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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)

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

**In Respect of the
CITY OF MERCED
acting solely as the Housing Successor Agency to the
Merced Redevelopment Agency**

(Childs Court Apartments Project)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of _____, ____, by and between the City of Merced, a California Charter Municipal Corporation, acting solely as the Housing Successor Agency to the Merced Redevelopment Agency, ("Agency") and Merced CA Apartments, L.P., a Delaware limited partnership (the "Developer") (collectively referred to as the "Parties").

RECITALS

A. Pursuant to that certain Enforceable Funding Commitment Agreement ("Commitment Agreement") between the City and the Richman Group of California Development Company LLC, a California Limited Liability Company, dated _____, ____ and that certain Disposition and Development Agreement ("DDA") between the City and the Developer dated _____, ____, which is incorporated herein by this reference, the City has agreed to provide a loan of One Million Two Hundred Thousand Dollars (\$1,200,000) from Low and Moderate Income Housing Asset Funds (the "Housing Successor Loan") to Developer for the construction of a multi-family affordable housing 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").

A. The Project consists of one hundred nineteen (119) rental dwelling units. Of the 119 units, 89 affordable housing units, consisting of 17 – 1 bedroom, 36 – 2 bedroom, and 36 – 3 bedroom units will be restrict to households with incomes at or below fifty percent (50%) of the Area Median Income ("AMI") for Merced County, with adjustments for family size, as determined from time to time by the U.S. Department of Housing and Urban Development ("HUD") pursuant to the United States Housing Act of 1937 as amended and the California Department of Housing and Community Development ("HCD") pursuant to California Health and Safety Code ("HSC") Section 50093; and thirty (30) units will be designated as permanent supportive housing units for those who are homeless or at risk of homelessness and restricted to thirty percent (30%) AMI ("PSH Units").

B. 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 ("Enterprise Grant") to the managing member of the managing general partner of Developer (Central Valley Coalition for Affordable Housing) who shall loan the funds to the Developer; (b) a HOME Fund loan in the amount of \$1,145,000 ("HOME Loan") to the managing member of the managing general partner of Developer who shall loan the funds to Developer; and (c) a HUD Section 108 loan in the amount of \$2,000,000 ("Section 108 Loan").

C. In addition, HCD awarded \$13,950,000 in Affordable Housing and Sustainable Communities ("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 ("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").

D. Additionally, the Housing Authority of the County of Merced has awarded 30 Project Based Vouchers for 30 one-bedroom, one-bath units for a 15-year term, as more specifically described in an award letter dated January 11, 2019.

E. 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 HSC Sections 34176 and 34176.1.

F. The Housing Successor Loan is evidenced by a Promissory Note and Deed of Trust and Security Agreement of even date herewith. The Commitment Agreement, DDA, Loan Agreement, Promissory Note, Deed of Trust, and this Agreement are collectively referred to herein as the "Loan Documents" pertinent to the Housing Successor Loan and incorporated herein by this reference. The Deed of Trust shall be recorded in the Official Records of Merced County ("Official Records") concurrently herewith.

G. As a condition of receiving the Housing Successor Loan, Developer agrees to place specified restrictions upon the use and transfer of the Property, including without limitation the restrictions referenced in Recitals A and E.

H. The Parties intend that the covenants set forth in this Agreement shall run with the land and be binding upon Developer and Developer's successors and assigns as further provided herein.

I. Capitalized terms not defined herein, if any, shall have the meaning ascribed to them in the DDA.

NOW THEREFORE, in consideration of the Housing Successor Loan and other valuable consideration, the Parties covenant and agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions.

"Actual Household Size" means the actual number of persons in the applicable household.

"Adjusted for Family Size Appropriate for the Unit" shall be determined consistent with Section 50052.5(h) of the HSC and applicable federal rules and regulations. If the applicable federal rules and regulations conflict with such Section 50052.5(h), then the rules and regulations that result in the more restrictive income and rent limits shall control.

"Affordable Rent" means thirty percent (30%) of applicable percentage of Area Median Income, Adjusted for Family Size Appropriate for the Unit, for each Restricted Unit.

"Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

"Area Median Income" or "AMI" means the median income for Merced County, adjusted for Actual Household Size, as determined from time to time by HUD pursuant to the United States Housing Act of 1937 as amended and the HCD pursuant to HSC Section 50093. Should the annual AMI differ between HUD and HCD in a given year, the Developer shall adhere to the more restrictive (lower) income limits. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the Agency shall provide the Developer with other income determinations which are reasonably similar with respect to methods of calculations to those previously published by the State.

"Deed of Trust" shall mean the deed of trust to the Agency on the Property which secures repayment of the Housing Successor Loan and performance of the Loan Agreement and this Agreement.

“Eligible Household” means a household for which household income upon initial occupancy does not exceed the maximum income level for Restricted Unit.

“Extremely Low-Income Household” shall mean a household whose gross income does not exceed thirty percent (30%) of the Area Median Income, adjusted for Actual Household Size.

“Extremely Low-Income Units” shall mean one of the thirty (30) Permanent Supportive Housing Restricted Units, which, pursuant to Section 2.1, are required to be occupied by Extremely Low-Income Households, pursuant to this Agreement.

“Homeless” means households that are Homeless as defined by the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)).

“Housing Successor Loan” shall mean all funds loaned to the Developer by the Agency pursuant to the Loan Agreement.

“Loan Agreement” shall mean the Deed Restriction Covenant and Loan Agreement dated _____, _____ by and between the City and the Developer and pertaining to the Housing Successor Loan for the Property and Project.

“Permanent Supportive Housing Unit” (or “PSH Unit”) shall mean one of the thirty (30) one-bedroom Extremely Low-Income Units in the Project that are reserved for occupancy by those who are Homeless or at risk of homelessness and restricted to thirty percent (30%) AMI.

“Promissory Note” shall mean the promissory note from the Developer to the Agency evidencing all or any party of the Housing Successor Loan.

“Rent” means all charges, other than deposits, paid by a tenant for the use and occupancy of a Restricted Unit and any mandatory charge for direct or supportive tenant services in a rental housing development, including a utility allowance in an amount determined by the local housing authority with jurisdiction over the Project.

“Restricted Unit” means one of the Extremely Low-Income Units or Very Low-Income Units.

“Term of this Agreement” means the period through the fifty-fifth (55th) anniversary of the issuance of the final certificate of occupancy for the Project.

“Very Low Income Household” means a household whose gross income does not exceed fifty percent (50%) of the Area Median Income, adjusted for Actual Household Size.

“Very Low-Income Unit” means one of the twenty-eight (28) two-bedroom dwelling units in the Project that are reserved for occupancy by a Very Low-Income Household pursuant to this Agreement.

ARTICLE 2

AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirement.

(a) Upon Issuance of a final certificate of occupancy and for the entire Period of Affordability (as defined in Section 2.8), the Project shall be rented to, at a Rent no greater than Affordable Rent, and occupied by (or if vacant, available for occupancy by) the following schedule:

Extremely Low-Income Units. Thirty (30) Restricted Units shall be rented to and occupied by or, if vacant, available for occupancy by Extremely Low-Income Households. The Extremely Low-Income Units shall also be designated as PSH units restricted for those who are Homeless or at risk of homelessness.

Very Low-Income Units. In addition to the thirty (30) Extremely-Low Income Units twenty-eight (28) Restricted Units shall be rented to and occupied by or, if vacant, available for occupancy by Very Low-Income Households, for a total when combined with the Extremely-Low Income Units of fifty-eight (58) Restricted Units.

(b) In addition to the restrictions required by the Housing Successor Loan and this Agreement, the Agency acknowledges that Developer's extended use agreement with the California Tax Credit Allocation Committee will restrict additional units as described in the DDA.

The number of units by income and bedroom size for the Project as restricted by all funding sources are contemplated as follows:

Bedroom Size	Income Level	Number of Units
1-bedroom	30% AMI	30
1-bedroom	50% AMI	17
2-bedroom	50% AMI	36
3-bedroom	50% AMI	36
Total		119

Should the annual 50% AMI and 30% AMI income limits differ between HUD and HCD in a given year, the Developer shall adhere to the more restrictive (lower) income limits. 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 Project shall be operated at all times in compliance with the provisions of: (a) the HSC; (b) the Unruh Act; (c) the United States Fair Housing Act, as amended; (d) the California Fair Employment and Housing Act; and any other applicable law or regulation (including the Americans with Disabilities Act, to the extent applicable to the Project). The Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the

City and Agency and their respective board members, council members, officers and employees from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Developer's failure to comply with any of the above laws or regulations. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Pursuant to the requirements of the HSC, Developer and Agency shall execute a Notice of Affordability Restrictions on Transfer of Property substantially in the form attached to the DDA and shall cause such notice to be recorded in the Official Records substantially concurrently with the recordation of this Agreement.

2.2 Allowable Rent.

(a) Subject to the provisions of Section 2.4(b), the Rent charged to tenants of the Extremely Low-Income Units designated as PSH Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of thirty percent (30%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

(b) Subject to the provisions of Section 2.4(b), the Rent charged to tenants of the Very Low-Income Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

(c) Initial rents for all Units shall be approved by the Agency prior to occupancy. All rent increases shall be based on published HCD rents or other applicable rents imposed on the Project by other funding sources. Should the annual rent limit differ between HCD and other applicable regulatory agencies in a given year, the Developer shall adhere to the more restrictive (lower) rent limits.

(d) Loss of Project Based Voucher Subsidy

It is anticipated that during the term of this Agreement the Project will maintain Project Based Voucher ("PBV") Restricted Units, supported by Project-Based Section 8 rental subsidy payments (the "Rental Subsidy"). If, during the Term of this Agreement, any change in federal law or regulations occurs, or any action (or inaction) by Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidy through no fault of Developer, such that the Rental Subsidy shown on the Loan Agreement is no longer available (or available in a lesser amount), Developer may request approval of the Agency to increase the rent on one or more of the PBV Restricted Units, to an adjusted income that does not exceed fifty percent (50%) AMI, adjusted for actual household size, so long as the Agency, in its sole discretion, finds that the proposed number of PBV Restricted Units subject to the rent increase do not disrupt the Agency's ability to meet its Housing Successor Agency expenditure requirements found in Health and Safety Code section 34176.1(a) and with the Agency making such determination giving no

preferential treatment to any other project in the City in similar circumstances. In order to ensure that the Project is not treated arbitrarily, the Agency agrees to (i) encumber each project receiving Housing Successor Agency Funds ("Other Project") after the date hereof with restrictions that are no less restrictive than those contained herein. Notwithstanding Section 34176.1(a), any proposed PBV Restricted Unit rent change may only be increased to an adjusted income that does not exceed fifty percent (50%) AMI, adjusted for actual household size.

The rent increase is subject to the following requirements: (a) concurrently with the request, Developer shall provide the Agency with evidence of the anticipated reduction, termination, or nonrenewal of the Rental Subsidy, (b) a Management Plan (as defined in Section 2.3) for the Project for the Agency's approval, (c) a proposed operating budget reflecting the rent increases (the "Operating Budget"), and (d) a description of efforts to obtain alternate sources of rent. The number of PBV Restricted Units subject to the rent increase and the amount of the proposed increase may not be greater than the number or amount required to ensure that the Project generates sufficient income to cover its operating costs, required deposits to replacement reserves, and debt service on approved financing as shown on the Operating Budget, and as is necessary to maintain the financial stability of the Project. Any such rent increase must be implemented pursuant to a transition plan approved by the Agency consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program. In addition, upon a reduction, termination or nonrenewal of the Rental Subsidy as described above, Developer hereby agrees to the following:

- (A) Developer shall use good faith efforts to obtain alternative sources of rental subsidies and shall provide the Agency with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents to be reduced. Upon receipt of any alternative rental subsidies, Developer shall reduce the rents back to the original restrictions found in Exhibit B to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs, required replacement reserves and debt service of the Project as shown on the Operating Budget.
- (B) Developer shall provide tenants in the PBV Restricted Units with notice of any rent increase, and shall notify the tenants that if they have received a tenant-based voucher from Merced County they may use the tenant-based voucher for their Restricted Unit.
- (C) All rent increases are subject to Agency approval. No later than sixty (60) days prior to the proposed implementation of any rent increase,

Developer shall submit to the Agency a schedule of any proposed increase in the rent. The Agency will disapprove a rent increase if it does not comply with the restrictions set forth in in this Regulatory Agreement.

- (D) Developer shall give tenants of all PBV Restricted Units written notice at least sixty (60) days prior to any rent increase.

2.3 Tenant Selection Standards.

During the Period of Affordability the Developer shall select tenants in conformance with the requirements of all funding sources applicable to the Project, including but not limited to the California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8305.

(a) Developer shall rent vacant Restricted Units only to Eligible Households in accordance with a Management Plan approved by Agency. Such Management Plan may be periodically altered and such alteration must be submitted to and approved by Agency prior to use. The Management Plan shall include:

- (1) Reasonable criteria for selection or rejection of tenant applications which shall not discriminate in violation of any federal, state or local law governing discrimination, or any other arbitrary factor;

- (2) Prohibition of local residency preferences, except where accompanied by an equal preference for employment in the local area and applied to areas not smaller than municipal jurisdictions or recognized communities within unincorporated areas;

- (3) Tenant selection procedures that include the following components, and that are available to prospective tenants upon request:

- (A) Selection of tenants based on order of application, lottery or other reasonable method approved by Agency;

- (B) Prompt written notification to tenant applicants of eligibility for residency and, based on turnover history for Restricted Units, the approximate date when a Restricted Unit may be available;

- (C) Prompt written notification of tenant applicants who are found ineligible to occupy a Restricted Unit of their ineligibility and the reason for the ineligibility, and of their right to appeal this determination;

- (D) Maintenance of a waiting list of applicant households eligible to occupy Restricted Units designated for various tenant income levels, which shall be made available at no charge to prospective tenants upon request;

(E) Targeting specific special needs populations in accordance with this Agreement and applicable laws; and

(F) Affirmative fair housing marketing procedures as specified in 24 CFR Part 92.351 or the Affirmative Fair Housing Marketing Plan Compliance Regulations of HUD, 24 CFR Part 200.620(a)-(c), or similar affirmative fair marketing housing plan as approved by Agency.

2.4 Certification of Tenant Income.

(a) The income and household size of all households occupying Restricted Units shall be certified by Developer prior to occupancy and recertified annually thereafter in a manner approved by Agency and specified in the Project's Management Plan and Section 3.1 hereof.

(b) If the income of a tenant upon recertification exceeds the upper limit for households at or below the applicable percentage of AMI, the tenant must pay as rent the lesser of the amount payable by the tenant under state or local law or thirty percent (30%) of the households adjusted monthly income for rent and utilities; except that the rent may not exceed the market rent for comparable, unassisted units in the neighborhood; provided however, that Restricted Units subject to a California Tax Credit Allocation Committee ("CTCAC") Regulatory Agreement shall be governed by such agreement with respect to tenants who upon recertification no longer qualify as Extremely Low-Income or Very Low-Income Households.

(c) If the income of a tenant upon recertification exceeds the upper limit for households at or below the applicable percentage of AMI, the Developer shall restrict the next available vacant unit at the appropriate income level to come into compliance with the Occupancy Requirement and Allowable Rent provisions of this Regulatory Agreement, as well as any applicable state and federal requirements.

2.5 Marketing Plan.

(a) Not later than thirty (30) days prior to the anticipated date of issuance of a certificate of occupancy for the Project, Developer shall prepare a Marketing Plan for Agency's review and approval, and shall implement such plan as approved by the Agency. The Marketing Plan shall specify how Developer intends to market the Project to prospective tenants in the Project's market area in accordance with fair housing laws and this Agreement. The Marketing Plan shall specifically address how Developer intends to market the Project to underserved populations in the Project's market area and the frequency of marketing efforts. City agrees that Developer may utilize the HUD 935.2 Affirmative Fair Housing Marketing Plan for these purposes.

(b) Developer agrees to evaluate the effectiveness of the Marketing Plan in reaching underserved populations on an annual basis and to revise it as necessary to better reach underserved populations that are not being reached. Any revised Marketing Plan shall be submitted to City for approval prior to implementation.

2.6 Unit Standards.

For the full loan term, the number, size, type and amenity level of Restricted Units shall not be fewer than the number nor different from the size, type and amenity level described in Section 2.1 and Recital B.

2.7 Rental Agreement and Grievance Procedures.

The rental agreement and grievance procedures shall be in accordance with the California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, section 8307.

(a) All rental or occupancy agreements shall be for a term of not less than one (1) year unless by mutual agreement between the tenant and Developer.

(b) All rental or occupancy agreements are subject to City approval; and shall include the following:

(1) Provisions requiring good cause for termination of tenancy;

(2) A provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;

(3) A notice of grievance procedures for hearing complaints of tenants and appeal of management action; and

(4) A requirement that the tenant annually recertify household income and size.

(c) Developer shall not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable federal, state or local law; or for other good cause.

(d) To terminate or refuse to renew tenancy, Developer must serve written notice upon the tenant in compliance with State law, specifying the grounds for the action, and served at least thirty (30) days prior to the termination of the tenancy.

(e) One or more of the following, without limitation, may constitute "good cause":

(1) Failure by the tenant to maintain applicable eligibility requirements under the HSC or other eligibility requirements as imposed by Agency or other state or federal funding sources or tax credits;

(2) Material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which:

A. Adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related Project facilities;

B. Substantially interfere with the management, maintenance, or operation of the Project; or

C. Result from the failure or refusal to pay, in a timely fashion, Rent or other permitted charges when due. Failure or refusal to pay in a timely fashion is a minor violation if payment is made during the three (3) day notice period;

(3) Material Failure by the tenant to carry out obligations under federal, State, or local law;

(4) Subletting by the tenant of all or any portion of any Project Unit;

(5) Any other action or conduct of the tenant constituting significant problems which can be reasonably resolved only by eviction of the tenant, provided Developer has previously notified the tenant that the conduct or action in question would be considered cause for eviction. Examples of action or conduct in this category include the refusal of a tenant, after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income or household size.

(6) Notwithstanding the foregoing, if any part of this Section 2.7(e) is determined not to be "good cause" pursuant to Section 42 of the Internal Revenue Code of 1986, Section 42 of the Internal Revenue Code of 1986 shall control.

(f) The lease may not contain any of the following provisions:

(1) Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of Developer or Developer's agent in a lawsuit brought in connection with the lease;

(2) Agreement by the tenant that Developer may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, shall not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. Developer may dispose of this personal property in accordance with State law;

(3) Agreement by the tenant not to hold Developer or Developer's agent(s) legally responsible for any action or failure to act, whether intentional or negligent;

(4) Agreement of the tenant that Developer or Developer's agent may institute a lawsuit without notice to the tenant;

(5) Agreement by the tenant that Developer or Developer's agent may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) Agreement by the tenant to waive any right to a trial by jury;

(7) Agreement by the tenant to waive tenants right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(g) Developer shall establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and federal regulations. Said rules shall be in writing and shall be given to each tenant upon occupancy. Any changes shall become effective no fewer than thirty (30) days after giving written notice thereof to each tenant household.

(h) Developer shall adopt an appeal and grievance procedure to resolve grievances filed by tenants and appeals of actions taken by Developer with respect to tenant's occupancy in the Project, and prospective tenants applications for occupancy. Developer's appeal and grievance procedures shall be subject to Agency's approval and, at a minimum, shall include the following:

(1) A requirement for delivery to each tenant and applicant of a written copy of the appeal and grievance procedure;

(2) Procedures for informal dispute resolution;

(3) A right to a hearing before an impartial body, which shall consist of one or more persons with the power to render a final decision on the appeal or grievance; and

(4) Procedures for the conduct of an appeal or grievance hearing and the appointment of an impartial hearing body.

2.8 Period of Affordability.

Developer acknowledges that the Housing Successor Loan is being made to Developer under the terms and conditions of the HSC as part of a public program to ensure affordable housing for Project tenants. To preserve affordability of the Restricted Units, Developer covenants that the Restricted Units shall remain affordable for a period of fifty-five (55) years of the issuance of the final certificate of occupancy for the Project (hereinafter referred to as the "Period of Affordability"). It is intent of the parties to this Agreement, that this covenant shall run with the land, with the benefit of this covenant running to the City and/or Agency, in order to preserve the public interest in maintaining the affordability of the Restricted Units. The Period of Affordability

will remain without regard to the term of any mortgage or the transfer of the Property ownership, other than by foreclosure or deed in lieu of foreclosure.

ARTICLE 3

INCOME CERTIFICATION AND REPORTING

3.1 Income Certification.

The Developer will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each tenant renting any of the Units.

The Developer shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as part of the verification process: (a) obtain a pay stub for the most recent pay period; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicants current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant received assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return or income verification, obtain another form of independent verification. Copies of tenant income certifications shall be available to the City upon request.

3.2 Recordkeeping and Reports.

Developer or the management agent designated by Developer, as approved by City, will be responsible for recordkeeping and reports. The management agent will establish and maintain a comprehensive system of records, books, and accounts in a manner conforming to the directives of Developer in order to assist Agency in meeting Federal and State recordkeeping and reporting requirements. All records, books and accounts will be subject to examination at reasonable hours by any authorized representative of Agency. All such records and books shall be kept for a period of at least seven (7) years in a manner designed to protect them from destruction or tampering, and shall be subject to inspection and audit by the Agency or their respective authorized agents.

3.3 Additional Information.

The Developer shall provide any additional information reasonably requested by the Agency. The Agency shall have the right to examine and make copies of all books, records or other documents of the Developer which pertain to the Project.

3.4 On-Site Inspection.

Developer shall allow City access to the Project to conduct inspections on an annual basis, or more frequently, with fourteen (14) days written notice to Developer. Developer shall provide tenants with a minimum of twenty-four (24) hours written notice prior to seeking access to a tenant

unit for inspection purposes. In said notice, Developer shall clearly inform tenant of the purposes of the inspection.

ARTICLE 4

MISCELLANEOUS

4.1 Restrictions on Sale, Transfer or Conversion.

(a) Upon any sale or transfer, including transfer by gift, devise, descent, foreclosure, assignment, deed in lieu of foreclosure, condemnation, or voluntary or involuntary bankruptcy, of the Property without the prior written approval of City, all principal, interest and costs then owing upon the Housing Successor Loan will become immediately due and payable to Agency.

(b) Agency shall approve a sale, transfer or conveyance of the Property provided that all of the following conditions are met: (i) the existing Developer is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of this Agreement; (ii) the successor-in-interest to Developer agrees to assume all obligations of the existing Developer pursuant to this Agreement; (iii) the successor-in-interest demonstrates to City's satisfaction that it can own and operate the Project in full compliance with all Federal, State, and local requirements; and (iv) Agency determines, in the sole exercise of its reasonable discretion, that no terms of the sale transfer or conveyance threaten City's security or the successors ability to comply with all Federal, State, and local requirements and this Agreement.

(c) Developer shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Project or any part thereof during the Period of Affordability.

(d) Nothing contained in this Section 4.1 shall prohibit the transfer of the Property or Developer's interest therein that is permitted under the DDA.

4.2 Restrictions on Encumbrances.

Developer covenants that Developer has not, and shall not enter into or execute any other agreement with provisions contrary to the provisions of this Agreement, or contrary to the intent of maintaining the affordability of the Property for the full Period of Affordability described in Section 2.8; provided, however, that Developer may, without the written consent of City, enter into a Regulatory Agreement with the CTCAC with regard to tax credits or a regulatory agreement in favor of HCD in connection with the AHSC Financing or a regulatory agreement in connection with the issuance of tax exempt bonds for the Project or any other restrictions or regulatory agreements contemplated by the DDA. Developer further covenants that, except for its senior loans, the AHSC Loan, it has not, and shall not, otherwise encumber the Property, including without limitation by way of mortgage or deed of trust, or by judgment, mechanics, tax or other lien without Agency's prior written consent.

4.3 Non-Discrimination; Compliance with Fair Housing Laws.

(a) Developer shall comply with State and Federal fair housing laws in the marketing and rental of the units in the Project.

(b) Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, 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 Property or part thereof, nor shall Developer or any person claiming under or through Developer 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, of, or for the Property or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property shall contain the language set forth in the DDA.

(c) The Developer will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 voucher holders that is more burdensome than criteria applied to all other prospective Tenants, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of Units by such prospective Tenants.

4.4 Default and Remedies.

(a) The occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") hereunder:

(1) The occurrence of a transfer, sale or conversion in violation of Section 4.1 hereof or an encumbrance in violation of Section 4.2 hereof;

(2) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Developer or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee,

receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in a legal proceeding its inability to pay its debts as they become due;

(3) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtors relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer;

(4) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the property or the improvements thereon, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution.

(5) Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated (other than an administrative dissolution that is cured within any applicable grace or cure period); or

(6) Any material breach by Developer or any of its successors of any representation, warranty or covenant hereunder, which is not cured within thirty (30) days after notice thereof given by the City or Agency, or, if a cure is not possible within thirty (30) days, where cure is not commenced within thirty (30) days and thereafter diligently prosecuted to completion.

(b) If an Event of Default occurs under this Agreement or the Loan Documents, City or Agency, as applicable, may give written notice to the Developer by certified mail or any express delivery service with a delivery receipt requested. If the breach or violation is not cured to the satisfaction of the Party so notifying Developer within the time period specified in the notice, which shall not be fewer than thirty (30) days, the notifying Party may declare a default and may seek legal remedies including the following:

(1) Collect all rents and income in connection with the operation of the Project and use the same and the reserve funds for the operation and maintenance of the Project.

(2) Take possession of the Project and bring any action necessary to enforce any rights of the Developer arising from the operation of the Project, and operate the Project in accordance with the terms of this Agreement until such time as the City, in its sole

discretion, shall determine that the Developer is again in a position to operate the Project in accordance with the terms of this Agreement.

(3) Apply to the applicable state or federal court for an order of specific performance of this Agreement, or for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, or for such other relief as may be appropriate. It is agreed by the Developer that the injury to the City and Agency arising from a default under any of the terms of this Agreement would be irreparable, and that the amount of compensation which would provide adequate relief to the City and Agency, in light of the purposes of the Housing Successor, would be impossible to ascertain.

(4) Accelerate all amounts, including outstanding principal and interest, due under the Housing Successor Loan, and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the City may proceed with a foreclosure in accordance with the provisions of the Deed of Trust and State law regarding foreclosures.

(5) The City may seek such other remedies as may be available under law or equity.

(6) In the event that the breach or violation involves the rents to tenants or other charges in excess of those permitted under this Agreement, the City or Agency may demand, and seek as an additional remedy, the return of such excess rents or other charges to the affected households.

(c) The remedies of the City hereunder are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the City of any one or more of its other remedies.

(d) Developer's limited partners shall have the right to cure any default of Developer hereunder upon the same terms and conditions afforded to Developer. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to Developer's limited partner(s) at the following address (or such alternate address designated by such limited partner(s) from time to time in a written notice to City): c/o JDF, LLC, 777 West Putnam Avenue, Greenwich CT 06830, Attention: Joanne D. Flanagan, Esq.

4.5 Maintenance & Management.

(a) Developer is solely and specifically responsible for all maintenance, repair, and management functions for the Project, including without limitation, selection of tenants, certification and recertification of household income and size, evictions, collection rents, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security.

Developer shall maintain units and common areas in a safe and sanitary manner in accordance with local health, building and housing codes, HUD housing quality standards pursuant to 24 CFR 92.251. The City shall not have any responsibility for management or maintenance of the Property or the Project, but shall have the remedies provided for in Section 4.4 hereof, which they may exercise at their option as applicable.

(b) Developer may contract with a management agent for the performance of the services or duties required in Section 4.5(a) above. However, doing so shall not relieve Developer of responsibility for proper performance of said duties. Any such contract shall contain a provision allowing Developer to terminate the contract without penalty with no more than thirty (30) days notice. Upon determination by City or Agency and notice to Developer that the contracted management agent has failed to operate the Project in accordance with this Agreement, Developer shall exercise such right of termination forthwith and shall immediately make arrangements, subject to Agency approval, for continuing performance of the requirements of this Agreement.

(c) If Developer operates the Project directly without contracting with a management agent and City or Agency determines that the Project is not being operated in accordance with this Agreement, City or Agency may provide notice to Developer thereof, and may require Developer to contract with a management agent to operate the Project, or to make such other arrangement as City deems necessary to ensure performance of the requirements of this Agreement.

4.6 Governing Law.

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

4.7 Successors and Assigns.

This Agreement and all the covenants, promises, and agreements contained in it shall be binding on and inure to the benefit of the Parties and their respective legal and personal representatives, devisees, heirs, successors, and assigns.

4.8 Severability.

If any provision of this Agreement 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 unless, in the sole discretion of City, the invalidity, or unenforceability of the threatens the security for the City's Housing Successor Loan.

4.9 Costs of Enforcement.

Developer agrees to pay any and all of City's costs with respect to enforcement of this Agreement, including City's reasonable attorneys' fees, costs and expenses.

4.10 Counterparts/Originals.

This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute one (1) entire Agreement.

4.11 Amendment.

This Agreement shall not be altered or amended except in a writing executed by the Parties.

4.12 No Waiver.

No waiver by the City of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.

4.13 Captions.

The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of intent of this Agreement.

4.14 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or shall establish the Parties as partners, coventurers, or principal and agent with one another.

4.15 Hold Harmless.

Except to the extent arising from the City's willful misconduct, Developer agrees to indemnify, defend with counsel reasonably acceptable to the City and Agency and hold harmless the City and Agency and their respective agents, employees and officers (collectively, "Indemnitees") from and against any and all claims, losses, liabilities, causes of action or costs (including reasonable attorney's fees) arising from or in connection with Developer's development, management, maintenance or operation of the Project.

4.16 Deleted.

4.17 Venue.

This 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 Agreement shall be held exclusively in a state court in the County of Merced.

4.18 Interpretation of Affordability.

It is the purpose of this Agreement to limit and restrict use and resale of the Property in order to maintain the Project's affordability for the entire Period of Affordability.

4.19 Affordability Protocols.

To the extent that State, Federal and local laws and regulations may conflict with respect to household income levels, rent levels, or similar provisions relating to affordability of the Project, the Parties acknowledge and agree that the intent of this Agreement is to provide the maximum affordability restrictions.

4.20 Covenants to Run With the Land.

The City and Agency and the Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided however, that on the expiration of the Term of this Agreement, said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

4.21 Attorneys Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

4.22 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied upon the earliest of receipt or three business days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

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: USA Institutional Merced 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.

Such addresses may be changed by notice to the other party given in the same manner as provided above.

IN WITNESS WHEREOF the Agency and the Developer hereby warrant and represent they have the legal authority to enter into this Agreement and have executed this Agreement by duly authorized representatives, all on the date first written above.

CITY OF MERCED

BY: _____
City Manager/Executive Director

ATTEST:
STEPHANIE DIETZ, INTERIM CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Freddie A. Holt 9-29-2020
City Attorney/General Counsel Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

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 _____

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