jdfllaw.com

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

}

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____

Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

}

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

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Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____

Signature of Notary Public

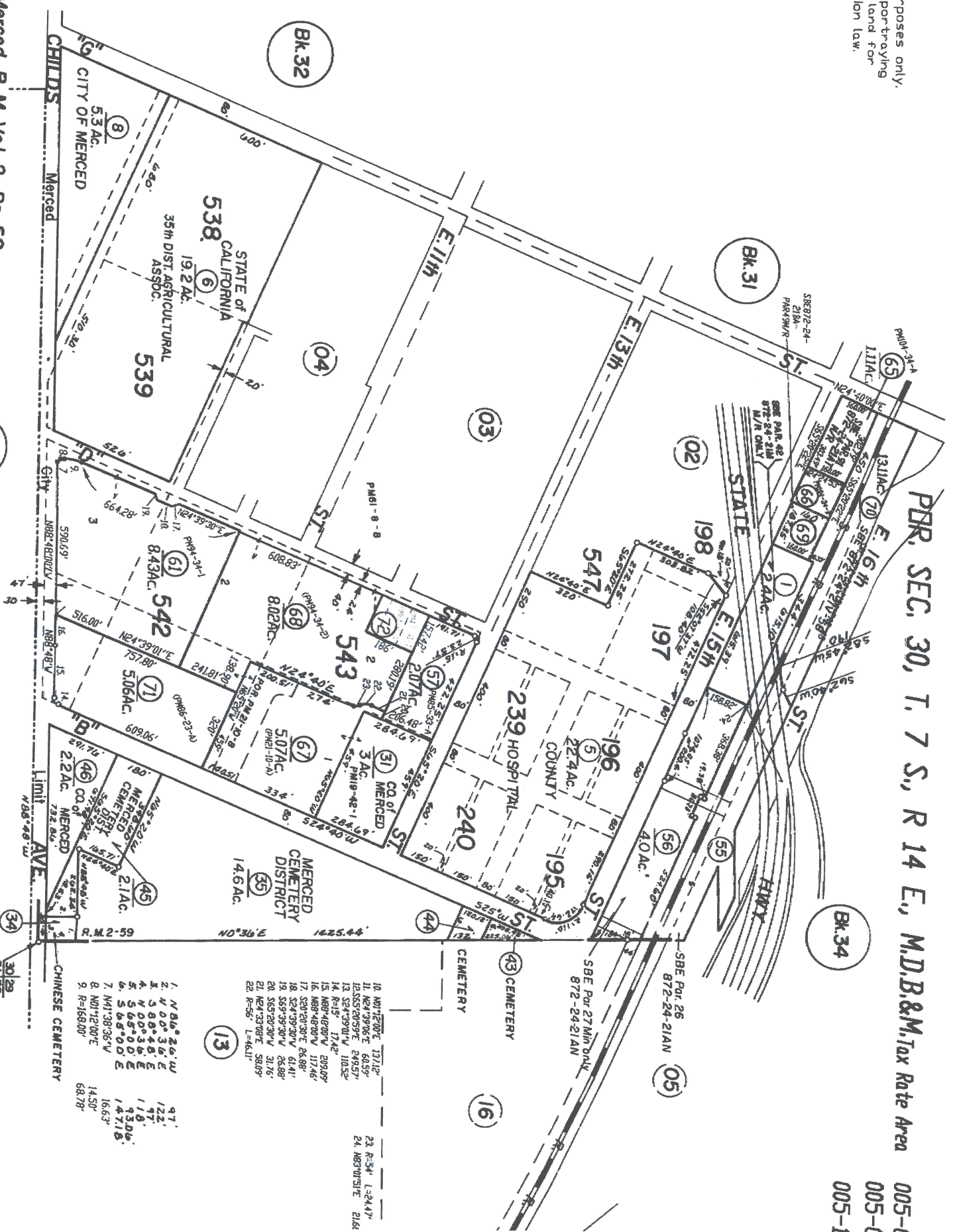
ATTACHMENT NO. 1

MAP OF THE SITE

-NOTE-
Assessment purposes only.
construed as portraying
divisions of land for
ing or subdivision law.

PDR. SEC. 30, T. 7 S., R 14 E., M.D.B.&M. Tax Rate Area

005-C
005-0
005-1



City of Merced, R. M. Vol. 2, Pg. 59

NOTE - Assessor's Block Numbers Shown in Ellipses
Assessor's Parcel Numbers Shown in Circles

Assessor's Map Bk. 35-P
County of Merced, Calif.
1959

ATTACHMENT NO. 2
LEGAL DESCRIPTION

EXHIBIT A

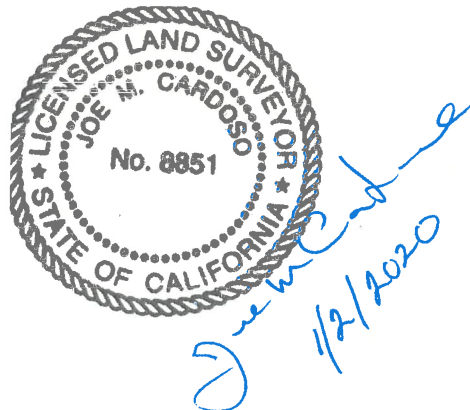
A parcel of land situated in the Southeast One Quarter (SE1/4) of Section 30, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, said parcel of land being a portion of Parcel A, as said Parcel A is delineated on that certain map entitled "PARCEL MAP FOR RAYMOND A. BESSEMER M.D.", filed for record on March 2, 2000, in the office of the County Recorder of Merced County, in Book 86 of Parcel Maps, at Pages 22-23, said parcel of land being more particularly described as follows:

All of said Parcel A, EXCEPTING THEREFROM the following real property:

BEGINNING at the southwest corner of said Parcel A; thence N24°39'01"E, along the west line of said Parcel A, a distance of 211.87 feet; thence S6S° 21' 00" E, to the easterly line of said Parcel A, a distance of 320.00 feet; thence S24°39'01"W, along said easterly line, a distance of 63.21 feet to the beginning of a tangent curve concave to the northwest, having a radius of 15.00 feet; thence southwesterly along said curve, through a central angle of 66°33'00", an arc distance of 17.42 feet to a point of tangency on the south line of said Parcel A; thence N88°48'00"W, along said south line, a distance of 338.97 feet to **POINT OF BEGINNING.**

The above-described parcel of land is delineated on Exhibit B, attached hereto, and made a part hereof.

The above-described parcel of land contains 4.01 acres, more or less, is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.



PARCEL 2
94 P.M. 33

PARCEL 1
94 P.M. 33

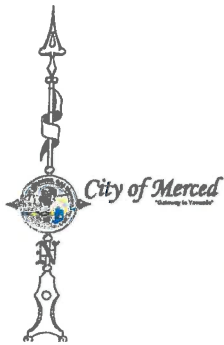
COUNTY OF MERCED
GRANT DEED
2009-061427, M.C.R.

4.01 ACRES
174,683 Sq. Ft.

PARCEL A
86 P.M. 22

MERCED CEMETERY
DISTRICT

COUNTY OF MERCED



SCALE: 1" = 100'

N24°39'01"E 757.80'

S65°19'58"E 320.00'

15 R.S. 11

B STREET

S65°21'00"E 320.00'

1.05 ACRES
45,570 Sq. Ft.

N88°48'00"W 338.97'

CHILDS AVENUE

P.O.B.

63.21'

DELTA = 66°33'00"
RAD. = 15.00'
LEN. = 17.42'
TAN. = 9.84'

Lt O.P. 24



City of Merced
DEVELOPMENT SERVICES
ENGINEERING PROJECTS AND STANDARDS
678 W. 18th Street (209) 385-6846

EXHIBIT B

DR. BY: CARDOSO
DATE: 4/19/16
CH. BY:
DATE:
File No.
SCALE: 1" = 100'

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

DATE	ACTION
Three (3) days after mutual execution of DDA	Submission of Good Faith Deposit
One (1) business day prior to the Closing Date	Submission of financial commitments for construction loans. Opening of escrow on all parcels.
On or before the date required by TCAC or CDLAC to preserve the tax exempt bond allocation for the Project	Close of escrow by Developer on parcels ("Closing Date").
Five (5) days after the Closing Date	Obtain building permits or approvals.
Thirty (30) days after the Closing Date	Start of construction.
Twenty-four (24) months after Closing	Completion of construction
On or before the date required pursuant to the AHSC Standard Agreement	Completion of the AHSC City Work

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

A. Description of Development

The Project is new construction of 119 units (118 rental units and one (1) manager's unit) consisting of thirty (30) Permanent Supportive Housing ("PSH") 1-bedroom units restricted to 30% of the area median income (AMI); and seventeen (17) 1-bedroom units, thirty-five (35) 2-bedroom units, and thirty-six (36) 3-bedroom units restricted to 50% of the AMI. Project amenities will include a multi-purpose room, manager's and service provider's offices, computer center, fitness room, mailboxes, laundry facilities, patio and barbeque area, swimming pool, and children's play area.

B. Obligations of Developer

1. Purchase the Site in accordance with the provisions of the Disposition and Development Agreement.
2. Obtain financing for the Project, pursuant to other provisions of the Disposition and Development Agreement, including tax credits, and any other necessary funding.
3. Prepare the Site for development, including filling and grading, and other site preparation.
4. Design and construct the Project in accordance with the description above, other terms of the Disposition and Development Agreement, and applicable ordinances and laws.
5. Secure all permits and approvals needed for the construction of the project, including any Conditional Use Permits issued by the Merced Planning Commission, approvals of the Design Review Commission, and building permits issued by the City of Merced.

C. City Responsibilities

1. Acquire the Site pursuant to the County Transfer Agreement.
2. Give all appropriate assistance to Developer in securing necessary permits for the project, including coordinating with Developer in presentations to the Design Review Commission, Planning Commission, City Council, or other body involved in permits or approvals for the project.
3. Provide for the partitioning of the Site into Parcels as necessary, to transfer under the terms of the Disposition and Development Agreement.

4. Transfer the Site to the Developer in accordance with the provisions of the Disposition and Development Agreement.
5. Respond promptly, as provided in the Schedule of Performance, to submittals from the Developer.
6. Provide all legally allowed assistance in completing any zoning changes that may be necessary for the Project to begin.
7. Complete CEQA and NEPA reviews as needed.

ATTACHMENT NO. 5
APPROVED SITE PLAN



ILLUSTRATED SITE PLAN
11-2018-01

1. Landscaped Areas: All landscaping will be a drought-tolerant species and will be irrigated with recycled water. All landscaping will be installed and maintained in accordance with the City of Merced's Landscape Maintenance Ordinance. 2. Stormwater Management: The project will be designed to meet the City of Merced's Stormwater Management Ordinance. 3. Streets and Roadway: The project will be designed to meet the City of Merced's Streets and Roadway Ordinance. 4. Utilities: The project will be designed to meet the City of Merced's Utilities Ordinance. 5. Security: The project will be designed to meet the City of Merced's Security Ordinance. 6. Noise: The project will be designed to meet the City of Merced's Noise Ordinance. 7. Air Quality: The project will be designed to meet the City of Merced's Air Quality Ordinance. 8. Other: The project will be designed to meet the City of Merced's other applicable ordinances.

PRATOK
1871 TELEGRAPH AVE. SUITE
500
OAKLAND, CA 94612
510.461.8575
pratok.com

**THE RICHMAN GROUP
OF CALIFORNIA**
400 WEST STREET, SUITE 100
MERCED, CA 95369

**Childs and B Street,
TOD Affordable Housing**
905 B STREET, MERCED CA 95341

REVISIONS	
NO.	DATE
1	11/2/2018

A1.2

PRATOK - NOT TO CONSTRUCTION

RECORDING REQUESTED BY:

City of Merced, a charter city of the State of
California

WHEN RECORDED MAIL TO:

City of Merced
678 West 18th Street
Merced, California 45340

**Exempt Recording Per
Gov't Code Section 6103**

(Above for Recorder's Use Only)

MERCED, CALIFORNIA

NOTICE OF SATISFACTION OF CERTAIN OBLIGATIONS

WHEREAS, By a Disposition and Development Agreement dated _____, 2020, (hereinafter referred to as "Agreement") by and between the City of Merced, a charter city of the State of California, (hereinafter referred to as the "City") and Merced CA Apartments, L.P., a Delaware limited partnership, (hereinafter referred to as the Developer"), the Developer has completed the improvements according to the terms and conditions of said Agreement; and,

WHEREAS, Pursuant to Section 323 of the Agreement, promptly after construction and development of the Site, the City shall record a Notice of Satisfaction of Certain Obligations upon written request therefore by the Developer; and,

WHEREAS, The City has conclusively determined that the Developer has satisfactorily completed the construction required by the Agreement.

NOW, THEREFORE:

1. As provided in the Agreement, the City does hereby certify that the Project has been fully and satisfactorily performed and completed, and that the Project is in full compliance with said Agreement as of the date of this Notice of Satisfaction of Certain Obligations.

2. This Notice of Satisfaction of Certain Obligations shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the work of rehabilitation,

construction, and development of the improvements, or any part thereof. This Notice of Satisfaction of Certain Obligations is not a Notice of Completion as referred to in Section 3093 of the California Civil Code.

3. Other provisions of the Agreement including, but not limited to, Section 325, 401, 402, 403, 404, and 706 of said Agreement, remain in full force and effect.

IN WITNESS WHEREOF, the City has executed this Certificate as of the date first above written.

APPROVED:

Chair of the City

ATTEST:

CITY SECRETARY

BY: _____
Assistant/Deputy City Secretary

APPROVED AS TO FORM:

City General Counsel Date

“DEVELOPER”

Merced CA Apartments, L.P., a
Delaware limited partnership

By: Merced Childs & B Street, LLC, a
Delaware limited liability company

Its Managing General Partner

By: Central Valley Coalition for Affordable
Housing, a California nonprofit
corporation, Managing Member

Christina Alley, Chief Executive
Officer

By: Merced CA GP, LLC, a Delaware
limited liability company

Its Administrative General Partner

By: TRG Merced CA Member LLC, a
Delaware limited liability company

Its Sole Member

By: _____
Samantha Anderes, its Treasurer

By: The Richman Group of California
Development Company LLC, a
California limited liability company,
its Co-General Partner

By: _____
Samantha Anderes, its Treasurer

Taxpayer I.D. No. _____

ADDRESS:

c/o JDF, LLC
777 West Putnam Avenue
Greenwich CT 06830
Attention: Joanne D. Flanagan, Esq.

TELEPHONE: (203) 869-0900

FACSIMILE: (203) 496-8569

E-MAIL: flanaganj@jdflaw.com

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }

County of _____ }

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

}

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____

Signature of Notary Public

RECORDING REQUESTED BY:

City of Merced, a charter city of the State of
California

WHEN RECORDED MAIL TO:

City of Merced
678 West 18th Street
Merced, California 45340

**Exempt Recording Per
Gov't Code Section 6103**

(Above for Recorder's Use Only)

**AGREEMENT CONTAINING COVENANTS
AFFECTING REAL PROPERTY**

**(_____ PROJECT AREA)
MERCED, CALIFORNIA)**

THIS AGREEMENT is entered into this _____ day of _____, 20__
(this "Agreement"), by and between the City of Merced (a public body corporate and politic,
hereinafter referred to as the "City") and Merced CA Apartments, L.P., a Delaware limited
partnership (hereinafter referred to as the "Developer"), with reference to the following:

WHEREAS, The Developer is the present owner of the real property (the "Site") located in
the City of Merced, County of Merced, State of California, legally described in Attachment No. 1.
This Agreement is being entered into pursuant to the terms of that certain Disposition and
Development Agreement dated _____ by and between the City and Developer (the "DDA").
Capitalized terms not otherwise defined herein shall have the meanings set forth in the DDA.

NOW, THEREFORE, THE CITY AND THE DEVELOPER AGREE AS FOLLOWS:

1. The Developer, on behalf of itself and its successors, assigns, and each successor
in interest to the Site or any part thereof, hereby covenants and agrees:

a. Of the one hundred nineteen (119) rental dwelling units in the Project, twenty-eight
(28) units in the Project will be rented to "Very Low Income households" as set forth in California
Health and Safety Code Section 50105, as it may be amended from time-to-time (the "VLI Units"),
and thirty (30) units in the Project shall designated as permanent supportive housing units for those
who are homeless or at risk of homelessness and restricted to "extremely low income households"
as defined in California Health and Safety Code Section 50106 and accompanying regulations of

the California Department of Housing and Community Development (the "ELI Units" and together with the VLI Units, the "Affordable Units") ELI Units shall not exceed the affordable rent for "extremely low income households" as defined in California Health and Safety Code Section 50053(b)(1) and accompanying regulations of the California Department of Housing and Community Development and the maximum rent for such VLI Units shall not exceed the affordable rent for "very low income households" as defined in California Health and Safety Code Sections 50053(b)(2) and accompanying regulations of the California Department of Housing and Community Development, as such law or regulations may hereafter be amended, replaced or renumbered from time-to-time, with allowance for utilities. If, during the term of this Agreement, there is a loss of project based rental subsidy to the Project through no fault of Developer, then Developer may request an increase on the rents for the ELI Units, to an adjusted income that does not exceed the rent applicable to "very low income households" as defined in California Health and Safety Code Section 50053(b)(2) and accompanying regulations of the California Department of Housing and Community Development ("VLI Units").

b. use, devote, and maintain the Site and each part thereof, for the purposes and uses specified in accordance with the zoning requirements of the [] zone. Developer shall develop the Project on the Site in conformity with the DDA and this Agreement and in the event of inconsistency among such provisions and covenants of record, the most restrictive restrictions then in effect shall apply. The Site shall be operated as an affordable housing Project and devoted only to the uses specified in the DDA for the periods of time specified therein and herein. No building or any tenant space within a building may include visible bars or grates over or behind any window visible from a public street or right of way. Any permanent signage affixed to the building or windows must be of high quality materials, not including tempera paint.

If in the future, should the building be rezoned to allow commercial uses, the retail and commercial spaces on the Site shall be developed to a high standard and shall not be leased, rented to, or occupied by pawn shops, tattoo parlors, fortune-tellers, skateboard shops, or bail bonds businesses.

c. To maintain the improvements and landscaping on the Site and keep the Site free from any accumulation of debris and waste materials.

d. Not to discriminate upon the basis of sex, marital status, disability, race, color, creed, religion, age, national origin, ancestry or sexual orientation or identity in the sale, lease, sublease, transfer or rental, or in the use, occupancy, tenure, or enjoyment of the Site or any improvements thereon, or of any part thereof. Each and every deed, lease, and contract entered into with respect to the Site shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

(1) In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, disability, marital status, ancestry, national origin, or sexual orientation or identity in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the

selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

(2) In leases: “The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account of race, disability, color, creed, religion, sex, marital status, ancestry, national origin, or sexual orientation or identity in the leasing, subleasing, transferring, use, or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sub-lessees, subtenants, or vendees in the land herein leased.”

(3) In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, disability, ancestry, national origin, or sexual orientation or identity in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees of the land.”

2. There shall be no discrimination against or segregation of any person, or groups of persons, on account of sex, marital status, disability, race, color, creed, religion, age, national origin, ancestry, or sexual orientation or identity in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any part thereof, nor shall the Developer, its successors, assigns, or successors in interest to the Site or any part thereof, or any person claiming under or through them, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sub-lessees, or vendees of the Site or any part thereof.

3. The covenants and agreements established in this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successor in interest to the Site, or any part thereof, for the benefit of and in favor of the City, its successor and assigns, and the City of Merced. Except as set forth in the following sentence, the covenants contained in paragraph 1 of this Agreement shall remain in effect until _____ [55 years]. The covenants against discrimination contained in paragraphs 1 and 2 shall remain in perpetuity.

4. The covenants and restrictions contained in this Agreement shall not benefit nor be enforceable by any owner of any other real property within or outside the Project or any person or entity having any interest in any such other real property.

5. Any notice, request, demands, approvals or other communications given hereunder or in connection herewith shall be sent by registered or certified mail, return receipt requested, postage and fees prepaid and addressed to the party hereto to receive such notice, at its address as set forth as follows:

To Developer: Merced CA Apartments, L.P., a Delaware limited partnership

c/o JDF, LLC
777 West Putnam Avenue
Greenwich CT 06830
Attention: Joanne D. Flanagan, Esq.

with copy to:

c/o The Richman Group of California Development Company LLC
420 31st Street Suite B1
Newport Beach, CA 92663
Attention: Rick Westberg

With a copy to:

Central Valley Coalition for Affordable Housing
3351 "M" Street, Ste. 200
Merced, CA 95348
Attention: Christine Alley

To City/Agency:

City of Merced
678 West 18th Street
Merced, CA 95340
Attention: Housing Division & City Clerk

With a copy to:

City Attorney's Office
City of Merced
678 West 18th Street
Merced, A 95340

Either party may, by notice given as aforesaid, change its address for any subsequent notice. Any notice shall be deemed given on the second day following its deposit in the United States mail.

No party hereto shall be deemed to be in default of any provision hereof unless and until thirty (30) days' notice thereof shall be given by one party to the other, and then the party in default shall have the absolute right to cure said default so long as such cure is commenced within a reasonable time, in no event longer than ninety (90) days, and such cure is diligently prosecuted to its conclusion. The foregoing is in addition to any of the provisions contained herein. If written request is made by Developer's limited partner, City shall also deliver a copy of default notice to such limited partner. Any partner of Developer shall have the right to cure any default within the

applicable cure periods set forth hereinabove, whether in its own capacity or on behalf of Developer and City shall accept such cure as if tendered by Developer.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date first above written.

“CITY”
CITY OF MERCED

BY: _____

ATTEST:

BY: _____

APPROVED AS TO FORM:

(Signatures continued on next page)

“DEVELOPER”

Merced CA Apartments, L.P., a
Delaware limited partnership

By: Merced Childs & B Street, LLC, a
Delaware limited liability company

Its Managing General Partner

By: Central Valley Coalition for Affordable
Housing, a California nonprofit
corporation, Managing Member

Christina Alley, Chief Executive
Officer

By: Merced CA GP, LLC, a Delaware
limited liability company

Its Administrative General Partner

By: TRG Merced CA Member LLC, a
Delaware limited liability company

Its Sole Member

By: _____
Samantha Anderes, its Treasurer

By: The Richman Group of California
Development Company LLC, a
California limited liability company,
its Co-General Partner

By: _____
Samantha Anderes, its Treasurer

Taxpayer I.D. No. _____

ADDRESS:

c/o JDF, LLC
777 West Putnam Avenue
Greenwich CT 06830
Attention: Joanne D. Flanagan, Esq.

TELEPHONE: (203) 869-0900

FACSIMILE: (203) 496-8569

E-MAIL: flanaganj@jdfllaw.com

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }

County of _____ }

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____

Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

}

On _____

Date

before me, _____

Here Insert Name and Title of the Officer

personally appeared _____

Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____

Signature of Notary Public

ATTACHMENT NO. 1
LEGAL DESCRIPTION

EXHIBIT A

A parcel of land situated in the Southeast One Quarter (SE1/4) of Section 30, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, said parcel of land being a portion of Parcel A, as said Parcel A is delineated on that certain map entitled "PARCEL MAP FOR RAYMOND A. BESSEMER M.D.", filed for record on March 2, 2000, in the office of the County Recorder of Merced County, in Book 86 of Parcel Maps, at Pages 22-23, said parcel of land being more particularly described as follows:

All of said Parcel A, EXCEPTING THEREFROM the following real property:

BEGINNING at the southwest corner of said Parcel A; thence N24°39'01"E, along the west line of said Parcel A, a distance of 211.87 feet; thence S6S° 21' 00" E, to the easterly line of said Parcel A, a distance of 320.00 feet; thence S24°39'01"W, along said easterly line, a distance of 63.21 feet to the beginning of a tangent curve concave to the northwest, having a radius of 15.00 feet; thence southwesterly along said curve, through a central angle of 66°33'00", an arc distance of 17.42 feet to a point of tangency on the south line of said Parcel A; thence N88°48'00"W, along said south line, a distance of 338.97 feet to **POINT OF BEGINNING.**

The above-described parcel of land is delineated on Exhibit B, attached hereto, and made a part hereof.

The above-described parcel of land contains 4.01 acres, more or less, is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.



PARCEL 2
94 P.M. 33

PARCEL 1
94 P.M. 33

COUNTY OF MERCED
GRANT DEED
2009-061427, M.C.R.

4.01 ACRES
174,683 Sq. Ft.

PARCEL A
86 P.M. 22

MERCED CEMETERY
DISTRICT

COUNTY OF MERCED



SCALE: 1" = 100'

P.O.B.

CHILDS AVENUE

B STREET

Lt O.P. 24

DELTA = 66°33'00"
RAD. = 15.00'
LEN. = 17.42'
TAN. = 9.84'



City of Merced

DEVELOPMENT SERVICES
ENGINEERING PROJECTS AND STANDARDS
678 W. 18th Street (209) 385-6846

EXHIBIT B

DR. BY: CARDOSO
DATE: 4/19/16
CH. BY:
DATE:
File No.

SCALE: 1"=100'

FORM OF ACQUISITION NOTE

\$1,080,000

_____, 2020
Merced, California

FOR VALUE RECEIVED, Merced CA Apartments, L.P., a Delaware limited partnership, (the “**Maker**”), having an address of c/o JDF, LLC, 777 West Putnam Avenue, Greenwich CT 06830, promises to pay the **CITY OF MERCED**, or order (“**Holder**”), the initial principal sum of **\$1,080,000**, or so much of said amount which may be advanced from time to time, with simple interest at the rate of **0%** per annum.

1. This Note is made pursuant to Section 201 of that Disposition and Development Agreement dated as of _____, 2020 (collectively, the “**DDA**”) between Maker and Holder to finance the acquisition of the Site. All capitalized terms not otherwise defined herein shall have the meaning set forth in the DDA.

Pursuant to the DDA, Maker has acquired that certain real property defined in the DDA as the “**Site**”, and will construct on the Site a multi-family residential housing project consisting of 119 residential units (the “**Units**”), one of which shall be a manager’s unit and a portion of which shall be rented to qualified very-low income persons and families (the “**Housing Project**”), as described in the DDA between Maker and Holder.

2. Payment of this Note is secured by a deed of trust, assignment of rents, security agreement and fixture filing (the “**Deed of Trust**”) from Maker to Holder upon the Site.

3. The entire outstanding balance of principal and interest owing under this Note shall be due and payable on the date that is fifty-five (55) years from the date hereof (the “**Maturity Date**”). No payments shall be due on this Acquisition Note prior to the Maturity Date. Any unpaid principal amount owing from year to year shall continue to accrue interest. All payments made hereunder shall be credited first to any accrued but unpaid interest, then to current interest due and owing and lastly to principal. Interest not paid current shall accrue and shall not be compounded.

4. The principal of this Acquisition Note may be voluntarily prepaid at any time, in its entirety or in any partial amount, without penalty. Payment shall be made in lawful money of the United States to Holder, 678 West 18th Street, Merced, California 95340. The place of payment may be changed from time to time as the Holder may from time to time designate in writing.

5. A failure to pay any sum due hereunder within ten (10) business days after it is due shall constitute an event of default under this Note.

If written request is made by Maker’s limited partner, Holder shall also deliver a copy of default notice to such limited partner. Any partner of Maker shall have the right to cure

any default within the applicable cure periods set forth hereinabove, whether in its own capacity or on behalf of Maker, and Holder shall accept such cure as if tendered by Maker. However, failure by Holder to deliver such notice to Maker's limited partner shall not be a default under this Note or the DDA.

Upon the occurrence of any event of default, or at any time thereafter that the event of default continues beyond grace/cure period, at the option of the Holder hereof and without notice, the entire unpaid principal and interest owing on this Note shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of Holder's option. Holder's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Holder's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. At all times when Maker is in default hereunder by reason of Maker's failure to pay principal due under this Note, the interest rate on the sums as to which Maker is in default (including principal, if Holder has elected to declare it immediately due and payable), shall be the lower of (i) the highest rate then allowed by law or (ii) two percent (2%) over the prime interest rate announced by Wells Fargo Bank, N.A., as of the date of the default.

8. Maker waives presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consents to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

9. Maker agrees to pay immediately upon demand all costs and expenses of Holder including reasonable attorneys' fees, (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after a default hereunder or under the Deed of Trust, the DDA or under any loan document referred to herein Holder finds it necessary to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, or (iii) if Holder seeks to have the Site abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

10. If Holder shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the property or the title thereto or the interest of the Holder under the Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, Holder shall be reimbursed by maker immediately upon demand for all actual costs, charges and reasonable attorneys' fees incurred by Holder in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Site.

11. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the address stated in this Note or at such address as either party may designate by written notice. Copies of all notices to Maker shall be sent concurrently to Maker's limited partner at c/o JDF, LLC, 777 Putnam Avenue, Greenwich, CT 06830.

12. This Note shall be binding upon Maker, its successors and assigns.

13. This Note shall be construed in accordance with and be governed by the laws of the State of California.

14. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

15. The obligation to repay this Note is a nonrecourse obligation of the Maker.

16. This Note is nonrecourse and neither Maker nor any member, officer, partner or employee of Maker shall have any personal liability for repayment of the sums evidenced hereby, and the Holder must resort only to the Project for repayment should the Maker fail to repay the sums evidenced hereby.

{Signatures continued on next page}

MAKER:

“DEVELOPER”

Merced CA Apartments, L.P., a
Delaware limited partnership

By: Merced Childs & B Street, LLC, a
Delaware limited liability company

Its Managing General Partner

By: Central Valley Coalition for Affordable
Housing, a California nonprofit
corporation, Managing Member

Christina Alley, Chief Executive
Officer

By: Merced CA GP, LLC, a Delaware
limited liability company

Its Administrative General Partner

By: TRG Merced CA Member LLC, a
Delaware limited liability company

Its Sole Member

By: _____
Samantha Anderes, its Treasurer

By: The Richman Group of California
Development Company LLC, a
California limited liability company,
its Co-General Partner

By: _____
Samantha Anderes, its Treasurer

Taxpayer I.D. No. _____

ADDRESS:

c/o JDF, LLC
777 West Putnam Avenue
Greenwich CT 06830
Attention: Joanne D. Flanagan, Esq.

TELEPHONE: (203) 869-0900

FACSIMILE: (203) 496-8569

E-MAIL: flanaganj@jdfllaw.com

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 West 18th Street
Merced, California 95340

**Exempt Recording Per Gov't Code
Section 6103**

ATTACHMENT NO. 9

(Above for Recorder's Use Only)

DEED OF TRUST AND SECURITY AGREEMENT

**In Respect of the
CITY OF MERCED
(Childs Court Apartments Project)**

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made as of _____, ___, by and among Merced CA Apartments, L.P., a Delaware limited partnership ("Trustor"), Fidelity National Title Major Accounts, a California corporation ("Trustee"), and the City of Merced, a California Charter Municipal Corporation ("Beneficiary") for a loan of One Million Eighty Thousand Dollars (\$1,080,000) (the "Acquisition Loan"). FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the City of Merced, County of Merced, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a mean of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to the Property and intended to be installed herein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including the Property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Section 4.1 herein; and

TOGETHER WITH all Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner.

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or

related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security."

To have and to hold the Security, together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING:

(a) Payment of just indebtedness of Trustor to Beneficiary as set forth in the Acquisition Note (defined in Article 1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the Acquisition Note. Said Acquisition Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and (b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and (c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (defined in Section 1.1).

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

ARTICLE 1

DEFINITIONS AND REPRESENTATIONS AND WARRANTIES

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust;

(a) The term "Covenant Agreement and Notice" mean that certain Agreement Containing Covenants Affecting Real Property, dated as of _____, _____, and that certain Notice of Affordability Restrictions, dated as of _____, _____, each to be recorded concurrently herewith in the Official Records of the County of Merced relating to covenants and restrictions relating to the Property that run with the land.

(b) The term "DDA" means that certain Disposition and Development Agreement dated _____, _____, between the City and the Trustor, relating to the acquisition and development of the Property.

(c) The term "Loan Documents" means this Deed of Trust and the Acquisition Note.

(d) The term "Acquisition Note" means the promissory note in the principal amount of One Million Eighty Thousand Dollars (\$1,080,000) dated of even date herewith executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust. (A

copy of the Acquisition Note is on file with the Beneficiary and terms and provisions of the Acquisition Note are incorporated herein by reference.)

(e) The term "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith by and between the Beneficiary and the Trustor.

Section 1.2 Representations and Warranties.

Trustor represents and warrants that (i) Trustor lawfully possesses and holds a fee simple interest in the land and the improvements of the Property, (ii) Trustor has good and marketable title to all of the Property; (iii) other than as limited by the Loan Documents and the Permitted Encumbrances, Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; (iv) subject only to encumbrances of record and senior liens permitted pursuant to the Loan Documents or otherwise approved in writing by Beneficiary ("Permitted Encumbrances"), this Deed of Trust creates a valid lien on Trustor's entire interest in Property; (v) except with respect to Permitted Encumbrances, Trustor owns the Property free and clear of all deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, and (vi) there is no financing statement affecting the Property on file in any public office other than as disclosed in writing to Beneficiary.

In the event that Trustor refinances any of the indebtedness which is senior in lien priority that is secured by this Deed of Trust, Beneficiary agrees that it will resubordinate this Deed of Trust to any deed of trust or other security instruments executed by Trustor in connection with such refinancing so long as such refinancing does not increase the Trustor's annual debt service obligations. Beneficiary further agrees that Trustor shall have the right to assign its rights and obligations under this Deed of Trust and the Acquisition Note pursuant to any sale by Trustor of the Property so long as Trustor obtains Beneficiary's consent to such assignment (such consent not to be unreasonably withheld, conditioned or delayed), and the assignee thereof agrees to assume and perform Trustor's obligations under the Acquisition Note, Deed of Trust and other documents then encumbering the Property in favor of Beneficiary.

ARTICLE 2

MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment of the sum owed under the Acquisition Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition, reasonable wear and tear excepted. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. Beneficiary shall have no

responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof.

Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security.

Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Merced County, a surety bond in an amount 1½ times the amount of such claim item to protect against a claim of lien.

Section 2.2 Granting of Easements.

Without the consent of Beneficiary, Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security; provided, however, that the consent of Beneficiary shall not be required for Trustor to grant easements required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, cable or those required by law.

ARTICLE 3

TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided however, the Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments, Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessment charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within ten (10) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the lesser of seven percent (7%) per annum or the maximum rate permitted by law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay such amounts promptly upon demand by the Beneficiary.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all other obligations secured hereunder are fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense.

Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Beneficiary's receipt of the entire principal, interest accrued thereon and all other amounts secured by this Deed of Trust.

Section 3.3 Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least ten (10) days prior notice to the Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all

amounts so advanced therefor by the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of seven percent (7%) per annum or the maximum rate permitted by law.

ARTICLE 4

DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any material part of or any material interest in the Security by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Security or in any material part thereof by insured casualty, and (3) any other injury or damage to all or any material part of the Security ("Funds") are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option; provided, however, unless an Event of Default shall have occurred and be continuing, so long as the value of Beneficiary's lien is not impaired, all Funds shall be used by Trustor for repair and/or restoration of the Project. The Trustor shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender.

ARTICLE 5

AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property.

The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of any obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees or such other reasonable expenses so incurred by the Beneficiary;

and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of seven percent (7%) per annum or the maximum rate permitted by law.

Section 5.3 Payment of the Principal.

The Trustor shall pay to the Beneficiary the principal and any other payments including interest as set forth in the Acquisition Note in the amounts and by the times set out therein.

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Acquisition Note in accordance with their terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon forty-eight (48) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

Section 5.8 Nondiscrimination.

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on any basis listed in subdivision (a) or

(d) of Section 12955 of the Government Code (race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability or any other basis prohibited by California Civil Code § 51), as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

ARTICLE 6

HAZARDOUS WASTE

Section 6.1 Hazardous Waste.

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state, or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” under any applicable federal or state laws or regulations (collectively referred to hereinafter as “Hazardous Materials”) except such of the foregoing as may be customarily kept and used in and about multifamily residential property.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, (“Hazardous Materials Law”); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above hereinafter referred to a “Hazardous Materials Claims”); and (iii) Trustor’s discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as “border-zone property” under the provision of California Health and Safety Code, Sections 25220 et. seq. or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy transferability or use of the Property under any Hazardous Materials Law.

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys’ fees in connection therewith paid by Trustor. Trustor shall indemnify and

hold harmless Beneficiary, and their respective councilmembers, board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any actual loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened releases, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) intentionally omitted; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (s) and (b), including but not limited to reasonable attorneys' fees. Notwithstanding the foregoing, the above indemnification obligations shall not extend to those activities caused by the gross negligence or willful misconduct of Beneficiary, its agents, employees and representatives as described above.

Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgment, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its

rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5 (a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release of threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5 (d) (1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by an lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5 (b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the rate specified in the Acquisition Note until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

ARTICLE 7

EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default.

The following shall constitute Events of Default following the expiration of any applicable notice and cure periods: (1) failure to make when due any payment to be paid by Trustor under the Loan Documents and such failure continues for ten (10) days after written notice from the City of the failure; or (2) failure to observe or perform any of Trustor's other covenants, agreement or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination, or failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other debt instruments or regulatory agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein; provided, if a cure period has not otherwise been specified, Beneficiary shall have given the Trustor and the Trustor's limited partner notice of such default hereunder and at least thirty (30) days (or such additional time as Beneficiary may determine to be reasonably necessary) within which to cure such default before Beneficiary shall have the remedies described herein. Notwithstanding anything to the contrary contained herein, Beneficiary hereby agrees that any cure of any default made or tendered by one or more of Trustor's limited partners shall be deemed to be a cure by Trustor and shall be accepted or rejected on the same basis as if made or tendered by Trustor.

Copies of all notices which are sent to Trustor hereunder shall also be to:

U.S.A. Institutional Tax Credit Fund CXXXIV L.P.
c/o JDF, LLC
777 West Putnam Avenue
Greenwich CT 06830
Attention: Joanne D. Flanagan, Esq.

Section 7.2 Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and the unpaid principal and interest of the Acquisition Note shall immediately become due and payable in full, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Default (as defined below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Default and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclosure this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Default and Election to Sell"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Merced County; or

(d) Exercise all other right and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other documents or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

Section 7.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclosure by exercise of power of sale herein contained, the Beneficiary shall give notice to the Trustee (the "Notice of Sale") and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid principal amount of the Acquisition Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then required by law and after recordation of such Notice of Default and Election to Sell and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid principal amount of the Acquisition Note and all accrued and unpaid interest thereon; (ii) all other amounts owed to Beneficiary under the Loan Documents, (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may in its discretion, give a new Notice of Sale.

Section 7.5 Receiver.

If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereto), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefore.

Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or any breach by the Trustor in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of obligations of the Trustor hereunder.

Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (iv) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, cosigner, endorser, surety or guarantor *(unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted on any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security.

Following an Event of Default by Trustor, Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental

enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Beneficiary May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security hereunder or be prejudicial to the interest of the Beneficiary.

Section 7.10 Waiver.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Beneficiary acknowledges that Trustor and the California Tax Credit Allocation Committee ("CTCAC") intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(B) of the Internal Revenue Code, as amended (the "Code"). Notwithstanding anything to the contrary contained herein, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Property encumbered by this Deed of Trust, the following rule contained in Section 42(H)(6)(E)(ii) of the Internal Revenue Code of 1986 (26 USC 42(h)(6)(E)(ii)), as amended, shall apply: "For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the Regulatory Agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code."

ARTICLE 8

MISCELLANEOUS

Section 8.1 Indemnification. Trustor shall indemnify, defend (with counsel reasonably satisfactory to Beneficiary), and hold the Trustee and the Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, "Indemnitees") harmless from and against any and all actual loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all

of the foregoing, hereafter individually "Claim" and collectively "Claims") arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any Loan Document other than the failure to repay the Loan, (b) any representation by Trustor in any Loan Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Property or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any Loan Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Trustor under this Section 8.1 shall survive the repayment of the Loan and shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

Section 8.2 Amendments.

This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary, Trustee and Trustor.

Section 8.3 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.4 Notices.

If at any time after the execution of this Deed of Trust it shall become necessary to convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and if intended for Beneficiary shall be addressed to:

TO CITY: City of Merced
 678 West 18th Street
 Merced, CA 95340
 Attention: Housing Division & City Clerk

With a Copy to: City Attorney's Office
City of Merced
678 West 18th Street
Merced, CA 95340

TO DEVELOPER: Merced CA Apartments, L.P., a Delaware limited partnership
c/o JDF, LLC
777 West Putnam Avenue
Greenwich CT 06830
Attention: Joanne D. Flanagan, Esq.

With a Copy to: The Richman Group of California Development Company LLC
420 31st Street Suite B1
Newport Beach, CA 92663
Attention: Rick Westberg

TO INVESTOR: U.S.A. Institutional Tax Credit Fund CXXXIV L.P.
c/o JDF, LLC
777 West Putnam Avenue
Greenwich, CT 06830
Attention: Joanne D. Flanagan, Esq.

With a Copy to: Kraus Lam LLC
230 W. Monroe St.
Chicago, IL 60606
Attention: Daniel Kraus, Esq.

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 8.5 Successors and Joint Trustors.

Where an obligation is created herein binding upon Trustor, obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligations of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligations of each and every entity and person comprising Trustor.

Section 8.6 Captions.

The Captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.7 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 8.8 Governing Law.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 8.9 Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.10 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

Section 8.11 Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.12 Venue. This Deed of Trust and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Deed of Trust shall be held exclusively in a state of court in the County of Merced.

Section 8.13 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, continuing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.14 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.15 Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; (iii) any waste committed by Trustor, the lessees of the Property or any third parties, or any dangerous or defective condition of the Property; or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence, or bad faith of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in subclauses (i) - (iv) of this Section 8.15 and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary, except to the extent caused by the willful misconduct, gross negligence or bad faith of Beneficiary.

Section 8.16 Acceptance by Trustee.

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

IN WITNESS WHEREOF the parties hereto have executed this Deed of Trust as of the date first above written.

[Signatures on Next Page]

“DEVELOPER”

Merced CA Apartments, L.P., a
Delaware limited partnership

By: Merced Childs & B Street, LLC, a
Delaware limited liability company

Its Managing General Partner

By: Central Valley Coalition for Affordable
Housing, a California nonprofit
corporation, Managing Member

Christina Alley, Chief Executive
Officer

By: Merced CA GP, LLC, a Delaware
limited liability company

Its Administrative General Partner

By: TRG Merced CA Member LLC, a
Delaware limited liability company

Its Sole Member

By: _____
Samantha Anderes, its Treasurer

By: The Richman Group of California
Development Company LLC, a
California limited liability company,
its Co-General Partner

By: _____
Samantha Anderes, its Treasurer

Taxpayer I.D. No. _____

ADDRESS:

c/o JDF, LLC
777 West Putnam Avenue
Greenwich CT 06830
Attention: Joanne D. Flanagan, Esq.

TELEPHONE: (203) 869-0900

FACSIMILE: (203) 496-8569

E-MAIL: flanaganj@jdfllaw.com

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }

County of _____ }

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT A

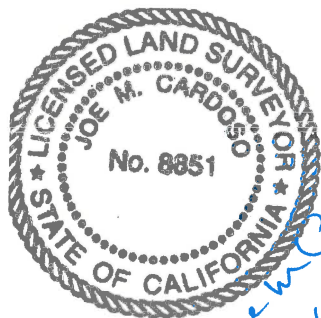
A parcel of land situated in the Southeast One Quarter (SE1/4) of Section 30, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, said parcel of land being a portion of Parcel A, as said Parcel A is delineated on that certain map entitled "PARCEL MAP FOR RAYMOND A. BESSEMER M.D.", filed for record on March 2, 2000, in the office of the County Recorder of Merced County, in Book 86 of Parcel Maps, at Pages 22-23, said parcel of land being more particularly described as follows:

All of said Parcel A, EXCEPTING THEREFROM the following real property:

BEGINNING at the southwest corner of said Parcel A; thence N24°39'01"E, along the west line of said Parcel A, a distance of 211.87 feet; thence S6S° 21' 00" E, to the easterly line of said Parcel A, a distance of 320.00 feet; thence S24°39'01"W, along said easterly line, a distance of 63.21 feet to the beginning of a tangent curve concave to the northwest, having a radius of 15.00 feet; thence southwesterly along said curve, through a central angle of 66°33'00", an arc distance of 17.42 feet to a point of tangency on the south line of said Parcel A; thence N88°48'00"W, along said south line, a distance of 338.97 feet to **POINT OF BEGINNING.**

The above-described parcel of land is delineated on Exhibit B, attached hereto, and made a part hereof.

The above-described parcel of land contains 4.01 acres, more or less, is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.



Joe M. Cardoso
1/2/2020

PARCEL 2
94 P.M. 33

PARCEL 1
94 P.M. 33

COUNTY OF MERCED
GRANT DEED
2009-061427, M.C.R.

4.01 ACRES
174,683 Sq. Ft.

PARCEL A
86 P.M. 22

MERCED CEMETERY
DISTRICT

COUNTY OF MERCED



SCALE: 1" = 100'

N24°39'01"E 757.80'

S65°19'58"E 320.00'

15 R.S. 11

S24°39'01"W 609.06'

B STREET

S65°21'00"E 320.00'

1.05 ACRES
45,570 Sq. Ft.

N88°48'00"W 338.97'

P.O.B.

CHILDS AVENUE

DELTA = 66°33'00"
RAD. = 15.00'
LEN. = 17.42'
TAN. = 9.84'

Lt O.P. 24



City of Merced
DEVELOPMENT SERVICES
ENGINEERING PROJECTS AND STANDARDS
678 W. 18th Street (209) 385-6846

EXHIBIT B

DR. BY: CARDOSO
DATE: 3/19/16
CH. BY:
DATE:
File No.
SCALE: 1"=100'