

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**

(Above for Recorder's Use Only)

DEED RESTRICTION COVENANT AND LOAN AGREEMENT

**In Respect of the
CITY OF MERCED
COMMUNITY HOUSING DEVELOPMENT ORGANIZATION
HOME INVESTMENT PARTNERSHIP PROGRAM**

**(Childs and B Street Transit-Oriented Development ("TOD") Affordable Housing
Project)**

THIS DEED RESTRICTION COVENANT AND LOAN AGREEMENT ("Loan Agreement"), dated _____, __, ____, entered into by and between the City of Merced, a California Charter Municipal Corporation, ("City"), Merced CA Apartments, L.P., a Delaware Limited Partnership ("Developer"), and Central Valley Coalition for Affordable Housing, a California nonprofit corporation ("Sponsor"):

A. Pursuant to that certain Disposition and Development Agreement ("DDA") between the City and the Developer dated _____, __, ____, the City has agreed to provide a loan of One Million One Hundred Forty Five Thousand Dollars (\$1,145,000) (the "CHDO HOME Loan") to the Sponsor, who is the managing member of the Managing General Partner to the Developer, for the construction of a multi-family affordable residential rental project (the "Project") on that certain real property generally known as 1137 "B" Street, Merced, California 95341 (APN 035-010-071), and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property" or "Site").

B. The Project consists of one hundred nineteen (119) rental dwelling units. Of the 119 units in the Project, six (6) units described below (the "HOME Assisted Units") shall be restricted under HOME Investment Partnership Program regulations as more particularly set forth

in the Regulatory Agreement. Should the Developer have multiple restrictions on unit affordability required by other funding sources, the Developer shall adhere to the more restrictive (lower) income limits.

C. The CHDO HOME Loan shall be funded from a grant in the amount of One Million One Hundred Forty-Five Thousand Dollars (\$1,145,000) from HUD made to the City pursuant to the Community Housing Development Organization HOME Investment Partnership Program funds ("CHDO HOME Program"). Sponsor shall use the CHDO HOME Loan proceeds to make a loan to the Developer on the same terms set forth in this Loan Agreement.

D. The CHDO HOME Loan is being made pursuant to the HOME Program, established and governed by Title II of Public Law No. 101-625, 104 Stat. 4079 (Nov. 28, 1990), (42 USC 12701), known as the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended by the Housing and Community Development Act of 1992, Public Law No. 102-550, and is subject to the requirements of 24 CFR part 92, the State HOME Investment Partnerships Program Act (25 CCR Sections 8200 et. seq.) and the State Uniform Multifamily Regulations (25 CCR Sections 8300 et. seq.), as applicable.

E. The City is providing additional assistance to the Project in the form of: (a) an Enterprise Fund grant in the amount of \$1,470,000 to the Sponsor ("Enterprise Grant"); b) a HUD Section 108 loan in the amount of \$1,685,000 ("Section 108 Loan") to the Developer; and a Low and Moderate Income Housing Asset Fund loan in the amount of \$1,200,000 ("Housing Successor Loan") to the Developer.

F. In addition, HCD awarded \$13,950,000 in Affordable Housing and Sustainable Communities ("AHSC") Program Funds consisting of 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 ("AHSC Grant") 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") (collectively, the "AHSC Grant", and collectively with the AHSC Loan, the "AHSC Financing").

G. The Housing Successor Loan shall assist with the construction of the 30 PSH Units restricted to 30% AMI. The Housing Successor Loan is subject to the requirements of HSC Sections 34176 and 34176.1.

ARTICLE I. LOAN OF CHDO HOME FUNDS

SECTION 1.01 CHDO HOME Loan. Subject to the satisfaction of the conditions set forth herein, the City loans to the Sponsor the amount of One Million One Hundred Forty Five Thousand Dollars (\$1,145,000) in CHDO HOME Program funds for the primary purpose of assisting with the construction of 119 rental dwelling units, of which 6 will be designated as HOME units.

As a condition of the receipt of said CHDO HOME Loan, the Sponsor agrees to cause the Developer to carry out the project as generally described in DDA. In addition, Sponsor shall use the CHDO HOME Loan proceeds to make a loan to the Developer on the same terms set forth in this Loan Agreement. In accordance with 24 CFR Section 92.504(c)(vi), Sponsor may periodically submit claims for disbursement of the CHDO HOME Loan when the funds are needed for reimbursement of eligible costs identified in the Developer's budget. The amount of each such request shall be limited to the amount reimbursed. The request shall be accompanied by documentation of expenditures in such form as may be required by the City, including but not limited to submission of copies of documents such as paid invoices, payroll, time sheets, and other supporting source documents.

Sponsor shall be liable for repayment of any CHDO HOME Program grant proceeds disbursed to Sponsor that are subsequently determined to constitute disallowed costs. Disallowed costs may be identified through audits, monitoring, or other sources. City shall make the final determination of disallowed costs subject to provisions of applicable CHDO HOME Program regulations.

The CHDO HOME Loan is to be evidenced by a Note executed by Sponsor in favor of City and delivered to City concurrently herewith (the "CHDO HOME Note"). Repayment of the CHDO HOME Note is to be secured by the Developer's Deed of Trust and Security Agreement in favor of Sponsor of even date hereof (the "Developer Trust Deed"), covering the Property and the Project.

That certain Regulatory Agreement and Declaration of Restriction Covenants of even date hereof (the "Regulatory Agreement") imposing covenants, conditions and restrictions running with the land is a material consideration for the making of the CHDO HOME Loan. Developer shall execute the Regulatory Agreement and deliver it to escrow for recordation. This Deed Restriction and Loan Agreement, the DDA, the CHDO HOME Promissory Note, Developer Trust Deed, Regulatory Agreement and documents related thereto, are referred to herein as the "Loan Documents."

SECTION 1.02 Conditions of Funding. The obligation of the City to disburse CHDO HOME Loan proceeds pursuant to this Loan Agreement is subject to the following conditions:

1. Sponsor shall provide the City with a corporate resolution or similar document approving and authorizing execution of this Loan Agreement and all documents contemplated hereby and with such other documents required by the City regarding Sponsor's corporate status and ability to enter into this transaction.

2. Sponsor shall or shall cause the Developer to provide the City with Certificates of Insurance in form and with insurers admitted in California acceptable to the City, evidencing compliance with the insurance requirements of this Loan Agreement on or prior to close of escrow on the property and upon demand by City at any time subsequent. If requested by the City, Sponsor shall also provide copies of the required insurance policies.

3. As a material inducement to City to enter into this Loan Agreement and to make the CHDO HOME Loan to Sponsor, Sponsor unconditionally, and each signatory who signs on its behalf, to the extent of their actual knowledge, represents and warrants to City, as of the date hereof, as follows:

(a) Sponsor is duly formed and validly exists in the form stated in Article I, is qualified to do business in California, and has full power to consummate the transactions contemplated.

(b) Sponsor has full authority to execute this Loan Agreement, the CHDO HOME Note, the Regulatory Agreement and all of the other Loan Documents, to undertake and consummate the contemplated transactions, and to pay, perform, and observe all of the conditions, covenants, agreements, and obligations.

(c) This Loan Agreement, the CHDO HOME Note, the Regulatory Agreement and each of the other Loan Documents constitutes a legal and binding obligation of, and is valid and enforceable against, each party other than City, in accordance with the terms of each.

(d) There are no actions, suits, or proceedings pending or, to the best knowledge of Sponsor, threatened against or affecting Sponsor, the Property, or any part of it, or involving the validity or enforceability of the priority of the lien, or the validity or enforceability of any of the other Loan Documents, at law or in equity, or before or by any local, state or federal governmental agency. Sponsor is not in default with respect to any order, writ, injunction, decree, or demand of any court or other local, state or federal governmental agency.

(e) The consummation of the transactions covered by this Loan Agreement and the payment and performance of all of the obligations in the Loan Documents will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, contract, loan or credit agreement, corporate charter, bylaws, partnership agreement, trust agreement, or other instrument to which the Sponsor or any of its general partners is a party or by which it or they or the Property may be bound or affected.

(f) There is no event of default or potential default on the part of Sponsor under the Loan Documents or any other document relating to the financing of the Project.

(g) Sponsor has not received financing for either the acquisition of the Property, the construction of the Project or the permanent financing of the Project except as has been specifically disclosed to and approved by City in writing.

(h) All proceeds of the CHDO HOME Loan will be disbursed as provided in this Loan Agreement and used only for reimbursement of the costs of construction of the Project in accordance with the Plans and Specifications (as defined in the DDA) and for other purposes specified in the DDA and this Loan Agreement.

(i) The Plans and Specifications are satisfactory to Sponsor and its general contractor and have been approved by the City and all other construction lenders. There are no structural defects in the Project as shown in the Plans and Specifications that are known to or reasonably should have been known to Sponsor or its agents and employees, and to the best of Sponsor's knowledge, no violation of any law, ordinance, order, rule, regulation, plan, ruling, determination or requirement of a local, state or federal governmental agency exists.

(j) All applications, financial statements, reports, documents, instruments, information, and forms of evidence delivered to City concerning the CHDO HOME Loan or required by this Loan Agreement or any of the other Loan Documents are accurate, correct and sufficiently complete to give City true and accurate knowledge of their subject matter, and do not contain any untrue statement of a material fact or omit any material fact necessary to make them not misleading.

SECTION 1.03 Terms and Repayment of Loan. The parties agree that additional assistance in the Project is being provided by the City in the form of a Community Housing Development Organization HOME Investment Partnership Program loan ("CHDO HOME Loan"). Said CHDO HOME Loan shall equal One Million One Hundred Forty-Five Thousand Dollars (\$1,145,000). The annual percentage rate shall be at the rate of zero percent (0%) from the date of initial advance by the City until completion of construction of the Development, as evidenced by the issuance of the certificate of occupancy for the Development (the "Conversion Date"), and thereafter, shall bear simple interest at the rate of three percent (3%) per annum until repaid. Each monthly draw request of funds shall be made by the Sponsor to the City. Said request shall include copies of paid invoices to substantiate each line item requested. The City shall provide funds for all expenses incurred each month, up to a cumulative total of One Million One Hundred Forty-Five Thousand Dollars (\$1,145,000).

The CHDO HOME Loan's term shall be fifty-five (55) years following the Conversion Date, with payments made from Developer's Net Cash Flow (as defined in the DDA). The annual principal and interest, if any, payments shall be made by the 1st of the sixth month following the conclusion of each fiscal year of the Project.

Sponsor shall have the right to prepay the CHDO HOME Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest, if any, accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest, if any, and then to principal. Any such prepayment shall have no effect upon Sponsor's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement.

Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the CHDO HOME Note shall be due and payable at the end of the HOME Loan's 55-year term, or upon the transfer of the Property absent the prior written consent of City of all or any part of or interest in the Property except as otherwise permitted pursuant to this Loan Agreement or the DDA.

Notwithstanding any provision of this Loan Agreement or any document evidencing or securing this CHDO HOME Loan, Sponsor, and Sponsor's principals, partners, members, agents, officers, and successors in interest shall not be personally liable for the payment of the CHDO HOME Loan or any obligation of the CHDO HOME Loan.

SECTION 1.04. Net Cash Flow For the purposes described in Section 1.03 of this Loan Agreement, Net Cash Flow shall be defined as follows as defined in the DDA:

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).

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 of Developer 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 by Developer 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).

SECTION 1.05. Subordination of Housing Successor Loan, CHDO HOME Loan, and Section 108 Loan. The City agrees that each of the deeds of trust securing the Housing Successor Loan, CHDO HOME Loan, and Section 108 Loan and Agreement Containing Covenants shall be subject and subordinate to the terms and conditions of a construction and/or permanent deeds of trust and 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.

ARTICLE II. OPERATION OF THE PROJECT

SECTION 2.01. Acceptance of Obligations. In consideration of the Loan to be provided hereunder, Sponsor agrees to and accepts the restrictions, obligations, and conditions contained in this Loan Agreement, including without limitation, the occupancy and rent requirements set forth in Section 2.04 below.

SECTION 2.02. Development and Operation of Project. Sponsor shall maintain the Property for rental housing in accordance with this Loan Agreement, and all other applicable legal requirements. Sponsor shall at all times maintain in full force and effect all applicable licenses required by the City of Merced, the County of Merced, and/or the State of California to operate and manage the property.

SECTION 2.03 CHDO HOME Requirements. Sponsor shall comply with all applicable laws and regulations governing the use of the CHDO HOME Program funds including, but not limited to, the terms and conditions of the Standard Agreement, all applicable regulations contained in 24 CFR Part 92, and applicable requirements and conditions referenced on Exhibit B – “Special Requirements of the HOME Investment Partnership Program” attached hereto and incorporated herein by reference.

In the event HUD formally amends, waives or repeals any HUD administrative regulation previously applicable to Sponsor’s performance under this Loan Agreement, the City expressly reserves the right upon giving notice to HUD and Sponsor, to require performance of Sponsor as though the regulation was not amended, waived, or repealed subject only to the written and binding direction or instruction from HUD.

SECTION 2.04. Occupancy and Rent Requirements.

A. Occupancy Requirement. During the term of this Loan Agreement, Sponsor agrees to cause the Developer to rent the property only to tenants whose income meet the requirements contained in 24 CFR Section 92.252. This provision shall operate as a deed restriction during the term of this Loan Agreement. Should the annual income limit differ between the CFR and other applicable regulatory agencies in a given year, the Sponsor shall adhere to the more restrictive (lower) income limits.

B. Rent Requirement. Initial rent shall be established in accordance with 24 CFR 92.252 and any increases shall not exceed the permitted rent under 24 CFR 92.252. Should the annual rent limit differ between the CFR and other applicable regulatory agencies in a given year, the Sponsor shall adhere to the more restrictive (lower) rent limits.

C. Records Relating to Occupancy and Rental Requirements. Sponsor shall cause the Developer maintain all documents used in determining the qualifications of occupants, complete records of rent and other charges billed to and received from all occupants, and such other documents and reports as are necessary to enable the City, as recipient of CHDO HOME Program

funds, to meet the recording requirements of 24 CFR Part 92, sub part K 92.508. The records and documents described in the preceding sentence shall be maintained for the periods and in the manner set forth in Section 2.06 below. The City shall have the right to review and audit such documents and records for compliance with requirements of this Section.

D. Noncompliance with Rent Restrictions; Return of Funds. If the maximum rent authorized to be charged by 24 CFR 92.252 is exceeded for the period specified by 24 CFR 92.252, the grant funds loaned hereunder to Sponsor shall be returned to City pursuant to 24 CFR 92.504(c)(3)(ii).

SECTION 2.05. Corporate Status. At all times during the term of this Loan Agreement, Sponsor shall maintain its existence and shall comply with all provisions of the California Law (Corporations Code Section 5000 *et. seq.*)

SECTION 2.06. Records and Audits.

A. Maintenance of Records. Sponsor shall maintain records including, but not limited to, books, financial records, supporting documents, statistical records, and all other pertinent records sufficient to accurately reflect all expenditures under this Loan Agreement, and all other matters covered by this Loan Agreement pursuant to 24 CFR 92.

Sponsor shall preserve and make available its records relating to receipt and use of CHDO HOME Loan proceeds until the expiration of seven (7) years from the date of final disbursement of CHDO HOME grant proceeds to the City, or for such longer period, if any, as required by law.

B. Annual Audit. Each year in which CHDO HOME Loan proceeds are received or expended, Sponsor shall cause to be prepared an independent fiscal audit conducted in accordance with generally accepted auditing principles, which audit shall identify the CHDO HOME Loan proceeds received and expended.

Upon completion, Sponsor shall provide the City with a copy of each annual independent fiscal audit.

C. Examination of Records and Facilities. Any time during normal business hours, and as often as may be deemed necessary, the Sponsor agrees that HUD or the City or any duly authorized employee or representative, shall have access to and the right to examine Sponsor's offices or facilities engaged in performance of this Loan Agreement, and all the Sponsor's records with respect to all matters covered by this Loan Agreement.

SECTION 2.07. Insurance. Sponsor shall maintain, throughout the term of this Loan Agreement, insurance from companies admitted in California, and approved by the City, in amounts as follows:

A. Workers' Compensation Insurance, including Employers' Liability coverage, with limits not less than required by California law.

Comprehensive General Liability Insurance with limits of not less than \$1,000,000 for each occurrence combined single limit bodily injury and property damage, including coverage for contractual liability.

B. Property Insurance covering the Property in a form appropriate for the nature of this Property covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with a deductible, if any, acceptable to the City, naming City as loss payee as its interest may appear.

C. The General Liability Insurance provided hereunder shall name the City as an additional insured and all insurance shall provide the City with thirty (30) days written notice of any cancellation.

ARTICLE III. DEFAULT, ENFORCEMENT, AND REMEDIES

SECTION 3.01. Default. Failure by either party to timely perform any material term or provision of this Loan Agreement (including, without limitation, failure by Sponsor to comply with the occupancy and rent requirements of Section 2.04 above), shall be considered a Default by that party under this Loan Agreement. The non-defaulting party shall serve written notice of a Default, upon the defaulting party. If such 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.

Section 3.02. Default by Sponsor. In the event Sponsor is in default, City may proceed with any and all remedies available under rules of law or equity including, without limitation, specific performance. Additionally, in the event of such default, the Sponsor shall repay to City all loan funds under this Loan Agreement received by Sponsor with interest at the rate of seven percent (7%) per annum.

Section 3.03 Non-Waiver of Default. Failure or delay in giving notice of any Default shall not constitute a waiver of any Default, nor shall it change the time of such Default. Any failure or delay by either party in asserting 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 either 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.

Section 3.04 Suspension and Termination. In the event a Default is declared that is not immediately cured, City shall have the right, but not the obligation, to suspend this Loan

Agreement and to terminate this Loan Agreement for any uncured Default or a material breach of any provision or requirement hereof pursuant to 24 CFR 85.43.

ARTICLE IV. GENERAL PROVISIONS

SECTION 4.01 Notices. Any notice, tender, or delivery to be given hereunder by either party to the other may be effected in writing either by personal delivery or sent by first class mail through the United States Postal Service, addressed as set forth below. Either party may change its address by written notice in accordance with this section.

TO CITY:	City of Merced 678 West 18 th Street Merced, CA 95340 Attention: Housing Division & City Clerk
With a Copy to:	City Attorney's Office City of Merced 678 West 18 th Street Merced, CA 95340
TO SPONSOR:	Central Valley Coalition for Affordable Housing 3351 "M" Street, Suite 100 Merced, California 95348 Attention: Christina Alley
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:	USA Institutional Tax Credit Fund CXXXIV 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:	Kraus Lam LLC 230 W. Monroe St. Chicago, IL 60606 Attention: Daniel Kraus, Esq.

SECTION 4.02 Assignment. Sponsor acknowledges and agrees that the Loan is being provided in consideration of its special expertise, skill, and ability of Sponsor to cause the Developer to operate and maintain the Property in a manner that will achieve the City's objective to provide quality affordable housing for lower income households. Consequently, Sponsor shall not permit any voluntary transfer, assignment, or encumbrance of this Loan Agreement without first obtaining the City's written consent, which shall not be unreasonably withheld. Any transfer, assignment, encumbrance, or lease without the City's consent shall be voidable and, at the City's sole discretion, shall constitute a material breach of this Loan Agreement.

SECTION 4.03 Non-Discrimination. In addition to observing any other CHDO HOME requirements relating to non-discrimination, such as 24 CFR 92.350, Sponsor shall assure, in connection with the performance of this Loan Agreement, that no person shall be subject to discrimination because of race, religion, ethnic background, sex, sexual preference, orientation, identity, or disability.

SECTION 4.04 No Third Party Beneficiaries. Nothing contained in this Loan Agreement shall be construed as creating a relationship of employer and employee or principal and agent between the City and Sponsor or Sponsor's agents or employees. Nothing contained in this Loan Agreement shall create or justify any claim against City by any third person with whom Sponsor may have employed or contracted.

SECTION 4.05 Indemnification. As a separate and independent covenant and irrespective of any insurance coverage, Sponsor shall take all responsibility for its performance, and shall bear all losses and damage directly resulting to it, and for performance of any of its contractors, subcontractors or agents.

Sponsor agrees to defend with counsel selected by the City, protect, indemnify, and hold harmless the City, its officers, employees, representative, and agents, on account of any act, error, or omission of Sponsor in the performance of this Loan Agreement.

Sponsor agrees to indemnify, protect, to assume the defense of with counsel selected by the City, and to hold harmless the City, its officers, employees, and agents from every claim, loss, damage, injury, expense, including attorney's fees, judgment, and direct or vicarious liability of every kind, nature, and description arising in whole or in part from the performance of this Loan Agreement.

SECTION 4.06 Covenant Running With Land. The provisions of this Loan Agreement shall constitute covenants which shall run with the land and be binding upon Sponsor and Sponsor's successors and assigns, and all parties having or acquiring any right, title, interest in whatever form, including, but not limited to, leasehold interests, in and to any part of the Property, except that, subject to the Regulatory Agreement and if specifically referenced herein, the same shall terminate and become void forty (40) years from the date of execution of this Loan Agreement. Any attempt to transfer title or any interest therein in violation of these covenants, except as herein provided, shall be void.

SECTION 4.07 Term. The term of this Loan Agreement shall commence upon the date of this Loan Agreement and shall continue for fifty-five (55) from the Conversion Date unless earlier terminated by the parties hereto. Upon termination or expiration of hereof, Sponsor shall transfer any CHDO HOME funds on hand and any accounts receivables attributable to the use of CHDO HOME funds to the City.

SECTION 4.08 Entire Agreement. This Loan Agreement constitutes the entire Agreement between the City and Sponsor with respect to the subject matter hereof.

SECTION 4.09 Amendments. The City and Sponsor reserve the right to amend this Loan Agreement by mutual consent. It is understood and agreed that no alteration or variation of the terms of this Loan Agreement shall be valid unless made in writing and signed by the parties, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms of this Loan Agreement shall be binding on either of the parties, unless made in writing and signed by both of the parties.

SECTION 4.10 Severability. The invalidity of any clause, part, or provision of this Loan Agreement shall not effect the validity of the remaining portions thereof.

SECTION 4.11 Exhibits. The following referenced exhibits are attached to this Loan Agreement and are incorporated in this Loan Agreement as though fully set forth herein.

Exhibit A: Legal Description of Property

Exhibit B: Special Requirements of CHDO HOME Investment Partnership Program

SECTION 4.12 Venue. This Loan Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Loan Agreement shall be held exclusively in a state court in the County of Merced.

SECTION 4.13. Other Program Requirements. Sponsor is required by this Loan Agreement to carry out each activity in compliance with all federal laws and regulations described in Subpart H of 24 CFR 92, except that Sponsor does not assume the City's responsibility for environmental review in Section 92.352 or the intergovernmental review process in Section 92.357. Neither City nor Sponsor may have an officer or employee occupy the Property in violation of 24 CFR 356(f) as required by 24 CFR 504(c)(v)(E). The Property shall, after construction and for the term of this Loan Agreement, meet the property standards set forth in 24 CFR 92.251.

SECTION 4.13 Affirmative Marketing. Sponsor must comply with the City's affirmative marketing procedures and requirements adopted in accordance with 24 CFR Section 92.351.

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

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, INTERIM CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Shirley A. Hahn 9-29-2020
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

“SPONSOR”

Central Valley Coalition for Affordable Housing, a California nonprofit corporation

By: _____
Christina Alley, Chief Executive Officer

ADDRESS:

3351 “M” Street, Suite 100
Merced, California 95348
Attention: Christina Alley

TELEPHONE: _____

FACSIMILE: _____

E-MAIL: _____

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.

Signature

Place Notary Seal Above

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.

Signature

Place Notary Seal Above

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.

Signature

Place Notary Seal Above

Signature of Notary Public

Exhibit A: Legal Description of Property

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'

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'

Exhibit B: Special Requirements of HOME Investment Partnership Program

The State of California Department of Housing and Community Development, HOME Contract Management Manual, dated April 2006, as amended from time to time, contains relevant requirements for recipients of HOME Program funds, and is hereby incorporated into the Regulatory Agreement.