

## REPORT TO CITY COUNCIL

**Approved by:**

  
\_\_\_\_\_

Department Director

  
\_\_\_\_\_

Arnoldo Rodriguez, City Manager

**Council Meeting of:** July 1, 2020

**Agenda Number:** D-4  
\_\_\_\_\_

**SUBJECT:**

San Joaquin Valley Unified Air Pollution Control District Public Benefit Grants Program Funding Agreement for the Downtown Madera Veterans and Family Housing Project (\$539,151), Use of Grant Funds for Loan Agreement with Downtown Madera Housing Associates to Be Used for an Affordable Housing Project, and Related Loan Documents

**RECOMMENDATION:**

The City Council (Council)

- 1) Adopt Resolution approving Public Benefits Grant Program Funding Agreement (Funding Agreement) between San Joaquin Valley Unified Air Pollution Control District (District) and City of Madera (City); and
- 2) Adopt Resolution approving a loan agreement between City and the Downtown Madera Housing Associates (DMHA), a California Limited Partnership, and related loan documents for DMHA's use on the City's Downtown Madera Veterans and Family Housing Project (Project).

**SUMMARY:**

The City received notification from the District of a grant award in the amount of \$539,151 from the Public Benefit Grants Program – Community Improvement Projects on November 7, 2019. The City has now received the Funding Agreement for the \$539,151. The Funding Agreement includes terms and conditions for use of the funds toward the Project. The grant is a reimbursement agreement meaning the District will transmit funds to the City upon completion of the Project. The City is required to approve the Funding Agreement to accept and use these grant funds. The City will lend the \$539,151 to DMHA to be used as supplemental funding for the development of Project.

**DISCUSSION:**

City Staff has reviewed the Funding Agreement and is recommending approval as well as approval a loan to DMHA. City staff has worked with DMHA (Borrower) to ensure that the subordinate loan agreement in the amount of the grant proceeds, meets the terms and conditions of the Funding Agreement such as purpose, eligible costs, completion of the Project, and reimbursement. Upon completion of the Project, the City will disburse \$539,151, to DMHA for a term of 55 years. Concurrently, the borrower shall execute:

1. A promissory note in the amount of \$539,151 to evidence (Loan Note), and
2. A Deed of Trust and Security Agreement (Deed of Trust) to provide the City with a security interest in the Property and the Project (Development).

City staff and DMHA has determined that the Loan is necessary to make the development of the Project economically feasible and affordable to low- and very low-income households. City staff understands that this is a soft loan to DMHA, which will be paid out of residual receipts, as defined in the Loan Agreement.

**FINANCIAL IMPACT:**

These transactions do not impact the City's General Fund since the entire transaction includes the subject grant funds.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

The City's Promissory Note supports the Vision Madera 2025 Plan as follows:

- Strategy 101.8
  - Promote and encourage development and redevelopment of low- and moderate-cost housing.
- Strategy 135:
  - Ensure adequate supply of affordable, accessible and barrier-free housing citywide.
- Strategy 136:
  - Transitional Housing: Promote transitional housing to ensure that the homeless have safe shelter.

**ALTERNATIVES:**

As an alternative, Council may:

- Not enter into a grant agreement with SJVAPCD
- Not enter into a loan agreement with the Downtown Madera Housing Associates
- Direct staff to identify and utilize a different source of funds for a loan with DMHA

**ATTACHMENTS:**

1. Resolution approving Funding Agreement with San Joaquin Valley Unified Air Pollution District with Exhibits (Funding Agreement)
2. Resolution approving Loan Agreement with exhibits (Loan Agreement, Note, and Deed)

ATTACHMENT 1

Resolution 20-\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA  
AUTHORIZING APPROVAL OF PUBLIC BENEFITS GRANT PROGRAM FUNDING  
AGREEMENT BETWEEN SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION  
CONTROL DISTRICT AND CITY OF MADERA**

**WHEREAS**, there is great demand for affordable rental homes in the City of Madera; and

**WHEREAS**, the San Joaquin Valley Unified Air Pollution Control District has awarded a grant to the City of Madera in the amount of \$539,151; and

**WHEREAS**, it is necessary to sign a grant funding agreement in order to receive the grant funds; and

**WHEREAS**, the City has reviewed the terms and conditions of the funding agreement.

**NOW, THEREFORE**, the City Council of the City of Madera finds, determines, resolves and orders as follows:

1. The recitals listed above are true and correct.
2. The City Council approves the Public Benefit Grants Program Funding Agreement with San Joaquin Valley Unified Air Pollution Control District. The Funding Agreement is attached hereto as Exhibit 1 and incorporated by reference.
3. This resolution is effective immediately upon adoption.

\* \* \*



**SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT**

**PUBLIC BENEFIT GRANTS PROGRAM**

**FUNDING AGREEMENT**

**Community Improvement Projects that Reduce Vehicle Use and Emissions  
Component**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, a unified air pollution control district formed pursuant to California Health and Safety Code section 40150 et seq. (District), and **City of Madera**, a municipal corporation (Participant).

**WITNESSETH:**

**WHEREAS**, the California Clean Air Act (CCAA) requires local air pollution control districts to reduce emissions from motor vehicles;

**WHEREAS**, AB 2766, AB 923, SB 709, and AB 2522 authorize the District to impose fees upon certain registered motor vehicles within the District, and the District has imposed said fees;

**WHEREAS**, said legislation requires the District to use said funds for activities related to reduce air pollution from motor vehicles and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the California Clean Air Act of 1988; and

**WHEREAS**, the District has developed other funding mechanisms in order to provide grant monies for its incentive programs; and

**WHEREAS**, on April 21, 2011, the District's Governing Board approved the Public Benefit Grants program focused on funding emission reduction projects that provide broad benefits to Valley residents, in partnership with local government agencies and public education institutions; and

**WHEREAS**, on February 21, 2017, the District launched the Community

1 Improvement Projects that Reduce Vehicle Use and Emissions Component  
2 (Component) under the Public Benefit Grants Program and began accepting  
3 applications to approve for funding those projects deemed to be most suitable for  
4 vehicle license fees and other funding; and

5 **WHEREAS**, Participant has proposed a project that meets the eligibility  
6 criteria of the Component and has been approved by the District for funding; and

7 **WHEREAS**, Participant represents that it is willing and able to complete  
8 the proposed project set forth herein within the timeframe specified in this Agreement.

9 **NOW, THEREFORE**, based on their mutual promises, covenants, and  
10 conditions, the parties hereby agree as follows:

11 **1. PROJECT**

12 Participant proposes to complete the Downtown Madera Veterans and  
13 Family Housing Project (Project), an Integrated Connectivity Project to construct two  
14 three-story buildings with a total of 48 below market rate housing units located at 200  
15 and 204 N. C Street, Madera, CA 93638 and 121 and 125 N. C Street, Madera, CA  
16 93638, as set forth in the Participant's application; attached hereto and incorporated  
17 herein as **Exhibit A**. Participant agrees to furnish all labor, materials, equipment,  
18 licenses, permits, fees, and other incidentals necessary to perform and complete, per  
19 schedule, in a professional manner, the project described herein. Participant agrees to  
20 comply with prevailing wage laws, if applicable, as set forth in Labor Code section 1720  
21 *et. seq.* In addition, if any subcontract entered into as a result of this Agreement qualifies  
22 as a public works contract as defined in California Civil Code section 8038 or Public  
23 Contract Code section 1101, Participant agrees to comply with any applicable bond  
24 requirements pursuant to California Civil Code section 9550 *et. seq.*

25 Participant represents that Participant, together with its partners, has met  
26 the program eligibility requirements described in the Eligibility Criteria and Application  
27 Guidelines, attached hereto and incorporated herein as **Exhibit B**, and has the  
28 expertise, match funding, and resources necessary to adequately perform and complete

1 the Project specified in and in accordance with this Agreement and the exhibits  
2 incorporated herein.

3 In the event of any conflict between or among the terms and conditions of  
4 this Agreement, the exhibits incorporated herein, and the documents referred to and  
5 incorporated herein, such conflict shall be resolved by giving precedence in the following  
6 order of priority:

- 7 1) To the text of this Agreement
- 8 2) **Exhibit B** of this Agreement
- 9 3) **Exhibit C** of this Agreement
- 10 4) **Exhibit A** of this Agreement

## 11 **2. PERIOD OF PERFORMANCE/TIMETABLE**

12 Participant shall commence performance of work within two (2) years from  
13 the date of execution of this Agreement and produce all work products in accordance  
14 with the Project Implementation Schedule approved by the District; attached hereto and  
15 incorporated herein as **Exhibit C**. The implementation schedule in **Exhibit C**  
16 supersedes the proposed implementation schedule described in **Exhibit A**.

17 **Project Completion Date:** Participant shall complete the Project in its  
18 entirety and in accordance with the scope of work specified in **Exhibit A**  
19 within two (2) years from the execution date of this Agreement, unless this  
20 Agreement is terminated sooner as provided for elsewhere in this  
21 Agreement.

22 Participant is responsible for and must comply with meeting and obtaining all local,  
23 state, and/or federal permitting, licensing, environmental and/or certifying requirements  
24 necessary to complete the project in accordance with the implementation schedule  
25 identified in **Exhibit C**.

## 26 **3. COMPENSATION**

27 The total obligation of District under this Agreement shall not exceed **Five**  
28 **Hundred Thirty-Nine Thousand One Hundred Fifty-One And 00/100 dollars**

1 **(\$539,151.00)** and supersedes any funding amount requested by the Participant  
2 identified in **Exhibit A**. Compensation provided by the District shall not exceed fifty  
3 percent (50%) of the total cost of the Project and shall be for eligible costs incurred.

4           The amount to be paid to Participant under this Agreement is limited to  
5 eligible costs directly related to the Project. Eligible costs are limited to physical  
6 improvements necessary for the completion of the affordable housing development,  
7 housing-related infrastructure, and/or sustainable transportation infrastructure.  
8 Ineligible costs include, but are not limited to, pre-development components, such as  
9 planning, engineering, architectural and other design work, required mitigation  
10 expenses, legal expenses, transportation-related amenities, and program costs. Any  
11 other expenses incurred by the Participant for this Project which exceed the  
12 compensation amount identified in Paragraph 3, including eligible costs, are the  
13 responsibility of the Participant. Funds may not be used to meet Americans with  
14 Disabilities Act (ADA) requirements. Participant shall make payment of such expenses  
15 as necessary to ensure the completion of the Project in accordance to Participant's  
16 proposal as specified in **Exhibit A** and the Project Implementation Schedule as  
17 specified in **Exhibit C**.

18           Participant shall obtain through other sources sufficient additional monies  
19 to fund the total cost of the Project as outlined in **Exhibit A**. Satisfactory written evidence  
20 of such funding commitments shall be provided to District prior to the release by District  
21 of any funds under this Agreement. These funds in addition to District funding shall not  
22 exceed the total cost of the Project. In the event funding from other sources is not  
23 sufficient to pay for costs to complete the Project, District reserves the right to terminate  
24 or re-negotiate this Agreement. In that event, if requested by District, Participant shall  
25 return any District funds provided for Participant's Project.

26           **A. Payments:** Advance payments shall not be permitted. District  
27 shall reimburse Participant after the completion of the Project in its entirety and after the  
28 receipt and verification of a properly supported financial claim which includes the

1 following:

- 2 1) Public Benefit Grants Program – Community Improvement Projects  
3 that Reduce Vehicle Emissions Claim for Payment Form, attached  
4 hereto and incorporated herein as **Exhibit D**. The Form must be  
5 completed and signed by the Participant’s contract signing  
6 authority.
- 7 2) Certificate of Occupancy demonstrating completion of Project as  
8 outlined in Paragraph 1. Final invoices detailing Project completion  
9 as outlined in **Exhibit A** must be submitted before payment can be  
10 made. Additional supporting documentation may include, but is not  
11 limited to, checks and receipts for work completed that is specific  
12 to the Project in this Agreement as specified in Exhibit A. Other  
13 forms of supporting documentation may be accepted as deemed  
14 appropriate by the District.
- 15 3) Final report as specified in subparagraph 4.B.
- 16 4) Successful completion of site visit. District reserves the right to  
17 inspect completed work performed to verify the completion of the  
18 Project as specified in **Exhibit A**. Site visits shall be scheduled  
19 upon receipt of items 1 – 3 as specified above.

20 Claims and all supporting documentation shall be submitted to District via one of the  
21 following methods:

22 **Mail or Hand-delivery:**

23 San Joaquin Valley Unified Air Pollution Control District  
24 Attention: Incentives Program  
25 1990 East Gettysburg Avenue  
26 Fresno, California 93726-0244

27 **E-mail:**

28 grants@valleyair.org

1                   Subject Line: PBGP – Community Improvement Projects

2   The District shall make payment to Participant after the evaluation and approval of a  
3   complete and eligible claim. District must ensure the receipt of proper documentation  
4   and verification that Participant has satisfactorily completed the Project as specified in  
5   Paragraph 1 before any payments are issued to Participant.

6                   **B.     Surplus Funds:** Any compensation, which is not expended by  
7   Participant pursuant to the terms and conditions of this Agreement by the Project  
8   completion date, shall automatically revert to District. Only eligible expenditures  
9   incurred by Participant in the direct performance of this Agreement will be reimbursed  
10   by District.

11                  **C.     Closeout Period:** Participant shall submit all final claims within  
12   ninety (90) days following the final month of activities for which payment is claimed.  
13   District may not take action on claims submitted beyond the 90-day closeout period.  
14   District will not make payment to Participant until the final report, as specified in  
15   subparagraph 4.B, has been submitted and deemed sufficient by the District, and the  
16   Project has been completed in full and in accordance with **Exhibit A**.

17   **4.     REPORTING REQUIREMENTS**

18                  Participant shall perform the following reporting requirements in  
19   subparagraphs 4.A through 4.C. If Participant does not meet the reporting requirements  
20   specified in this Agreement, Participant may be subject to conditions outlined in  
21   Paragraph 7.

22                  **A.     Status Reports:** Participant shall submit status reports on a semi-  
23   annual basis according to the project implementation schedule and deliverables  
24   identified in **Exhibit C**. The status report shall detail the work performed during the  
25   current reporting period; work planned for the next reporting period; problems identified,  
26   solved, and/or unresolved; the estimated percentage of each task completed; and  
27   include any other pertinent information requested on the Semi-Annual Progress Report;  
28   attached hereto and incorporated herein as **Exhibit E**. In addition, Applicant shall submit

1 supporting documentation of progress, specifically photographs of work completed  
2 during the reporting period, along with copies of invoices for work completed and city  
3 and/or county permits. Status reports shall be required up until the completion of the  
4 Project.

5 **B. Final Report:** Upon completion of the Project, Participant shall  
6 submit a final report which shall detail the final Project product; problems identified,  
7 solved, and/or unresolved; and any other pertinent information requested on the Final  
8 Report Form; attached hereto and incorporated herein as **Exhibit F**.

9 **C. Annual Reports:** Participant is required to complete and submit  
10 annual reports to the District for three (3) subsequent years, commencing approximately  
11 one year following the completion of the Project. The annual report shall detail the  
12 Project's viability; include, if completed, any study(ies) and/or reports that document the  
13 Project's success and contribution to improving air quality, public service(s), and/or its  
14 tangible benefit to Environmental Justice or disadvantaged communities; and include  
15 any other pertinent information requested on the Annual Report Form; attached hereto  
16 and incorporated herein as **Exhibit G**.

## 17 **5. NON-ALLOCATION OF FUNDS**

18 The terms of this Agreement are contingent on the approval and receipt  
19 of funds by the appropriating government agency. Should sufficient funds not be  
20 allocated, the scope of the project may be modified or this Agreement terminated by the  
21 District at any time by giving Participant thirty (30) days' prior written notice.

## 22 **6. INDEPENDENT PARTICIPANT**

23 In performance of the work, duties, and obligations assumed by  
24 Participant under this Agreement, it is mutually understood and agreed that Participant,  
25 including any and all of Participant's officers, agents, and employees, will at all times be  
26 acting and performing as an independent Participant and shall act in an independent  
27 capacity and not as an officer, agent, servant, employee, joint venture, partner, or  
28 associate of District. Furthermore, District shall have no right to control or supervise or

1 direct the manner or method by which Participant shall perform its work and function.  
2 However, District shall retain the right to administer this Agreement so as to verify that  
3 Participant is performing its obligations in accordance with the terms and conditions  
4 thereof. Participant and District shall comply with all applicable provisions of law and  
5 the rules and regulations, if any, of governmental authorities having jurisdiction over  
6 matters the subject thereof.

7 Due to its status as an independent participant, Participant shall have  
8 absolutely no right to employment rights and benefits available to District employees.  
9 Participant shall be solely liable and responsible for providing to, or on behalf of, itself  
10 all legally required employee benefits. In addition, Participant shall be solely responsible  
11 and save District harmless from all matters relating to payment of Participant's  
12 employees, including compliance with social security, withholding, and all other  
13 regulations governing such matters. It is acknowledged that during the term of this  
14 Agreement, Participant may be providing services to others unrelated to District or to  
15 this Agreement.

## 16 **7. TERMINATION**

17 **Breach of Agreement:** District may immediately suspend or terminate this Agreement,  
18 in whole or in part, where in the determination of District there is:

- 19 A. An illegal or improper use of funds;
- 20 B. A failure to comply with any term of this Agreement;
- 21 C. A substantially incorrect or incomplete report submitted to District;
- 22 or
- 23 D. A Project that does not substantially comply or align with **Exhibit A**  
24 in terms of units, size, location, and design as determined by the  
25 District.

26 In no event shall any payment by District constitute a waiver by District of  
27 any breach of this Agreement or any default, which may then exist on the part of  
28 Participant. Neither shall such payment impair or prejudice any remedy available to



District with respect to the breach or default. District shall have the right to demand of Participant the repayment to District of any funds disbursed to Participant under this Agreement which in the judgment of District were not expended in accordance with the terms of this Agreement. Participant shall promptly refund any such funds upon demand.

In addition to immediate suspension or termination, District may impose any other remedies available at law, in equity, or otherwise specified in this Agreement.

## **8. MODIFICATION**

Any matters of this Agreement may be modified from time to time by the written consent of all the parties without in any way affecting the remainder. Participant shall submit a request of any changes to this Agreement in writing to the District. Determination of whether a change to the Agreement is significant or non-significant will be at the discretion of the District. Significant changes to this Agreement must be approved by the District through a formal amendment. Changes that are not significant to this Agreement shall be documented in writing and approved by both parties.

**A. Significant Changes to the Agreement:** Significant changes to this Agreement must be approved by District through a formal amendment. Significant changes include, but are not limited to:

- 1) Change of Participant's legal name;
- 2) Change of Participant;
- 3) Changes in order to disencumber funds;
- 4) Changes to the Project that reasonably modify the work to be completed as identified in **Exhibit A**;

Participant shall submit a request in writing to District for any significant change. District will notify Participant of the appropriate action within ten (10) business days.

**B. Non-significant Changes to the Agreement:** Changes that are not significant to the Agreement may not need to be approved through a formal

1 amendment as determined by the District. Request for changes to the Agreement  
2 believed to be non-significant shall be submitted by Participant to District in writing.  
3 Changes to the Agreement deemed non-significant by District shall be documented in  
4 writing and approved by both parties.

5 **C. Implementation Schedule:** After the execution of this Agreement,  
6 revisions to the Implementation Schedule cannot extend beyond the Project Completion  
7 Date without a formal amendment. However, the due dates for specific tasks in the  
8 Implementation Schedule may be adjusted as necessary to accommodate reasonable  
9 and/or unforeseen circumstances that can cause delay in the completion of the tasks.  
10 District will work directly with Participant to ensure all adjustments to the Implementation  
11 Schedule are reasonable and adequate to complete the Project in a satisfactory manner  
12 by the Project Completion Phase of the Agreement.

## 13 **9. NON-ASSIGNMENT**

14 Neither party shall assign, transfer, or subcontract this Agreement, nor  
15 their rights or duties under this Agreement, without the prior express, written consent of  
16 the other party, which shall not be unreasonably withheld or delayed. The District and  
17 the Participant agree that the Project will be completed through a private/public  
18 partnership as encouraged by the Eligibility Criteria as state in **Exhibit B**.

## 19 **10. INDEMNIFICATION**

20 Participant agrees to indemnify, save, hold harmless, and at District's  
21 request and at Participant's sole expense, defend District, its boards, committees,  
22 representatives, officers, agents, and employees from and against any and all costs and  
23 expenses (including reasonable attorneys' fees and litigation costs), damages,  
24 liabilities, claims, and losses (whether in agreement, tort, or strict liability, including, but  
25 not limited to, personal injury, death, and property damage) which arise or are alleged  
26 to arise directly or indirectly from any act or omission of Participant, its officers, agents,  
27 subcontractors, or employees in the performance of this Agreement or out of the  
28 operations conducted by Participant, save and except claims or litigation arising out of

the sole negligence or sole willful misconduct of District.

## **11. INSURANCE**

**A.** Without limiting District's right to obtain indemnification from Participant or any third parties, Participant, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement:

1) Commercial general liability insurance with minimum limits of coverage in the amount of Five Million Dollars (\$5,000,000) per occurrence.

2) Commercial automobile liability insurance which covers bodily injury and property damage with a combined single limit with minimum limits of coverage in the amount of Five Million Dollars (\$5,000,000) per occurrence.

3) Workers' compensation insurance in accordance with California law.

**B.** Except for workers' compensation insurance, such insurance policies shall name District, its officers, agents, and employees, individually and collectively, as additional insureds. Such additional insured coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by District, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under Participant's policies herein. This insurance shall not be canceled or changed without providing District written notice a minimum of thirty (30) days' advance prior to such cancelation or change taking effect.

**C.** Prior to the commencement of performing its obligations under this Agreement, Participant shall provide certificates of insurance and additional insured endorsements on the foregoing policies, as required herein, to District, stating that such insurance coverages have been obtained and are in full force; that District, its officers, agents, and employees will not be responsible for any premiums on the policy. This insurance shall not be canceled or changed without a minimum of thirty (30) days'

1 advance, written notice given to District.

2           **D.**     In the event Participant fails to keep in effect at all times insurance  
3 coverage as herein provide, District may, in addition to other remedies it may have,  
4 suspend or terminate this Agreement upon the occurrence of such event.

5           **E.**     If Participant is a government entity, then it may self-insure such of  
6 those risks identified in subparagraph 11.A.1 of this Agreement, provided, however,  
7 that:

8                   1)     Such self-insurance plans shall be reasonably  
9 satisfactory to District; and

10                  2)     All those provisions identified in subparagraph 11.C  
11 of this Agreement concerning the relationship of  
12 Participant's primary and District's excess insurance to each  
13 other, the requirement of Participant delivering a certificate  
14 of insurance and additional insured endorsement or other  
15 suitable evidence to District, and the cancellation/change of  
16 insurance requirements shall apply to such self-insurance  
17 plans.

## 18 **12.   AUDITS AND INSPECTIONS**

19           Participant shall at any time during regular business hours, and as often  
20 as District may deem necessary, make available to District for examination all of its  
21 records and data with respect to the matters covered in this Agreement. Participant  
22 shall, upon request by District, permit District to audit and inspect all such records and  
23 data necessary to ensure Participant's compliance with the terms of this Agreement.

24           If, after audit, District makes a determination that funds provided to  
25 Participant pursuant to this Agreement were not spent in conformance with this  
26 Agreement or any other applicable provisions of law, Participant agrees to immediately  
27 reimburse District all funds determined to have been expended not in conformance with  
28 said provisions.

Participant shall retain all records and data for activities performed under this Agreement for a minimum of three (3) years from the date of final payment under this Agreement or until all audits are completed for that fiscal year, whichever is later.

Because this Agreement exceeds ten thousand dollars (\$10,000), Participant shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract (Gov. Code § 8546.7).

### **13. NOTICES**

The persons and their addresses having authority to give and receive notices under this Agreement are as follows:

<b>PARTICIPANT</b>	<b>DISTRICT</b>
<b>Arnoldo Rodriguez City Manager City of Madera 205 W. 4<sup>th</sup> Street Madera, CA 93637</b>	<b>Samir Sheikh Executive Director/APCO San Joaquin Valley Unified APCD 1990 East Gettysburg Avenue Fresno, CA 93726</b>

Any and all notices between District and Participant provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States mail, postage prepared, addressed to such party.

### **14. POLITICAL ACTIVITY PROHIBITED**

None of the funds, materials, property, or services provided under this Agreement shall be used for any political activity, or to further the election or defeat of any candidate for public office contrary to federal or state laws, statutes, regulations, rules, or guidelines.

### **15. LOBBYING PROHIBITED**

None of the funds provided under this Agreement shall be used for publicity, lobbying, or propaganda purposes designed to support or defeat legislation before the Congress of the United States of America or the Legislature of the State of

1 California.

2 **16. CONFLICT OF INTEREST**

3 No officer, employee, or agent of District who exercises any function or  
4 responsibility for planning and carrying out the services provided under this Agreement  
5 shall have any direct or indirect personal financial interest in this Agreement. Participant  
6 shall comply with all federal and state conflict of interest laws, statutes, and regulations,  
7 which shall be applicable to all parties and beneficiaries under this Agreement and any  
8 officer, agent, or employee of District.

9 **17. GOVERNING LAW**

10 This Agreement shall be governed in all respects by the laws of the State  
11 of California. Venue for any action arising out of this Agreement shall only be in Fresno  
12 County, California.

13 **18. COMPLIANCE WITH LAWS**

14 Participant and its subcontractors shall comply will all federal and state  
15 laws, statutes, regulations, rules, and guidelines that apply to performance under this  
16 Agreement and obtain any and all permits required to its performance under this  
17 Agreement and those specified in **Exhibit A**, including California driving eligibility,  
18 financial liability, prevailing wage and/or public works laws.

19 **19. BINDING ON SUCCESSORS**

20 This Agreement, including all covenants and conditions contained herein,  
21 shall be binding upon and inure to the benefit of the parties, including their respective  
22 successors-in-interest, assigns, and legal representatives.

23 **20. TIME IS OF THE ESSENCE**

24 It is understood that for Participant's performance under this Agreement,  
25 time is of the essence. The parties reasonably anticipate that Participant will, to the  
26 reasonable satisfaction of District, complete all activities provided herein within the  
27 implementation schedule outlined in the attachments to this Agreement, provided that  
28 Participant is not caused unreasonable delay in such performance.

1     **21.    DATA OWNERSHIP**

2             Upon termination or expiration of this Agreement, all data which is  
3 received, collected, produced, or developed by Participant under this Agreement shall  
4 become the exclusive property of Participant, provided, however, that District shall be  
5 allowed to receive a copy of any non-confidential data received, collected, produced, or  
6 developed by Participant under this Agreement subject to Participant's exclusive  
7 ownership rights stated herein. Accordingly, Participant shall, if requested, provide  
8 copies to District all such data which is in its possession (including its sub-contractors  
9 or agents), without any reservation of right, not otherwise enumerated herein.

10    **22.    SEVERABILITY**

11             In the event that any one or more of the provisions contained in this  
12 Agreement shall for any reason be held to be unenforceable in any respect by a court  
13 of competent jurisdiction, such holding shall not affect any other provisions of this  
14 Agreement, and the Agreement shall then be construed as if such unenforceable  
15 provisions are not a part hereof.

16    **23.    ENTIRE AGREEMENT**

17             This Agreement constitutes the entire agreement between Participant and  
18 District with respect to the subject matter hereof and supersedes all previous  
19 negotiations, proposals, commitments, writings, advertisements, publications, and  
20 understandings of any nature whatsoever unless expressly included in this Agreement.

21    ///

22    ///

23    ///

24    ///

25    ///

26    ///

27    ///

28    ///

1 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed  
2 as of the day and year first hereinabove written.

3  
4 **PARTICIPANT**  
5 **City of Madera**

**DISTRICT**  
**San Joaquin Valley Unified Air**  
**Pollution Control District**

6  
7 \_\_\_\_\_  
8 Arnolando Rodriguez  
9 City Manager

\_\_\_\_\_   
Craig Pedersen  
Governing Board Chair

10 ***Recommended for approval:***  
11 San Joaquin Valley Unified Air Pollution  
12 Control District

13 \_\_\_\_\_  
14 Samir Sheikh  
15 Executive Director/APCO

16 ***Approved as to legal form:***  
17 San Joaquin Valley Unified Air Pollution  
18 Control District

19 \_\_\_\_\_  
20 Annette A. Ballatore  
21 District Counsel

22 ***Approved as to accounting form:***  
23 San Joaquin Valley Unified Air Pollution  
24 Control District

25 \_\_\_\_\_  
26 Mehri Barati, C.P.A.  
27 Director of Administrative Services

28 ***Participant Business Entity:***

Tax ID Number: \_\_\_\_\_

***For accounting use only:***

Program: \_\_\_\_\_

Account No.: \_\_\_\_\_



# APPLICATION

## COMMUNITY IMPROVEMENT PROJECTS THAT REDUCE VEHICLE USE AND EMISSIONS


Please fill out this form completely and as accurately possible. All fields are required unless otherwise noted. Please contact District staff if you have questions regarding this form.

### Section 1 – Applicant Information

Agency's name (as it appears on Form W-9): City of Madera		
Physical Address: 205 W 4th Street		
City: Madera	State: CA	Zip code: 93637
Mailing address, <u>if</u> different from above:		
City:	State:	Zip code:
<b>Primary Contact Information</b>		
First name: Arnoldo	Last name: Rodriguez	Title: City Manager
Primary phone number: 559-661-5402	Fax number: 559-673-1655	Alternate contact number (optional):
E-mail: arodriguez@madera.gov		
<b>Signing Authority Information</b>		
First name: Arnoldo	Last name: Rodriguez	Title: City Manager
Phone number: 559-661-5402	E-mail: arodriguez@madera.gov	

### Section 2 – Applicant Certification

*I hereby certify that all information provided in this application and any attachments are true and correct to the best of my knowledge. I also certify that I have read and understand the requirements of the Eligibility Criteria and Application Guidelines.*

Printed name of signing authority: Arnoldo Rodriguez	Title: City Manager
Signature of signing authority: 	Date: Aug. 26, 2019

### Section 3 – Project Information

If applicable, please copy and complete this section for each future phase or development within ½ mile that emission reductions are to be calculated.

☐ CHECK HERE IF THE INFORMATION PROVIDED IS FOR A FUTURE PHASE OR DEVELOPMENT

Project Title/Name: Downtown Madera Veterans and Family Housing	
Total project cost: \$25,809,614	Total funding requested from the District: \$2,717,694
Anticipated project start date: January 1, 2020	Operational year: 2021
Project location: 200 & 204 N C Street, 121 & 125 N C Street Madera, CA	
Project type: <input type="checkbox"/> Transportation Oriented Development <input checked="" type="checkbox"/> Integrated Connectivity Project <input type="checkbox"/> Rural Innovation Project Area	
Project setting: <input type="checkbox"/> Low Density Suburban <input type="checkbox"/> Suburban Center <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Urban Center	
Applicable land use: <input type="checkbox"/> Commercial/Retail <input type="checkbox"/> Medical <input type="checkbox"/> Light Industrial <input type="checkbox"/> Heavy Industrial <input type="checkbox"/> Office <input type="checkbox"/> Recreational <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Educational <input type="checkbox"/> Government <input type="checkbox"/> Other: _____	
Number of units: 48-units <input checked="" type="checkbox"/> Residential (number of dwellings, if multi-family apartments, specify number of floors/levels): The project will consist of two (2) three-story buildings for a total of 48 dwellings  <input type="checkbox"/> Non-residential (square footage):	
Project Acreage: 0.88 acre	

## Section 4 – Requested Project Data for Emission Reduction Quantification

Please select the Vehicle Miles Traveled (VMT) reduction measures applicable to your project. Mark an “X” in the Table 1 “Selected Measures” column if the mitigation measure applies to your project, then complete the applicable data in the “Project Specific Data Inputs Required” column and provide supporting documentation for each mitigation measure selected.

For further information regarding the emission reduction measures listed below, please see the CalEEMod User’s Guide at <http://www.caleemod.com/>.

If applicable, please copy and complete for future phases or developments in which emission reductions are to be calculated.

☐ Check here if information provided is for future phase or development

**Project Name:**

**Table 1: Project Data for GHG Quantification**

Selected Measures	ID	VMT Reduction Measure	Use this Measure if...	Project Specific Data Inputs Required	VMT Reduction by Measure
<b>Land Use &amp; Site Enhancement Measures</b>					
X	LUT-1	Increase Density	Housing development density is greater than 7.6 dwelling units per acre	Dwelling units per acre of project: 54 units/acre Jobs per acre of the project: 2.27 FTE	0.8 – 30%

Selected Measures	ID	VMT Reduction Measure	Use this Measure if...	Project Specific Data Inputs Required	VMT Reduction by Measure
×	LUT-3	Increase Diversity	The project is located in an “urban area” and has multiple surrounding land use types within ¼ mile of the project site	Select for mixed-use developments (no additional data required)	9 – 30%
×	LUT-9	Improve Walkability Design	Project area has >36 intersections per square mile	Number of intersections per sq. mi. <i>(if needed, see calculations attached in Appendix A):</i> <b>422</b>	21.3%
×	LUT-4	Improve Destination Accessibility	Project is within 12 miles of a downtown/job center	Distance to downtown/job center: 500 feet	6.7 – 20%
×	LUT-5	Increase Transit Accessibility	<b>TOD Project</b> within ½ miles of High Quality Transit; <b>ICP/RIPA Project</b> within ½ miles of High Quality Transit	Distance to transit station (0-1/2 miles): 500 feet	0.5 – 24.6%
×	LUT-6	Integrate Below Market Rate Housing	Project incorporates affordable housing	Enter Percentage of units (not # of Units) that are affordable (0-100%): 100%	0.04 – 1.2%
<b>Neighborhood Enhancement Measures</b>					
×	SDT-1	Improve Pedestrian Network	Project area includes a pedestrian access network	Designate if improvements are “Project Site” only, or “ <u>Project Site and Connecting Off-Site</u> ”	0 – 2%


Selected Measures	ID	VMT Reduction Measure	Use this Measure if...	Project Specific Data Inputs Required	VMT Reduction by Measure
<b>Parking Policy/Pricing Measures</b>					
✗	PDT-1	Limit Parking Supply	Project parking requirements are reduced or eliminated	% reduction in spaces below ITE avg. weekday parking generation rate (0-100%): 40.6%	5 – 12.5%
	PDT-2	Unbundle Parking Costs	Project parking and property costs are separate	Monthly parking cost (\$0-200):	2.6 – 13%
	PDT-3	On-Street Market Pricing	On-street parking utilizes market-rate pricing (such as meters)	Provide the % increase in price (must be between 25-50%):	2.8 – 5.5%
<b>Transit Improvement Measures</b>					
	TST-1	Provide BRT System	Establish a Bus Rapid Transit line with operational funding stream	% of lines serving project converting to BRT (0-100%):	0.02 – 3.2%
✗	TST-3	Expand Transit Network	Establishes or enhances bus line with operational funding stream	% increase transit coverage (0-100%): <b>40%</b>	0.1 – 8.2%

Selected Measures	ID	VMT Reduction Measure	Use this Measure if...	Project Specific Data Inputs Required	VMT Reduction by Measure
	TST-4	Increase Transit Frequency	Reduces headways of existing transit	Level of implementation (percentage of lines improved) (<50% or ≥50%):  % reduction in headway (increase in frequency) (0-100%):	0.02 – 2.5%
<b>Commute Trip Measures</b>					
	TRT-1&2	Implement Trip Reduction Program <sup>1</sup>	TMA membership or other comprehensive services	% employees eligible (0-100):  Program Type:	6.2%
	TRT-15	Implement Employee Parking “Cash-Out” <sup>1</sup>	Employer provides cash-value of a parking space to employees who do not use one	% employees eligible (0-100):	6 – 7.7%
	TRT-14	Workplace Parking Charge <sup>1</sup>	Charge employees for their parking	% employees eligible (0-100):  Daily parking charge (\$):	0.1 – 19.7%

<sup>1</sup> Commute measures apply to employees working in the non-residential spaces in mixed use development projects. Therefore, these measures may only be used with mixed use development projects.

*Applicant must be able to demonstrate how these measures would be implemented by the tenant.*

Selected Measures	ID	VMT Reduction Measure	Use this Measure if...	Project Specific Data Inputs Required	VMT Reduction by Measure
	TRT-6	Encourage Telecommuting and Alternative Work Schedules <sup>1</sup>	Allow/require 9/80s, 4/40, or telecommuting	% employees work 9/80: % employees work 4/40: % employees telecommute 1.5 days: (Total percentage 0-100):	0.07 – 5.5%
	TRT-7	Market Commute Trip Reduction Option	Market sustainable travel options	% employees eligible (20-100):	0.8 – 4.0%

Selected Measures	VMT Reduction Measure	Use this Measure if...	Project Specific Data Inputs Required
Transit and Connectivity Methods (for use with CMAQ Model)			
	1. Operation of New Bus, Train, Vanpool, or Shuttle Service	<p>The project provides: new bus service, train service, or commuter vanpools or shuttles, or shuttles to worksites, homes, or schools.</p> <p>Useful life: Number of years the New Service is funded under the proposed project.</p>	<p>Days of operation: <b>365</b></p> <p>Years of New Service funding: <b>3 years</b></p> <p>Average Ridership: <b>642</b></p> <p>Annual VMT of New Service:</p>

Selected Measures	VMT Reduction Measure	Use this Measure if...	Project Specific Data Inputs Required
X	2. Bicycle Paths or Lanes	<p>The project provides: Bicycle paths (Class 1) or bicycle lanes (Class 2) that are targeted to reduce commute and other non-recreational auto travel.</p> <p>Useful life of Class 1 bicycle paths: 20 years Useful life of Class 2 Bicycle lanes: 15 years.</p>	<p>Days of use (consider climate): <b>365</b></p> <p>Annual Average Daily Traffic of closest street: <b>9217</b></p> <p>Number of Activity Centers within ¼ mile: <b>17</b></p> <p>Number of Activity Centers within ½ mile: <b>24</b></p> <p>Length of bike project: <b>5 miles</b></p>
X	3. Pedestrian Facilities	<p>The project provides: pedestrian facilities that reduce VMT by providing pedestrian access and replacing auto trips with walking trips.</p> <p>Useful life of Pedestrian Facilities: 20 years.</p>	<p>Auto trips eliminated per year: <b>12,000</b></p>



## Appendix A: Calculations for Number of intersections per square mile

<b>Mitigation Measure 3: Improve Walkability Design</b>		
<b>1. Square Miles within the Study Area:</b> <b>a.</b> If the distance from the center of the project out to its farthest boundary is less than or equal to ½ mile then the Square Miles within the Study Area will be 0.79. Enter this value in the blank to the right. <b>b.</b> If the distance from the center of the project out to its farthest boundary is greater than ½ mile then calculate the area value by: Study Area Square Miles = 3.14 x radius(squared). (Enter this value in the blank to the right.)		Square Miles:  <b>3.14</b>
<b>2. Intersection within the Study Area:</b> Number and type of intersections within the project area: <b>370</b>	Number of 3-Way Intersections:  <b>163</b>	x 3 =  <b>489</b>
Number of 4-Way Intersections: <b>199</b>	x 4 = <b>796</b>	
Number of 5-Way Intersections: <b>8</b>	x 5 = <b>40</b>	
Total Intersections (sum of above) = <b>1325</b>		
<b>3. Intersection Density within the Study Area:</b> Intersection Density is the Study Area's 'Total Intersections' value (B.) divided by the 'Square Miles' value (A.):		Intersections / sq. mi.  <b>422</b>
<b>Documentation:</b> Please attach supporting documentation (e.g.: map) to justify number of intersections within ½ mile of the project. <b>See Attached</b>		



# AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES (AHSC)

G-8723-1

## LEGEND

- ★ PROJECT LOCATION
- 🚌 TRANSPORTATION
- Proposed Sidewalk
- Proposed Class II Bike Lanes
- ◆ Proposed Flashers
- ⊠ Proposed Rect. Rapid Flashing Beacons
- Existing Sidewalk
- - - Existing Bike Lanes
- ▭ Buffer Area
- ▭ City Limits
- ▭ Parcel Lines
- 🌳 Landscaping Improvements

## KEY DESTINATIONS

- 👶 CHILD CARE FACILITY
- 🛒 GROCERY STORE
- 📖 LIBRARY
- 🏥 MEDICAL CLINIC
- 🎒 PUBLIC SCHOOL
- 🌳 PUBLIC PARK
- 💊 PHARMACY

## ACTIVITY CENTERS

- BEHAVIORAL HEALTH
- CHURCHES
- CIVIC ORGANIZATIONS
- COMMUNITY CENTERS
- SENIOR CENTERS
- SOCIAL SERVICES

0 500 1,100 2,200 3,300 4,400 Feet

EXHIBIT A

EXHIBIT "A"

## BUDGET SUMMARY SHEET

Please fill out this form completely and as accurately possible regarding the proposed project budget. All fields are required. Please contact District staff if you have questions regarding this form.

### Section 1 – Applicant Information

Agency name: City of Madera	
Project title: Downtown Madera Veterans and Family Housing	
Total project cost: \$25,809,614	Total amount of funding requested from the District: \$2,717,694

### Section 2 – Project Partners and Match Funding

Please list all project partners, funding sources and all potential grant funding (District funds included) that will be leveraged for the proposed project. Attach a separate sheet as necessary.

Project Partners	Funding Amount	Type of Match (Cash or In-Kind)	If applicable, describe the type of in-kind service
1. San Joaquin Valley Air Pollution Control District	\$2,717,694	Cash	N/A
2. AHSC	\$11,326,908	Cash	N/A
3. 4% LIHTC	\$7,020,846	Cash	N/A
4. Loans	\$1,508,400	Cash	N/A
5. Local Grant Funding	\$2,664,106	Cash	N/A
6. GP Equity / Deffered Developer Fee	\$571,660	Cash	N/A
7.			
8.			
9.			
<b>Total:</b>	\$25,809,614		

### Section 3 – Project Costs by Task

Please list all project tasks required to complete the project, even if the task will not be funded with District funding, with a brief description and associated costs for each task. Please identify the corresponding funding source for each task and provide a breakdown of costs for each task. Where a task will be funded in whole or part by a third party, please identify the third party. Include all items that are not eligible for District funding, which may be used as project match. Final eligible expenses will be identified in the grantee's agreement with the District. **Make additional copies and attach as necessary. The information provided in this section should correlate with Section 2 of this form.**

Task #	Brief Description of Task	Funding Source (check all that apply)	Amount provided per funding source	Breakdown of Task costs
1	Hard Costs (Affordable Housing Project Construction)	<input type="checkbox"/> District		Equipment:
		<input type="checkbox"/> Applicant		Labor/Installation:
		<input checked="" type="checkbox"/> Third Party: AHSC	\$6,818,980	Other:
		Total Task Cost:	\$6,818,980	
2	Hard Costs (Affordable Housing Project Construction)	<input type="checkbox"/> District		Equipment:
		<input type="checkbox"/> Applicant		Labor/Installation:
		<input checked="" type="checkbox"/> Third Party: 4% LIHTC	\$7,020,846	Other:
		Total Task Cost:	\$7,020,846	
3	Hard Costs (Sustainable Transportation Improvements)	<input type="checkbox"/> District		Equipment:
		<input type="checkbox"/> Applicant		Labor/Installation:
		<input checked="" type="checkbox"/> Third Party: AHSC	\$2,845,000	Other:
		Total Task Cost:	\$2,845,000	
4	Hard Costs (Housing Related Infrastructure & Transportation Related Amenities)	<input type="checkbox"/> District		Equipment:
		<input type="checkbox"/> Applicant		Labor/Installation:
		<input checked="" type="checkbox"/> Third Party: AHSC	\$1,662,928	Other:
		Total Task Cost:	\$1,662,928	
		<b>Total Project Cost:</b>	see next page	

### Section 3 – Project Costs by Task

Please list all project tasks required to complete the project, even if the task will not be funded with District funding, with a brief description and associated costs for each task. Please identify the corresponding funding source for each task and provide a breakdown of costs for each task. Where a task will be funded in whole or part by a third party, please identify the third party. Include all items that are not eligible for District funding, which may be used as project match. Final eligible expenses will be identified in the grantee's agreement with the District. **Make additional copies and attach as necessary. The information provided in this section should correlate with Section 2 of this form.**

Task #	Brief Description of Task	Funding Source (check all that apply)	Amount provided per funding source	Breakdown of Task costs
5	Soft Costs	<input type="checkbox"/> District		Equipment:
		<input type="checkbox"/> Applicant		Labor/Installation:
		<input checked="" type="checkbox"/> Third Party: <b>Loan</b>	\$1,508,400	Other:
		Total Task Cost:	\$1,508,400	
6	Soft Costs	<input type="checkbox"/> District		Equipment:
		<input type="checkbox"/> Applicant		Labor/Installation:
		<input checked="" type="checkbox"/> Third Party: <b>Local Grant Funding</b>	\$2,664,106	Other:
		Total Task Cost:	\$2,664,106	
7	Soft Costs	<input type="checkbox"/> District		Equipment:
		<input type="checkbox"/> Applicant		Labor/Installation:
		<input checked="" type="checkbox"/> Third Party: <b>GP Equity Deferred Fee</b>	\$571,660	Other:
		Total Task Cost:	\$571,660	
8	Soft Costs (Directly related to the construction/hard cost of the project)	<input checked="" type="checkbox"/> District <b>SJVAPCD</b>		Equipment:
		<input type="checkbox"/> Applicant		Labor/Installation:
		<input type="checkbox"/> Third Party:	\$2,717,694	Other:
		Total Task Cost:	\$2,717,694	
		<b>Total Project Cost:</b>	\$25,809,614	

## PROJECT IMPLEMENTATION SCHEDULE

Please fill out this form regarding the proposed project's implementation schedule completely and as accurately as possible. Please contact District staff if you have questions regarding this form.

### Section 1 – Applicant Information

Agency name: City of Madera
Project title: Downtown Madera Veterans and Family Housing

### Section 2 – Project Implementation Schedule

Please provide quantitative tasks required to complete the proposed project and the timeline for each task. Include the expected start and finish dates for each task. If you already have a project implementation schedule that provides the information requested in a similar format, it may be attached in lieu of completing the Project Implementation Schedule below. **Please make additional copies of this form as necessary.**

	Expected Start Date:	Expected Finish Date:
<b>Task:</b> AHSC Application		
Subtask 1: Land Use Approvals	7/1/18	11/1/18
Subtask 2: Site Control	2/6/19	2/6/19
Subtask 3: Community Outreach	1/30/19	1/30/19
<b>Task:</b> Design/Permitting		
Subtask 1: Conceptuals	7/1/18	9/11/18
Subtask 2: Construction Documents	7/1/19	12/1/19
Subtask 3: Building permits	9/1/19	12/1/19
<b>Task:</b> Financing		
Subtask 1: Secure AHSC	6/21/19	
Subtask 2: LIHTC & Revenue Bond	6/21/19	1/1/20
Subtask 3: Other Permanent Financing	6/21/19	1/1/20
<b>Task:</b> Construction (affordable housing)		
Subtask 1: Secure Constuction Financing	6/21/19	1/1/20
Subtask 2: Site Improvements	1/1/20	12/31/20
Subtask 3: Vertical Improvements	3/1/20	12/31/20
<b>Task:</b> Occupancy		
Subtask 1: Certificate of Occupancy	1/1/21	1/1/21
Subtask 2: Funding Close out	7/1/21	7/1/21
Subtask 3: Marketing outreach	6/1/20	1/1/21

## PROJECT IMPLEMENTATION SCHEDULE

Please fill out this form regarding the proposed project's implementation schedule completely and as accurately as possible. Please contact District staff if you have questions regarding this form.

### Section 1 – Applicant Information

Agency name: City of Madera
Project title: Downtown Madera Veterans and Family Housing

### Section 2 – Project Implementation Schedule

Please provide quantitative tasks required to complete the proposed project and the timeline for each task. Include the expected start and finish dates for each task. If you already have a project implementation schedule that provides the information requested in a similar format, it may be attached in lieu of completing the Project Implementation Schedule below. **Please make additional copies of this form as necessary.**

	Expected Start Date:	Expected Finish Date:
<b>Task:</b> Sustainable Transportation Improvements		
Subtask 1: Design/Permitting	10/1/19	3/1/21
Subtask 2: Construction	3/1/21	12/1/21
Subtask 3: Program Funds Fully Disbursed		3/1/22
<b>Task:</b> Transit Related Amneities		
Subtask 1: Design/Permitting	10/1/19	3/1/21
Subtask 2: Construction	3/1/21	12/1/21
Subtask 3: Program Funds Fully Disbursed		3/1/22
<b>Task:</b>		
Subtask 1:		
Subtask 2:		
Subtask 3:		
<b>Task:</b>		
Subtask 1:		
Subtask 2:		
Subtask 3:		
<b>Task:</b>		
Subtask 1:		
Subtask 2:		
Subtask 3:		



# San Joaquin Valley

## AIR POLLUTION CONTROL DISTRICT

### PUBLIC BENEFIT GRANTS PROGRAM

#### Community Improvement Projects that Reduce Vehicle Use and Emissions Eligibility Criteria and Application Guidelines

The San Joaquin Valley Air Pollution Control District (SJVAPCD) is currently accepting applications from public agencies requesting funding for land use and community development projects that will reduce vehicle use and emissions through enhanced walkability and increased use of zero and near-zero emission transportation options. The purpose of this grant is to provide the means to bring additional Cap and Trade and other state and federal funds to the Valley by providing match funds for these programs. Applicants may apply for up to 50% of the cost of the project, with a funding cap of \$3 million per project, per applicant. For additional information, assistance, or to receive application materials, please contact:

**Ashley Burrow or  
David Lopez**  
**San Joaquin Valley Air Pollution Control District**  
**Strategies and Incentives Department**  
**1990 East Gettysburg Avenue**  
**Fresno, CA 93726-0244**

You may also contact us by phone or e-mail, or visit our website at:

**(559) 230-5800**  
**[weberip@valleyair.org](mailto:weberip@valleyair.org)**  
**[www.valleyair.org](http://www.valleyair.org)**

#### **Please Note the Following:**

- All projects will be considered on a first-come, first-serve basis.
- You may **not** start construction or purchase equipment in which you are requesting funding prior to obtaining an executed contract with the SJVAPCD. Any contractual costs or work commenced **prior** to contract execution is **ineligible** for funding.



## ELIGIBILITY CRITERIA

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The purpose of this program is to provide necessary match funding to public agencies as a means of support, enhancing their grant applications for local, state, and federal funds. Program funds are to be used for specific land use and community development projects located within the boundaries of the SJVAPCD that reduce vehicle use and emissions.

❖ The **applicant** must:

- Be a public agency such as cities, counties, special districts (i.e. water districts, irrigation districts, etc.); public educational institutions (i.e. school districts, community colleges, state universities, etc.) or any other public agency as defined by Government Code section 6252, including those agencies provided for in Article IV and Article VI of the California Constitution, that are located within the geographic area of the SJVAPCD (see map on page 9 for boundaries).
  - Private/Public partnerships are encouraged; however, please note that if selected for funding, the agreement will be between the SJVAPCD and the public agency. The agreement will hold the public agency responsible for the completion of the project.
- Submit by e-mail, mail, or hand-deliver all completed applications to the SJVAPCD's Strategies and Incentives Department at the address listed on Page 1 of these guidelines.
- Provide a resolution from the applicant's governing body (i.e. City Council or County Board of Supervisors), or other documentation signed by a duly authorized official with authority to make financial decisions, authorizing the submittal of the application and identifying the individual authorized to implement the project.
- Commit to a three (3) year contract period.
- Adhere to all program requirements during the contract period.
- Maintain commercial general and automotive liability insurance with minimum limits of coverage in the amount of \$5 million per occurrence and workers' compensation in accordance with California law through the full term of the contract.
- Submit a current copy of Internal Revenue Service (IRS) Request for Taxpayer Identification Number and Certification Form W-9 (Form W-9).
- Submit annual reports to the SJVAPCD through the full term of the contract as well as comply with recordkeeping and audit requirements.
- Agree to allow the SJVAPCD to inspect the project at any time during the contract period.
- Disclose additional funding sources or other financial incentive(s) and funding amounts received or to be applied for by the applicant towards the project.
- Have match funding available to complete the project in a timely fashion or are applying to secure remaining funds from another grant scheduled to open within 6 months from time of application submittal.
- Sign a legally binding contract with the SJVAPCD agreeing to the project milestones and completion deadlines prior to funding being awarded.
- Have completed all necessary environmental clearances, including those required by the California Environmental Quality Act and have no outstanding legal challenges.

- Have all the necessary permits and discretionary land use approvals.
- Have site control, an enforceable right to use a parcel of land for the life of the project, such as a deed, lease, or easement.

❖ The **project** must:

- Provide for public infrastructure or community design that facilitates reductions in current vehicle miles traveled, or facilitates future development projects with reduced vehicle miles traveled.
  - Projects must fall into one of the three following eligible categories:
    - **Transit Oriented Development (TOD)** Project: A project that reduces VMT's by integrating High Quality Transit systems and key destinations. **High Quality Transit** is defined as a transit line with high frequencies (peak period headway frequency of every 15 minutes or less, seven days a week) and permanent infrastructure (railway or Bus Rapid Transit).
    - **Integrated Connectivity Project (ICP)**: A project that reduces VMT's through fewer or shorter vehicle trips or mode shift to transit use, bicycling or walking within area lacking **High Quality Transit**.
    - **Rural Innovation Project Area (RIPA)**: A project that reduces VMT's through fewer or shorter vehicle trips or mode shift to transit use, bicycling or walking within areas lacking **High Quality Transit** within a rural area.
- Be located within one-half (1/2) mile from a transit station/stop.
- Not cause the loss of agricultural land, other working lands, or natural resource lands for other uses.
- Be located within and/or benefit a disadvantaged community. SJVAPCD will use the latest version of EPA's CalEnviroScreen to determine disadvantaged communities. See <http://oehha.ca.gov/calenviroscreen> for more details and to determine if your project is located within a disadvantaged community.
- Be located within the SJVAPCD boundaries in the counties of San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and the Valley portion of Kern (see map on page 6 for boundaries).

❖ **Additional phases or developments of the project:**

If additional phases or developments within the area are planned for the project, the SJVAPCD will calculate the estimated future emission reductions and include them as part of the total sum of emission reductions. **However, future projects (or future phases of existing projects) for which emission reductions are claimed in the current application may not be included in future applications to the SJVAPCD.** Future emission reductions will only be calculated if project specifics necessary to calculate the emissions are known at time of application.

- Additional phases or developments must be located within ½ mile from the primary project.
- Only future emission reductions from reduced VMT's will be calculated.

- Additional phases or developments must be expected to be completed within 5 years of the project being completed.
- Applicant is to complete Sections 3 and 4 of the application for any future phases or developments that future emissions are to be calculated for.

❖ **General Information:**

- Eligible items are costs related to the construction, rehabilitation, and/or other physical improvements necessary for the completion of the project.
- Ineligible items include, but are not limited to, those items not directly related to the construction of the project, such as feasibility studies, administrative costs, employee compensation, marketing, outreach programs, travel expenses, ongoing maintenance, etc.
- Construction performed and/or items purchased prior to an executed contract with the SJVAPCD are **ineligible**. A contract is not deemed executed until all parties have signed. Only work performed and/or purchased within the contract period are eligible for reimbursement.
- Funds will be awarded on a first-come, first-serve basis, within each region of the SJVAPCD. To ensure equitable distribution of program funds, funding will be distributed between the following three SJVAPCD regions based on population. If an insufficient number of applications are received in a specific region, the remaining funds for that region may be used to fund a project in different region. The three regions are comprised of the following counties:
  - Northern Region: San Joaquin , Stanislaus, and Merced
  - Central Region: Madera, Fresno, and Kings
  - Southern Region: Tulare and the Valley portion of Kern
- Applicants are restricted to the following limitations:
  - Applicants may apply for up to 50% of the total project cost, up to \$3,000,000 per project, whichever is less.
  - Maximum funding per applicant is \$3,000,000 per funding cycle.
- Multiple applications may be submitted from the same applicant; however, funding will be limited to the above.
- All applications received will be subject to a review process, which will include the following:
  - Verification of the applicant's eligibility to participate in the Program.
  - Verification that the proposed project is consistent with these guidelines.
  - Determination that all information necessary to calculate benefits and costs is included.
- Funding will be limited to a cost-effectiveness level of \$40,000 to \$80,000 per ton of emissions reduced.
  - Cost-effectiveness level is based on the extent of leveraging funds provided by the applicants as follows:

<b>% of Total Project Funding Provided by Non-SJVAPCD Funding Sources</b>	<b>SJVAPCD Funding Level (\$/ton of criteria pollutant reductions)</b>
50% to 74%	\$40,000
75% to 89%	\$60,000
90% or greater	\$80,000

- SJVAPCD staff will calculate the cost-effectiveness of the project using the most current version of the California Emissions Estimator Model (CalEEMod) and the Congestion Mitigation and Air Quality Improvement cost-effectiveness analysis tools. Funding will be determined based upon the total emission reductions of criteria pollutants (NOx, ROG, and PM) with the corresponding cost per ton of criteria pollutant reductions as listed above.
- Unless written notification is provided stating otherwise, all applications submitted to the SJVAPCD will remain active and will be funded in the order received pending the availability of funds.
- Applicants may be asked to reapply if any aspect of the project is changed.
- Payments shall be made to the applicant only after a completed claim for payment has been received by the SJVAPCD along with all supporting documentation. Items necessary for a complete claim for payment will be outlined in the grant agreement.

## MAP OF THE SJVAPCD



## Implementation Schedule

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**Participant: City of Madera**

**Project Number: G-87235**

Participant shall complete the Project in its entirety within two (2) years from the execution date of this Agreement. Participant shall complete the project in its entirety as specified in Exhibit A and in accordance with the estimated project implementation schedule described below. The implementation schedule in this exhibit shall supersede any previous implementation schedules described and identified in Participant's proposal, Exhibit A. If for any reason the milestone/task(s) cannot be achieved during the estimated time frame, the Participant must notify District staff. Any extensions of milestone/task(s) must be approved by District Staff in writing.

<b>Milestone/Task:</b>	<b>Start Date:</b>	<b>Completion Date:</b>
Mobilization and Grading	July 2020	July 2020
Rough Plumbing	August 2020	September 2020
Pour Slab on Ground	September 2020	September 2020
Framing	September 2020	December 2020
Exterior Finishes	October 2020	March 2021
Status Report	November 2020	November 2020
Landscape	November 2020	January 2021
Topout Plumbing	November 2020	February 2021
Sheetrock	January 2021	May 2021
Status Report	February 2021	February 2021
Interior Doors/Trim/Paint	April 2021	July 2021
Status Report	May 2021	May 2021
Finish Plumbing	July 2021	September 2021
Status Report	August 2021	August 2021
Final Inspection	August 2021	September 2021
<b>Final Report</b>		<b>November 2021</b>

# San Joaquin Valley Air Pollution Control District

## Public Benefit Grant Program - Claim for Payment Form

### Community Improvement Projects

Project Number:

Payee/Grantee : \_\_\_\_\_

Address : \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Please check one of the following :	<input type="checkbox"/> Individual/Sole Proprietor	<input type="checkbox"/> Trust/Estate
	<input type="checkbox"/> C Corporation (C Corp)	<input type="checkbox"/> Other _____
	<input type="checkbox"/> S Corporation (S Corp)	<input type="checkbox"/> Limited Liability Company
	<input type="checkbox"/> Partnership	(C=C Corp, S= S Corp,
	P=Partnership) ► _____	

Federal Tax I.D. # : \_\_\_\_\_

Social Security # : \_\_\_\_\_

Telephone # : \_\_\_\_\_

Date of Invoice	Invoice #	Description of Project Cost	Amount Paid	Grant Amount
<b>Total Claim</b>				

Signature of Signing Authority \_\_\_\_\_ Date \_\_\_\_\_

### For District Use Only

<u>For District Use Only</u>	
SJVUAPCD Approval _____	Date _____
<u>Administrative Services Use Only</u>	
Audited By _____	Date _____
Reviewed By _____	Date _____

Object	Fund	Year	Dept	Sub-Dept	Type	Program	Phase	Entity	Amount	1099 Code
		1	90	92	-					
					-					
					-					
Stipend					-					
Expense					-					
Table					-					
Vendor Number: _____										\$ _____

## Status Report

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**Participant: City of Madera**

**Project Number: G-87235**

The goal of the Status Report is to verify continued progress is being made towards achieving the objectives of the Agreement. If the progress of the Project is anticipated to deviate from the Project Implementation Schedule (Exhibit C), please include a revised Project Implementation Schedule with your Status Report and an explanation for the deviation as requested below.

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*Please answer each item and submit a completed report to Public Benefit Grants Program staff. Please provide responses on a separate sheet of paper.*

- A) Provide a brief summary describing the activities performed for the Project during this reporting period. Include tasks performed or milestones achieved in accordance with the project implementation schedule.**
- B) Provide a brief description of issues encountered, if any, during the reporting period. Explain what actions have been taken or will be taken to resolve the issues.**
- C) Provide an update on the Project Implementation Schedule. Explain deviations from the schedule that might have occurred during the reporting period. Provide revised start and completion dates for tasks/milestones delayed.**
- D) Provide a brief description of the tasks to be performed in the next reporting period.**
- E) Provide any other pertinent information or concerns regarding the Project and its progress. This may include, but is not limited to, explanation of change orders, site photographs, and marketing plans.**



## Final Status Report

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**Participant: City of Madera**

**Project Number: G-87235**

The goal of the Final Report is to assess the project's success in achieving its goals and objectives to complete the **Downtown Madera Veterans and Family Housing Project (Project)**, an Integrated Connectivity Project to construct two three-story buildings with a total of 48 affordable housing units located at 200 and 204 N. C Street, Madera, CA 93638 and 121 and 125 N. C Street, Madera, CA 93638. The Final Report is due to District upon completion of the Project.

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*Please answer each item and submit a completed report to Public Benefit Grants Program staff. Please provide responses on a separate sheet of paper.*

- A) Provide a narrative discussing the completion of the Project including successes and lessons learned. Please identify problems encountered during Project implementation and the steps taken to resolve them.**
- B) Provide a discussion of any study(ies) and/or reports that document the Project's success and contribution to improving air quality, public services, and/or its tangible benefit to Environmental Justice communities.**
- C) Please describe and provide documentation of marketing that had been performed. What plans are in place to continue marketing the Project?**
- D) If applicable, provide any other pertinent information or concerns regarding the final outcome of the project.**

## Annual Report

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**Participant: City of Madera**  
**Project Number: G-87235**

The goal of the Community Improvement Projects that Reduce Vehicle Use and Emissions Annual Report is to document the Project's performance during the past year and ensure continued viability of the infrastructure investment. Please answer the questions below and return to the District within 30 days. If you have any questions regarding the annual report, please contact the program team at (559) 230-5800 or email [grants@valleyair.org](mailto:grants@valleyair.org) and a team member will be happy to assist you.

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*Please answer each item and submit a completed report to Public Benefit Grants Program staff. Please provide responses on a separate sheet of paper.*

- A) Describe the current condition of the Facility, including the grounds. Please include any major maintenance that has been completed.**
- B) Please provide the percentage of occupancy of the affordable housing units.**
- C) Provide a discussion of how the area has benefitted from the completion of the project.**
- D) Describe new development or redevelopment in the area of the Project that has occurred in the last year, if any.**
- E) Describe the marketing that has occurred for the Project in the last year.**
- F) If applicable, provide any studies and/or reports that document the Project's success and contribution to improving air quality, public services, and/or its tangible benefit to Environmental Justice or disadvantaged communities.**

**Resolution 20-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA  
APPROVING LOAN AGREEMENT BETWEEN CITY OF MADERA AND THE  
DOWNTOWN MADERA HOUSING ASSOCIATES AND RELATED DOCUMENTS FOR  
USE ON THE CITY'S VETERANS AND FAMILY HOUSING PROJECT**

**WHEREAS**, the City of Madera has secured a Public Benefit Grants Program grant in the amount of \$539,151 from the San Joaquin Valley Unified Air Pollution Control District; and

**WHEREAS**, the purpose of the grant is for completion of the Downtown Madera Veterans and Family Housing Project (Project); and

**WHEREAS**, the City will lend the grant funds to Downtown Madera Housing Associates, a California Limited Partnership (DMHA) to complete the Project; and

**WHEREAS**, the DMHA will utilize the loan funds solely to complete funding for the Project and eligible purposes as defined in the Loan Agreement; and

**WHEREAS**, the City wishes to make a subordinate loan to DMHA to facilitate the construction and development of the Project in the amount of \$539,151, for a term of 55 years; and

**WHEREAS**, the Loan Agreement provides that DMHA is required to meet the requirements of the grant Funding Agreement between the City and San Joaquin Valley Unified Air Pollution Control District; and

**WHEREAS**, the City will disburse the loan funds to DMHA upon completion of the Project as set forth in the Loan Agreement.

**NOW, THEREFORE**, the City Council of the City of Madera finds, determines, resolves and orders as follows:

1. The recitals listed above are true and correct.
2. The Council approves the Loan Agreement with Downtown Madera Housing Associates and related exhibits as set forth in Exhibit 2 (with exhibits) which is attached hereto and incorporated by reference.
3. This resolution is effective immediately upon adoption.

**LOAN AGREEMENT**

**by and between**

**THE CITY OF MADERA**

**and**

**DOWNTOWN MADERA HOUSING ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP**

## LOAN AGREEMENT

THIS LOAN AGREEMENT (this “Agreement”) is entered into as of July \_\_, 2020 (“Effective Date”), between the City of Madera (the “City”), and Downtown Madera Housing Associates, A California Limited Partnership (“Borrower”). Borrower and the City are hereinafter collectively referred to as the “Parties.”

### RECITALS

- A. There is a great demand for affordable rental homes in Madera, California.
- B. The City therefore desires to assist in the development of up to 47 affordable multi-family units and one below market manager’s unit in Madera, California (collectively, the “Project”).
- C. Borrower has agreed to purchase a certain parcel of real property known as Assessor Parcel Number APN 007-112-018 more particularly described in Exhibit A attached hereto (the “Property”) and agrees to construct the housing units described in Recital B, above, on the Property.
- D. Borrower is expected to incur substantial costs in developing and constructing the Project. To reimburse Borrower for a portion of those costs, the City has agreed to make a subordinate loan to Borrower in a total amount not to exceed \$539,151.00 (the “Loan”). The Loan Proceeds (defined below) are derived solely from a grant awarded by the San Joaquin Valley Unified Air Pollution Control District (the “Air District”) to the City (the “Grant”).
- E. The City has entered into a Public Benefit Grants Program Funding Agreement (the “Grant Agreement”) with the Air District for the disbursement of the Grant, attached hereto and incorporated herein as Exhibit B.
- F. Concurrently herewith, Borrower shall execute: (i) a promissory note in the amount of \$539,151.00 to evidence the Loan (the “Note”), and (ii) a Deed of Trust and Security Agreement (the “Deed of Trust”) to provide the City with a security interest in the Property and the Project (collectively, the “Development”). This Agreement, the Note and the Deed of Trust are hereinafter collectively referred to as the “Loan Documents.”
- G. The City has determined that the Loan is necessary to make the Development economically feasible and affordable to low- and very low-income households.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE I DEFINITIONS

- 1.1. “Agreement” means this Loan Agreement.

Exhibit 2-A

**1.2.** “Annual Operating Expenses” means for each calendar year during the term of the Loan, the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: all state and local property and other taxes and annual assessments imposed on the Development; premiums for property damage and liability insurance; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans that have been approved by the City and which are secured by deeds of trust senior in priority to the City’s Deed of Trust (“Approved Senior Loan”); utility services not paid for directly by tenants, including but not limited to water, sewer, trash collection, gas and electricity; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, supplies, and others; any annual license or certificate of occupancy fees required for operation of the Development; general administrative expenses including but not limited to advertising and marketing, security services and systems, and professional fees for legal, audit and accounting; property management fees and reimbursements including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the City; and cash deposited into a reserve for capital replacements and an operating reserve in such reasonable amounts as are approved by the City, tax credit adjusters payable to the Investment Limited Partner pursuant to the terms of the Partnership Agreement, the Asset Management Fee of \$7,500.00 per annum (increased annually by 3%), the Partnership Management Fee of \$100.00 per unit per annum (with accrued interest annually at a rate of 3%), and Deferred Development Fees payable out of Residual Receipts. Annual Operating Expenses shall not include the following: debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the City’s Deed of Trust other than the deferred developer fee loan; depreciation, amortization, depletion or other non-cash expenses; capital expenditures; expenses paid for with disbursements from any reserve account except to the extent such disbursement is accounted as Gross Revenue; any amount paid to Borrower, or any entity controlled by the persons or entities in control of Borrower (unless such payment to Borrower consists of fees paid to a property management agent or resident services agent or is specifically provided for hereinabove including, without limitation, the deferred developer fee).

**1.3.** “Loan” is defined in Recital D of this Loan Agreement.

**1.4.** “Completion Date” means the estimated date of two years from the execution of the Grant Agreement.

**1.5.** “Deferred Development Fee” means the portion of the Development Fee not paid to Pacific West Communities, Inc., an Idaho corporation (the “Developer”) from available development sources, but solely from net cash flow, pursuant to the agreement between the Developer and Borrower.

**1.6.** “Development” is defined in Recital F of this Loan Agreement.

**1.7.** “Development Fee” means the fee for services performed and to be performed under the Development Agreement between the Developer and Borrower.

## Exhibit 2-A

**1.8.** “Gross Revenue” means for each calendar year during the term of the Loan, all revenue, income, receipts and other consideration actually received by Borrower from operation and leasing of the Development. Gross Revenue includes, but is not limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development; and condemnation awards for a taking of part or all of the Development for a temporary period. Gross Revenue shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Development and the release of funds from replacement and other reserve accounts to Borrower other than for costs associated with the Development. Gross Revenue shall not include tenants’ security deposits, loan proceeds, capital contributions or similar advances.

**1.9.** “Investment Limited Partner” means RSEP Holding, LLC, a Delaware limited liability company, and its successors and assigns.

**1.10.** “Parties” means the City and Borrower.

**1.11.** “Partnership Agreement” means that certain Amended and Restated Agreement of Limited Partnership of Borrower, to be agreed upon by Borrower and the Investment Limited Partner.

**1.12.** “Project” is defined in Recital B of this Loan Agreement.

**1.13.** “Property” is defined in Recital C of this Loan Agreement.

**1.14.** “Residual Receipts” means for each calendar year during the Term (as defined in the Note), the amount by which Gross Revenue (as defined above) exceeds Annual Operating Expenses for the Development. Residual Receipts shall also include, unless otherwise provided herein and subject to the rights of senior lenders, condemnation awards for a permanent taking of part or all of the Property or the Project to the extent not utilized to repair or rebuild the Development.

**1.15.** “Soft Loans” means the Loan of \$539,151.00; the AHSC Loan of \$6,818,980.00; the City of Madera as the Successor Agency of the Former Redevelopment Agency Loan of \$946,000.00; and MHSA Loan of \$500,000.00 from Madera County.

**1.16.** Exhibits. The following exhibit is attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Public Benefit Grants Program Funding Agreement

## ARTICLE II LOAN PROVISIONS

### 2.1. The Loan.

(a) Loan Amount. The City agrees to lend to Borrower a total amount not to exceed \$539,151.00 ("Loan Proceeds") as reimbursement pursuant to the Grant Agreement. The Loan shall be evidenced by the Note executed by Borrower.

(b) Loan Interest. Commencing on the date of initial disbursement of all or a portion of Loan Proceeds and continuing through the date that all indebtedness and other amounts payable under this Agreement and the Note are paid in full, the interest on the Loan shall bear interest at a simple rate of three percent (3%) per year.

(c) Term. All unpaid principal, accrued and unpaid interest, and any other amounts payable under this Agreement is due and payable 55 years from the date the Certificate of Occupancy is issued for all buildings at the Project (the "Loan Maturity Date").

(d) Payment Terms. Borrower shall pay the Loan in accordance with the terms set forth in Section 2.2 of this Agreement.

### 2.2. Repayment of Loan

(a) Annual Payments. Borrower shall make payments on the outstanding principal and accrued interest on the Loan in amounts equal to the City Prorated Share (as defined below) of the Residual Receipts for the Loan. Such annual payments shall be due and payable in arrears no later than May 1<sup>st</sup> of each year with respect to the previous calendar year, commencing on the May 1<sup>st</sup>, following conversion of the Loan from the construction loan to the permanent loan, and shall be accompanied by Borrower's report of Residual Receipts. Borrower shall provide the City with any documentation reasonably requested by the City to substantiate Borrower's determination of Residual Receipts. Payments made shall be credited first against accrued interest and then against outstanding principal of the Loan. The "City's Prorated Share" means the pro rata share of 50% of Residual Receipts prorated between all Soft Loans.

(b) Payment in Full. All unpaid principal and interest on the Loan shall be due upon the earliest of:

(i) A Transfer (as such term is defined in Section 2.3, below) of the Development other than a Transfer permitted or approved by the City as provided in this Agreement;

(ii) The occurrence of an Event of Default for which the City exercises its right to cause Loan indebtedness to become immediately due and payable; or

(iii) The Loan Maturity Date for the Loan.

(c) Prepayments. The Loan or any portion of the outstanding principal balance of the Note may be prepaid at any time and from time to time without penalty or premium.



Prepayments shall be applied first to any unpaid late charges and other costs or fees then due, then to accrued but unpaid interest and then to principal.

(d) Reports and Accounting of Residual Receipts.

(i) Audited Financial Statement. In connection with the annual repayment of the Loan, within 120 days of Borrower's Fiscal Year end Borrower shall furnish to the City an audited statement duly certified by an independent firm of certified public accountants approved by the City, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding Development Fiscal Year.

(ii) Books and Records. Borrower shall keep and maintain on the Property or at another location within the City full, complete and appropriate books, records and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement which provide for the calculation of Residual Receipts on a cash basis. All such books, records, and accounts shall be open to and available for inspection by the City, its auditors or other authorized representatives at any time during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish to any governmental entity shall at all times during normal business hours be open for inspection by the City at the place that the books, records and accounts of Borrower are kept or can be requested to be sent to the City. Borrower shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (e) below then pending.

(e) The City Audits.

(i) The receipt by the City of any statement pursuant to subsection (a) above shall not bind the City as to the correctness of such statement or such payment. Within five (5) years after the receipt of any such statement, the City or any designated agent or employee of the City at any time shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto.

(ii) Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept, including on the site of the Project. Immediately after the completion of an audit, the City shall deliver a copy of the results of such audit to Borrower. If it shall be determined as a result of such audit that there has been a deficiency in a loan repayment to the City, then such deficiency shall become immediately due and payable with interest at the Default Rate as set forth in the Note, determined as of and accruing from the date that said payment should have been made. In addition, if Borrower's auditor's statement for any Development Fiscal Year shall be found to have understated Residual Receipts by more than two percent (2%), Borrower shall pay, in addition to the interest charges referenced hereinabove, all of the City's reasonable costs and expenses connected with any audit or review of Borrower's accounts and records.

Exhibit 2-A

(f) Reporting Requirements. Borrower shall comply with the reporting requirements described and required in the Grant Agreement during construction and for three subsequent years after one year following the Completion Date.

(g) Non-Recourse. Except as provided below, neither Borrower nor any partner of Borrower shall have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of Borrower under the Deed of Trust. The sole recourse of the City with respect to the principal of, or interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed of Trust shall be to foreclose on the Property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall:

(i) Limit or impair the enforcement against all such security for the Note of all the rights and remedies of the City thereunder, or

(ii) Be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Note as a demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of Borrower's obligations under the Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve Borrower of its obligation to indemnify the City under Sections 4.9 and 5.3 of this Agreement, or liability for:

(A) Fraud or willful misrepresentation;

(B) The fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and

(C) The misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

**2.3. Due on Sale, Refinance or Transfer of Property.** Unless the City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Loan Documents shall be due and payable upon the transfer, refinance or sale (each a "Transfer") of all or any part of, or interest in, the Property, except any Transfer after which the Property is subject to deed restrictions requiring the Property to continue to be operated as an affordable rental housing development (an "Affordable Development"), or upon Borrower's breach of the Agreement, through at least the Loan Maturity Date for the Loan. Moreover, the City hereby subordinates to the loan(s), loan documents and security interest(s) in the Property of any lender financing a Transfer which is conditioned upon the Property continuing to be operated as an Affordable Development and hereby agrees to execute any document(s) necessary to perfect such subordination(s) or to satisfy the requirements of any such lender. Notwithstanding the foregoing, following the admission of the limited partner of Borrower, the transfer of a limited partner's limited partnership interest shall not constitute an accelerating Transfer and shall not require the

Exhibit 2-A

consent of the City. Moreover, notwithstanding the foregoing, a limited partner of Borrower shall be permitted to remove and replace a general partner thereof for cause in accordance with the Partnership Agreement without the consent of the City.

**2.4. Security.** As security for repayment of the Note, Borrower shall execute the Deed of Trust pursuant to which Borrower shall provide the City a lien against the Property. The Deed of Trust shall be dated as of the Effective Date and shall be recorded in the official records of Madera County.

**2.5. Conditions Precedent to the City's Obligation to Disburse.** The obligation of the City to fund the Loan and disburse the proceeds thereof is conditioned upon the receipt by the City of the following:

- (a) Status Reports as defined and required by the Grant Agreement;
- (b) A completed copy of the Air District's Public Benefit Grants Program – Community Improvement Projects that Reduce Vehicle Emissions Claim for Payment Form, as defined and required by the Grant Agreement;
- (c) A copy of a certificate of substantial completion issued by the architect for the Project;
- (d) A completed copy of the Final Report as defined and required by the Grant Agreement;
- (e) The executed Loan Documents (as defined in Recital F of this Agreement), acknowledged where appropriate;
- (f) A copy of Borrower's enabling partnership agreement or enabling documents, certificate of good standing, corporate borrowing resolution and such other evidence satisfactory to the City that Borrower is duly formed, validly existing, in good standing under the laws of the State of California, has the power and authority to enter into the Loan Documents, and shall be bound by their terms when executed and delivered;
- (g) Recordation of the Deed of Trust in the official records of Madera County;  
and
- (h) Copies of such other documents related to the acquisition and financing of the Property and the Improvements as the City may reasonably request.

**2.6. No Obligation to Disburse Proceeds upon Default.** Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse any portion of the Loan Proceeds if Borrower's representations and warranties materially fail to be true and correct or the reimbursements are not for Eligible Costs (defined below in Section 2.7).

**2.7. Use of Funds.** Borrower agrees to use the Loan Proceeds solely to reimburse costs of physical improvements necessary for the completion of the Project, housing-related infrastructure, and/or sustainable transportation infrastructure ("Eligible Costs").

## Exhibit 2-A

**2.8.** Disbursement of Loan Proceeds. Upon satisfaction of the conditions set forth in Section 2.5 herein and the Air District's disbursement of the Loan Proceeds as a grant to the City, the City shall disburse an amount equal to the amount of the Loan Proceeds.

### **ARTICLE III**

#### **BORROWER REPRESENTATIONS AND WARRANTIES**

**3.1.** Duly Organized. Borrower warrants that it is duly organized under applicable laws of the State of California, is qualified to do business in the State of California, and is in compliance in all material respects with all laws and regulations necessary to acquire the Property.

**3.2.** Authority. Borrower warrants that it has authority, and has completed all proceedings and obtained all approvals necessary to execute, deliver, and perform its obligations under the Loan Documents and the transactions contemplated thereby.

**3.3.** No Contravening Agreements. Borrower warrants that the execution, delivery, and performance of the Loan Documents will not contravene, or constitute a default under or result in a lien upon assets of Borrower pursuant to any applicable law or regulation, any charter document of Borrower, or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decree, or other instrument binding upon or affecting Borrower.

**3.4.** Valid and Binding Obligations. Borrower warrants that, when duly executed by Borrower, this Agreement and the Note shall constitute the valid and binding obligations of Borrower enforceable in accordance with their respective terms. Borrower hereby waives any defense to the enforcement of the terms of the Loan Documents related to alleged invalidity of any provisions or conditions contained therein.

**3.5.** No Adverse Action. Borrower warrants that there is no action, suit or proceeding pending or threatened against it which might adversely affect Borrower in any material respect.

### **ARTICLE IV**

#### **BORROWER COVENANTS**

**4.1.** Use of Proceeds. Borrower agrees to use the Loan Proceeds solely for Eligible Costs consistent with this Agreement and the Grant Agreement.

**4.2.** Punctual Payment. Borrower covenants to punctually pay the principal balance of the Loan, and interest accrued thereon, at the times and place and in the manner specified herein and in the Note.

**4.3.** Taxes and Other Liabilities. Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state income taxes, property taxes, and special taxes or assessments due to the City of Madera or the County of Madera which are the obligations of Borrower in relation to the Property except those that Borrower may in good faith contest or as to which a bona fide dispute may arise, provided that Borrower notify the City of its dispute and that provision is made to the satisfaction of the City for eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

## Exhibit 2-A

**4.4. Compliance with Laws.** Borrower covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property. Without limiting the generality of the foregoing, Borrower shall comply with all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled.

**4.5. Assignment.** Borrower shall not cause or permit any voluntary transfer, assignment or conveyance of this Agreement. Any transfer, assignment or conveyance shall be voidable and shall constitute a default under Article 6 of this Agreement.

**4.6. Insurance.** Borrower covenants to maintain insurance equivalent to a commercial general liability policy in the amount of One Million Dollars (\$1,000,000.00) combined single limit, including contractual liability coverage. Such insurance shall be written on an occurrence basis and shall name the City as loss payee as its interests may appear. Borrower covenants to maintain and keep the Property insured against loss or damage by earthquake, fire and such other hazards, casualties and contingencies and by such companies on such forms and in the amount of the replacement cost of the Property and any improvements thereon, and shall deliver a copy of all such policies to the City, together with receipts satisfactory to the City evidencing payment of the premiums. Borrower shall provide the City not less than thirty (30) days advance written notice of the cancellation, expiration or termination of any such policy or any material change in the coverage afforded by it. Renewal policies and any replacement policies, together with premium receipts satisfactory to the City, shall be delivered to the City at least thirty (30) calendar days prior to the expiration of existing policies. Neither Borrower nor the City shall by reason of accepting, rejecting, approving or obtaining insurance incur any liability for the existence, nonexistence, form or legal sufficiency of such insurance, or solvency of any insurer for payment of losses. All insurance proceeds for such losses must be utilized for the repair or restoration of the Property and improvements thereon.

**4.7. Accounting Records; Property Inspection.** Borrower covenants to maintain accurate books and records in accordance with standard accounting principles consistently applied, and to permit the City, during business hours and upon reasonable notice to inspect, audit and examine such books and records with respect to the Project, the Property and the Loan Documents and to inspect the Property and Improvements during normal business hours upon reasonable notice.

**4.8. Maintenance.** During the term of this Agreement, Borrower shall maintain the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving an the City notice of such a condition (or such additional time as may be reasonably necessary provided Borrower has commenced to cure the same within such 30-day period), then in addition to any other rights available to the City, the City shall have the right to perform all acts necessary to cure such condition.

**4.9. Indemnification.** Borrower shall indemnify, defend (with counsel reasonably acceptable to the City), and hold harmless the City and its officials, officers, agents, and employees (collectively the "Indemnitees"), from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims, demands, penalties, fines, orders, judgments, injunctive or other

## Exhibit 2-A

relief, expenses and charges (including attorneys' fees and expenses of attorneys), but excluding the principal and interest due under the Loan (collectively "Liabilities") arising directly or indirectly in any manner in connection with or as a result of: (a) any breach of Borrower's covenants under the Loan Documents, (b) any failure of Borrower's representations and warranties to be true and correct in all material respects when made, (c) any injury or death to persons or damage to property or other loss occurring on the Property, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnatee which relates to or arises out of the Loan, the Loan Documents, or any transaction contemplated thereby, or any failure of Borrower to comply with all applicable state, federal and local laws and regulations, provided that no Indemnatee shall be entitled to indemnification under this Section for matters caused by such Indemnatee's gross negligence or willful misconduct. The obligations of Borrower under this Section shall survive the expiration or termination of this Agreement.

**4.10. Notice to The City.** Within three business days after any of the following shall occur, Borrower shall provide written notice thereof to the City: (1) any change in name, identity, legal structure, business location, or address of Borrower; (2) any uninsured or partially uninsured loss affecting the Property or any improvements thereon through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000.00); and (3) Borrower's receipt of a notice of default under any mortgage or other financing document affecting the Property or any improvements thereon.

**4.11. Lease of Property.** Unless the City agrees and approves in writing, Borrower shall not convey all or any part of the Property by lease, except in the ordinary course of operating the Development as a residential rental project.

**4.12. Expenses of Collection or Enforcement.** If at any time Borrower defaults under any provision of the Loan Documents, Borrower shall pay to the City in addition to any other sums that may be due to the City, an amount equal to the costs and expenses (including without limitation, attorneys' fees and expenses) the City incurs in connection with the collection, enforcement, or correction of the default, and such amounts shall be a part of the indebtedness secured by the Deed of Trust.

**4.13. Non-Discrimination.** Borrower covenants by and for itself, and any successors in interest, that there shall be no discrimination against or segregation of, any person, or group of persons on account of 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, nor shall Borrower itself or any person claiming under or through it establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of Borrower. The foregoing covenants shall run with the land.

Notwithstanding the foregoing, with respect to familial status, nothing herein shall be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor shall be construed to affect Section 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this Section 4.13.

## **ARTICLE V**

### **ENVIRONMENTAL REQUIREMENTS**

**5.1. Hazardous Materials.** Borrower shall not cause or permit any Hazardous Materials (as defined in below) to be brought upon, kept, stored or used in, on, or about the Property by Borrower, or the agents, employees, contractors or invitees of Borrower except for materials commonly used in construction activities similar to those related to the Improvements, or in the operation and maintenance of the Property and the Improvements, in each case in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Property. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Property and results in any contamination of the Property or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Property, Borrower shall promptly take all actions at Borrower's sole expense as are necessary to comply with all Hazardous Materials Laws (as defined below).

**5.2. Definitions.**

(a) Hazardous Materials. As used in this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, city or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," or any other terms comparable to the foregoing terms under any provision of California law or federal law as any such statutes and regulations now exist or may hereafter be amended, (ii) petroleum or petroleum products; (iii) asbestos; (iv) polychlorinated biphenyls, (v) radioactive chemicals, (vi) any material determined to hazardous based on deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity or toxicity, (vii) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (viii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); (ix) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq; or (x) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

(b) Hazardous Materials Laws. As used in this Agreement, "Hazardous Materials Laws" means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 5.2(a), as they may be amended from time to time.

**5.3. Indemnification.** Borrower shall indemnify, defend (with counsel reasonably acceptable to the City), and hold the Indemnitees harmless from and against liabilities arising directly or indirectly in any manner in connection with or as a result of the breach of Borrower's covenants set forth in Section 5.1 or the actual or alleged release or presence of any Hazardous Materials on, under, in or about the Property, whether known or unknown, foreseeable or unforeseeable, regardless of the source of such release or when such release occurred or such presence is discovered. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of such Hazardous Materials, all costs of determining whether the Property is in compliance with Hazardous Materials Laws, all costs associated with bringing the Property into compliance with all applicable Hazardous Materials Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources. The indemnity described in this Section shall survive the expiration or termination of this Agreement, the making and repayment of the Loan, the release or reconveyance of the Deed of Trust, and any foreclosure proceeding, foreclosure sale or delivery of deed in lieu of foreclosure. Borrower's indemnity obligations under this Section will not extend to claims resulting from Indemnitees' gross negligence or willful misconduct.

## **ARTICLE VI**

### **DEFAULT AND REMEDIES**

**6.1. Events of Default.** Each of the following events will constitute an event of default ("Event of Default") under this Agreement:

(a) Use of Funds. Borrower's illegal or improper use of funds after any applicable cure periods.

(b) Failure to Report. Borrower's failure to comply with the reporting requirements described and required by the Grant Agreement after any applicable cure periods.

(c) Failure to Make Payments. If Borrower fails to pay when due the principal and interest payable under the Note and such failure continues for ten (10) calendar days after the City notifies Borrower thereof in writing.

(d) Noncompliance with Loan Documents. Borrower's failure, neglect or refusal to perform any promise, agreement, covenant or obligation contained in the Loan Documents after any applicable cure periods.

(e) Noncompliance with Governmental Requirements. Borrower's failure to timely comply with any governmental requirements, including but not limited to obtaining licenses and permits and complying with the TCAC Regulatory Agreement after any applicable cure periods.

(f) False Representations. If any material representation or disclosure made to the City by Borrower in connection with the Loan Documents proves to be false or misleading in any material adverse respect when made.

(g) Bankruptcy. The filing by or against Borrower of a voluntary or involuntary petition in bankruptcy or the adjudication of Borrower as bankrupt or insolvent, or the filing of



any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or the seeking or consenting to or acquiescing in the appointment of any trustee, receiver, liquidator of Borrower or any substantial part of or all of the property of Borrower, and if any such proceeding is not dismissed within sixty (60) days; Borrower is named in any such proceeding and the same is not dismissed within one hundred twenty (120) days.

(h) Lease. Conveyance of all or a portion of the Property by lease without the prior written consent of the City to such conveyance, except in the ordinary course of operating the Development as a residential rental project.

(i) Transfer. The occurrence of a Transfer in violation of Section 2.3 of this Agreement.

(j) Occurrence of an Event of Default in Other Loan Documents. An event of default under any Loan Document, or any other loan agreement and related documents by and between Borrower and the City other than the Loan Documents, subject to the expiration of any applicable cure period set forth in such documents.

**6.2.** Declaring Default. Whenever any Event of Default has occurred the City shall give written notice of default to Borrower, and each limited partner of Borrower at the time of such notice. The City agrees to accept cure from any limited partner of Borrower. If the default is not cured by any of the noticed parties within thirty (30) business days after the Date of Default (defined herein or longer if set forth in any Loan Document), or any extension approved in writing by the City, the City may enforce its rights and remedies under Section 6.3 below. Any default that has occurred shall be deemed to commence on the date that written notice of default is effective per Section 7.4 of this Agreement (the "Date of Default"). If Default is of a nature that will reasonably take longer to cure than thirty (30) days, Borrower shall have such additional time as may be reasonably necessary to cure any condition that provided Borrower commences to cure within 30 days of notice of default and diligently pursues to cure.

**6.3.** Remedies. Upon the occurrence of any Event of Default, in addition to its other rights in this Agreement, and the Note, at law, or in equity, the City may exercise any one or more of the following rights and remedies:

(a) Accelerate and declare the entire unpaid principal balance of the Note together with all accrued interest thereon, and all other sums owing to the City immediately due and payable; and

(b) Proceed at law, or in equity, to require Borrower to perform its obligations and covenants under the Loan Documents; and

(c) Proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, pursue any and all other remedies available under law to enforce the terms of this Agreement or any other Loan Document.

The remedies provided herein are cumulative and not exclusive of, and shall not prejudice any other remedy provided in any Loan Document.

## **ARTICLE VII**

### **MISCELLANEOUS**

**7.1. Relationship of Parties.** Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee or principal and agent between the City and Borrower or Borrower's agents or employees, and Borrower shall at all times be deemed a borrower and shall be wholly responsible for the manner in which it or its agents, or both, perform under this Agreement.

**7.2. No Third Party Claims.** Nothing contained in this Agreement shall create or justify any claim against the City by any third person whom Borrower may have employed or contracted or may employ or contract relative to the purchase of any material, supplies or equipment, or the furnishing or the performance of any work or services with respect to any programs or projects being undertaken by Borrower.

**7.3. Conflict of Interest.** Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of the City or Borrower who exercises or has exercised any function or responsibilities with respect to activities assisted by tax increment funds in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities assisted under this Agreement, may obtain a personal or financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter.

**7.4. Notices.** Any notice, request or consent required pursuant to this Agreement shall be deemed delivered upon receipt when delivered personally or by facsimile transmission, provided that a transmission report is generated reflecting the accurate transmission thereof, or three (3) business days after being deposited in the U.S. mail, first class postage prepaid, return receipt requested, or one (1) day after deposit with a nationally recognized overnight carrier addressed as follows:

THE CITY:               The City of Madera  
205 W. 4th Street  
Madera, CA 93637  
Attn: Arnoldo Rodriguez

BORROWER:           Downtown Madera Housing Associates,  
A California Limited Partnership  
430 E. State Street, Ste.100  
Eagle, ID 83616  
Attn: Caleb Roope

With copies to:

Exhibit 2-A

RSEP Holding, LLC  
1100 Superior Avenue, Suite 1640  
Cleveland, OH 44114  
Attention: General Counsel

And:

Applegate & Thorne-Thomsen, P.C.  
425 S. Financial Place, Suite 1900  
Chicago, Illinois 60605  
Attention: Bennett Applegate

or to such other addresses as the parties may designate by notice as set forth above.

**7.5. Successors and Assigns.** All of the terms of this Agreement shall apply to and be binding upon, and inure to the benefit of, the successors and permitted assigns of the City and Borrower, respectively, and all persons claiming under or through them.

**7.6. Attorneys' Fees.** If any action is instituted by any Party to this Agreement to enforce this Agreement, the Loan or the Note, or to collect any sums due hereunder or pursuant to the Loan or the Note, the prevailing Party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in that action.

**7.7. Severability.** If one or more provisions of this Agreement are found invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not in any way be affected, prejudiced, disturbed or impaired thereby, and all other provisions of this Agreement shall remain in full force and effect.

**7.8. Amendments/Entire Agreement.** The City and Borrower reserve the right to amend this Agreement by mutual consent. It is mutually understood and agreed that no amendment, modification, alteration or variation of the terms of this Agreement shall be valid unless in writing and signed and acknowledged and approved by both parties. This Agreement constitutes the entire agreement of the parties and no oral understandings or agreement not incorporated herein shall be binding on either Party.

**7.9. Joint and Several Liability.** If Borrower consists of more than one person or entity, each shall be jointly and severally liable to the City for the performance of this Agreement.

**7.10. Time.** Time is of the essence in the performance of the terms and conditions of this Agreement.

**7.11. Governing Law.** The laws of the State of California shall govern this Agreement.

**7.12. Non-Liability of The City and The City Officials, Employees and Agents.** No member, official, employee or agent of the City or the City shall be personally liable to Borrower, or any successor in interest to Borrower, in the event of any default or breach by the City or for

any amount which may become due to Borrower or any successor under the terms of this Agreement.

**7.13. The City's Rights and Consent.** No forbearance, failure or delay by the City in exercising any right, power or remedy, nor any single or partial exercise by the City of any right or remedy hereunder shall preclude the further exercise of such right, power or remedy.

The City's consent to any act or omission by Borrower may not be construed as the City's consent to any other or subsequent act or omission or as a waiver of the requirement to obtain the City's consent in any other instance. All of the City's rights, powers and remedies are cumulative and shall continue in full force and effect until specifically waived in writing by the City.

**7.14. Duration/Survival.** This Agreement shall continue in full force and effect until the obligations due under this Agreement and the Note has been paid in full. Notwithstanding the foregoing, the indemnification provisions of Section 4.9 and Section 5.3 of this Agreement shall survive the expiration of this Agreement and the making and repayment of the Loan.

**7.15. Assignment or Assumption.** This Agreement and the Loan Documents may not be assigned to, or assumed by, a third party. Any attempt to assign or assume the Loan Documents shall be void.

**7.16. Headings.** The headings within this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Agreement.

**7.17. Counterparts, Facsimile Copies.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This Agreement shall be effective upon transmission by any Party to the other parties of a fully signed facsimile copy of the Agreement after the formal approval by the governing body of the City, so long as a copy of the Agreement signed by the transmitting Party is delivered to the other parties within five (5) business days thereafter. In case of any conflict, the counterpart maintained by the City shall be deemed to be determinative.

**7.18. Indemnity.** All indemnification provision in the Loan Documents in favor of the City shall apply only to losses, claims, liabilities and/or damages actually incurred, and shall not include any claim or liability to the extent resulting from the City's gross negligence or willful misconduct, as determined by a final judgment of a court of competent jurisdiction.

**7.19. Consent Standard.** In any approval, consent or other determination by the City required under any of the Loan Documents, the City shall act reasonably and in good faith.

**SIGNATURES ON NEXT PAGE**

Exhibit 2-A

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

The City:

City of Madera

By: \_\_\_\_\_  
Name: Andrew J. Medellin  
Title: Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
City Attorney

BORROWER:

Downtown Madera Housing Associates,  
A California  
Limited Partnership

By: TPC HOLDINGS VII, LLC,  
an Idaho limited liability company  
Its: Administrative General Partner

By: \_\_\_\_\_  
Name: Caleb Roope  
Its: Manager

By: MADERA OPPORTUNITIES FOR RESIDENT ENRICHMENT AND SERVICES,  
INC.  
a California Nonprofit Public Benefit Corporation  
Its: Managing General Partner

By: \_\_\_\_\_  
Name: William J. Glover  
Its: Acting Chief Executive Officer

Exhibit 2-A

EXHIBIT A  
Legal Description of the Property

Exhibit 2-A

**EXHIBIT B**  
**The Grant Agreement**

Recording Requested by  
and when Recorded, return to:

The City of Madera  
205 W. 4th Street  
Madera, CA 93637  
Attn: Alicia Gonzales, City Clerk

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

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

## DEED OF TRUST AND SECURITY AGREEMENT

THIS DEED OF TRUST AND SECURITY AGREEMENT ("**Deed of Trust**") is made as of July \_\_, 2020 by Downtown Madera Housing Associates, A California Limited Partnership ("**Trustor**") to First American Title Company as trustee ("**Trustee**") for the benefit of the City of Madera ("**Beneficiary**").

### RECITALS

- A. Trustor owns fee simple title to the real property known as APN 007-112-018 as more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("**Land**").
- B. Trustor has agreed to and will construct 47 affordable multi-family units and one below market manager's unit (the "**Project**") on the Land.
- C. Trustor and Beneficiary have entered into the Loan Agreement dated on even date herewith (the "**Loan Agreement**") pursuant to which Beneficiary will provide a loan in an amount not to exceed \$539,151.00, with the designated proceed sources enumerated in the Loan Agreement (the "**Loan**").
- D. As a condition to making the Loan, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Property (as defined below) to secure repayment of the Loan.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustee agrees as follows:

1. Grant in Trust. Trustor irrevocably grants and conveys the Land to Trustee, in trust, with power of sale, together with all improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Beneficiary to collect and apply such rents), all of which shall be deemed to be and remain a part



of the Property secured by this Deed of Trust; and all of the foregoing, together with the Land are hereinafter referred to as the “**Property**”.

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

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

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

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

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

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

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

TOGETHER WITH all of Trustor’s interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs, and other personal property now or hereafter appropriated for use on the Property, whether stored on the

Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the “**Security.**” To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING (collectively the “**Secured Obligations**”):

(a) Payment of just indebtedness of Trustor to Beneficiary as set forth in the Note (as defined in Article 1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the Note. Said Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor’s obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (defined in Section 1.3 below).

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

## **ARTICLE I DEFINITIONS**

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

**1.1.** The term “**Note**” means the promissory note in the principal amount of \$539,151.00 dated of even date herewith executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust. (A copy of the Note is on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference).

**1.2.** The term “**Loan Agreement**” means that certain Loan Agreement between Trustor and Beneficiary, dated of even date herewith providing for the Beneficiary to provide to the Trustor: a Loan in an amount not to exceed \$539,151.00 to the Trustor made to provide partial financing for the development of the Property, including a source for the permanent loan.

**1.3.** The term “**Loan Documents**” means this Deed of Trust, the Note, the Loan Agreement, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

**1.4.** The term “**Principal**” means the amount required to be paid under the Note.

## **ARTICLE II**

### **MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY**

#### **2.1. Maintenance and Modification of the Property by Trustor.**

(a) The Trustor agrees that at all times prior to full payment of the sum owed under the Note, the Trustor will, at the Trustor’s own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

(b) Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

(c) Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the office of the recorder of the County of Madera, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

**2.2. Granting of Easements.** Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those existing as of the date thereof, or required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law. As to these exceptions, Beneficiary will grant and/or direct the Trustee to grant such easements.

## **ARTICLE III**

### **TAXES AND INSURANCE; ADVANCES**

#### **3.1. Taxes, Other Governmental Charges and Utility Charges.**

(a) Trustor shall pay, or cause to be paid, at least fifteen (15) days prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided however, the Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1, and (c) Trustor notifies Beneficiary of its dispute with the tax, assessment, charge or levy. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefore on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments charges and levies.

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

#### **3.2. Provisions Respecting Insurance.**

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

(b) All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand thereof at any time prior to the Beneficiary's receipt of the entire Principal and all amounts secured by this Deed of Trust.

**3.3. Advances.** In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Beneficiary, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced thereof by the Beneficiary shall become an additional obligation of

the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of eight percent (8%) per annum or the maximum rate permitted by law.

#### **ARTICLE IV**

##### **DAMAGE, DESTRUCTION OR CONDEMNATION**

**4.1. Awards and Damages.** All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (b) any damage to or destruction of the Property or in any part thereof by insured casualty, and (c) any other injury or damage to all or any part of the Property (“**funds**”) shall be used by Trustor to restore the Property and, to the extent such funds cannot be used for such purpose, they are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement of adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender.

#### **ARTICLE V**

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

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

**5.2. Agreement to Pay Attorneys’ Fees and Expenses.** In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of any obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand thereof, pay to the Beneficiary the reasonable fees of such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of eight percent (8%) per annum or the maximum rate permitted by law.

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

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

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

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

**5.7. Inspection of the Security.** At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

**5.8. Nondiscrimination.** The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

## **ARTICLE VI**

### **HAZARDOUS MATERIALS**

**6.1.** Trustor shall not cause or permit any Hazardous Materials (as defined below) to be brought upon, kept, stored or used in, on, or about the Property by Trustor, or the agents, employees, contractors or invitees of Trustor except for materials commonly used in construction activities similar to those related to the Project, or in the operation and maintenance of the Property

and the Improvements, in each case in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Property. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Property and results in any contamination of the Property or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Property, Trustor shall promptly take all actions at Trustor's sole expense as are necessary to comply with all Environmental Laws (as defined below).

**6.2. "Hazardous Materials"** means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation:

(a) petroleum or oil or gas or any direct or indirect product or by-product thereof;

(b) asbestos and any material containing asbestos;

(c) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act (15 U.S.C. 2601, et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Authorization Act (49 U.S.C. Section 5101, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251), the Clean Air Act (42 U.S.C. Section 7401, et seq.), the California Underground Storage of Hazardous Substances Act (California Health and Safety Code Section 25280, et seq.), the California Hazardous Substances Account Act (California Health and Safety Code Section 25300, et seq.), the California Hazardous Waste Act (California Health and Safety Code Section 25100, et seq.), the California Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5, et seq.), and the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), as they now exist or are hereafter amended, together with any regulations promulgated thereunder;

(d) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or

(e) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

**6.3. "Environmental Law"** means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning:

(a) pollution or protection of the environment, including natural resources;

(b) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances;

(c) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities;

(d) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or

(e) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act (15 U.S.C. 2601, et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Authorization Act (49 U.S.C. Section 5101, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251), the Clean Air Act (42 U.S.C. Section 7401, et seq.), the California Underground Storage of Hazardous Substances Act (California Health and Safety Code Section 25280, et seq.), the California Hazardous Substances Account Act (California Health and Safety Code Section 25300, et seq.), the California Hazardous Waste Act (California Health and Safety Code Section 25100, et seq.), the California Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5, et seq.), and the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

**6.4.** Trustor shall immediately advise the Beneficiary in writing if at any time it receives written notice of

(a) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Development pursuant to any applicable Environmental Law; and

(b) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (a) and (b) above are hereinafter referred to as “**Hazardous Materials Claims**”).

**6.5.** The Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys’ fees in connection therewith paid by Trustor. Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary) and hold harmless the Beneficiary and its council-members, board-members, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal,



or presence of Hazardous Materials on, under, or about the Development including without limitation:

- (a) all foreseeable consequential damages;
- (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and
- (c) all reasonable costs and expenses incurred by the Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees, provided that no Indemnatee shall be entitled to indemnification under this Section for matters caused by such Indemnatee's gross negligence or willful misconduct. This obligation to indemnify shall survive termination of this Agreement.

**6.6.** Without the Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the Beneficiary's reasonable judgment, impair the value of the Beneficiary's security hereunder; provided, however, that the Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the Beneficiary's consent before taking such action, provided that in such event Trustor shall notify the Beneficiary as soon as practicable of any action so taken. The Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either:

- (a) a particular remedial action is ordered by a court of competent jurisdiction,
- (b) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action;
- (c) Trustor establishes to the reasonable satisfaction of the Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of the Beneficiary's security hereunder; or
- (d) the action has been agreed to by the Beneficiary.

**6.7.** Trustor hereby acknowledges and agrees that

- (a) this Section is intended as the Beneficiary's written request for information (and Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and
- (b) each representation and warranty in this Deed of Trust (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect

to the environmental condition of the Property is intended by the Parties to be an “environmental provision” for purposes of California Code of Civil Procedure Section 736.

## **ARTICLE VII**

### **EVENTS OF DEFAULT AND REMEDIES**

#### **7.1. Events of Default.**

(a) The following shall constitute Events of Default following the expiration of any applicable notice and cure periods:

(i) failure to make any payment to be paid by Trustor under the Loan Documents;

(ii) failure to observe or perform any of Trustor’s other covenants, agreement or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination;

(iii) failure to make any payment or perform any of Trustor’s other covenants, agreements, or obligations under any other debt instruments secured by the Property, which default shall not be cured within the times and in the manner provided therein.

#### **7.2. Acceleration of Maturity.**

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

#### **7.3. The Beneficiary’s Right to Enter and Take Possession.**

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

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

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

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

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

#### **7.4. Foreclosure by Power of Sale.**

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

(b) Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then required by law and after recordation of such Notice of Default and Election to Sell and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

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

(d) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further

notice make such sale at the time fixed by the last postponement, or may in its discretion, give a new Notice of Sale.

**7.5. Receiver.** If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereto), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application thereof. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

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

**7.7. No Waiver.**

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or any breach by the Trustor in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

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

as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust by altered thereby.

**7.8. Suits to Protect the Security.** The Beneficiary shall have the power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

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

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

## **ARTICLE VIII MISCELLANEOUS**

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

**8.2. Reconveyance by Trustee.** Upon written request of Beneficiary stating that all of the Secured Obligations have been performed in full, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

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

(a) If intended for Beneficiary shall be addressed to:

The City of Madera

205 W. 4th Street  
Madera, CA 93637  
Attn: Arnoldo Rodriguez, City Manager

(b) If intended for Trustor shall be addressed to:

Downtown Madera Housing Associates,  
A California Limited Partnership  
430 E. State Street, Ste.100  
Eagle, ID 83616  
Attn: Caleb Roope

With copies to:

RSEP, LLC  
1100 Superior Avenue, Suite 1640  
Cleveland, OH 44114  
Attention: General Counsel

And:

Applegate & Thorne-Thomsen, P.C.  
425 S. Financial Place, Suite 1900  
Chicago, Illinois 60605  
Attn: Bennett Applegate

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

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

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

**8.6. Invalidity of Certain Provisions.** Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality

or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

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

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

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

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

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

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

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

**8.14. Limited Partner's Right to Cure.** Any limited partner of Trustor shall have the right (but not the obligation) to cure an Event of Default by Trustor. Beneficiary shall provide notice of Default by Trustor to any limited partner of the Trustor set forth in Section 8.3(b) hereof, at the same time, and in the same manner, as notice is provided to Trustor. Limited partner's right to cure shall not extend any cure provision hereunder. Beneficiary agrees to accept a cure by any limited partner of Trustor.

**8.15 Extended Use Agreement.** Notwithstanding anything contained in the Loan Documents, Beneficiary hereby acknowledges and agrees that the State of California, acting

through the Tax Credit Allocating Body, intends to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the “Code”). As of the date hereof, Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Code Section 42 for a period of three (3) years after the date the Property is acquired by foreclosure or by instrument in lieu of foreclosure, even though such foreclosure or instrument in lieu of foreclosure would cause the termination of any such extended use agreement required by the Tax Credit Allocating Body. In the event the extended use agreement required by the Tax Credit Allocating Body is recorded against the Property, Beneficiary agrees to comply with the provisions set forth in Code Section 42(h)(6)(E)(ii).

SIGNATURES ON FOLLOWING PAGE



IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first above written.

**TRUSTOR**

Downtown Madera Housing Associates,  
A California Limited Partnership

By: TPC HOLDINGS VII, LLC,  
an Idaho limited liability company  
Its: Administrative General Partner

By: \_\_\_\_\_  
Name: Caleb Roope  
Its: Manager

By: MADERA OPPORTUNITIES FOR RESIDENT ENRICHMENT AND SERVICES,  
INC.  
a California Nonprofit Public Benefit Corporation  
Its: Managing General Partner

By: \_\_\_\_\_  
Name: William J. Glover  
Its: Acting Chief Executive Officer

EXHIBIT A

**LEGAL DESCRIPTION**

## Exhibit 2-C

### LOAN PROMISSORY NOTE

\$539,151.00

July \_\_, 2020

FOR VALUE RECEIVED and pursuant to that certain Loan Agreement (the "Loan Agreement") dated as of even date herewith entered by Downtown Madera Housing Associates, a California Limited Partnership ("Maker") and the City of Madera ("Holder"), Maker hereby promises to pay Holder the sum of \$539,151.00 (the "Loan") or so much thereof as may be advanced by Holder pursuant to the Loan Agreement, together with interest on the outstanding principal balance in accordance with and on the terms set forth herein below. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Loan Agreement.

Section 1. Purpose. Pursuant to the Loan Agreement, Holder agreed to make the Loan in connection with the development and construction of 47 affordable multi-family units and one below market manager's unit (the "Project") being developed by Maker in the City of Madera, California.

Section 2. Interest. Commencing on the date of initial disbursement of all or a portion of the Loan proceeds and continuing through the date that all indebtedness and other amounts payable under this Agreement and the Note are paid in full, the interest on the Loan shall bear interest at a simple rate of three percent (3%) per year. In the Event of Default, as defined in the Loan Agreement, interest shall increase to five percent (5%) for the duration of such default ("Default Rate").

Section 3. Term and Repayment Requirements. The term of this Note (the "Term") shall commence upon the date of issuance of certificates of occupancy for all buildings at the Project and shall expire upon the fifty-fifth anniversary of such date (the "Maturity Date"). The repayment of this Note shall be nonrecourse to Maker and its partners as set forth in more particularity in the Loan Agreement and shall be secured by that certain Deed of Trust and Security Agreement executed by Maker for the benefit of Holder on even date herewith.

Section 4. Repayment. This Note shall be repaid as follows:

a. Annual Payments. Until the original principal amount of this Note and interest accrued thereon is repaid in full, Maker shall make annual payments to Holder of a sum equal to the amount of Residual Receipts (as defined in the Loan Agreement) to which Holder is entitled in accordance with Section 2.2(a) of the Loan Agreement. All annual payments shall be made in arrears no later than May 1st of each year with respect to the previous calendar year. Payments made hereunder shall be credited first against accrued interest and then against outstanding principal. Notwithstanding anything herein to the contrary, Maker's obligation to make payments hereunder shall be only to the extent of Residual Receipts from the calendar year preceding such payment (and specifically, without limitation, not from proceeds of any sale or refinancing transaction) such that to the extent any payment required hereunder exceeds the amount of such Residual Receipts, any amounts that cannot be paid from Residual Receipts shall accrue and be paid from future year(s) Residual Receipts until paid.

## Exhibit 2-C

b. Prepayments. Maker shall have the right to make full or partial prepayments under this Note without premium or penalty. Any prepayments shall be applied to reduce the principal balance of the Note.

Section 5. Acceleration. All obligations evidenced by this Note, irrespective of the maturity dates expressed herein, at the option of Holder thereof and without demand or notice, shall immediately become due and payable, if at any time during the Term of this Note, Maker fails to make any payment as required hereunder and such failure continues for ten (10) days following written notice thereof to Maker from Holder, subject to the notice and cure rights set forth in the Loan Agreement.

Section 6. Attorney's Fees. Maker agrees to pay all costs of collection when incurred, including without limitation, reasonable attorney's fees and expenses (whether or not suit is filed hereon) and court costs. Such costs shall be added to the balance of principal then due.

Section 7. Holder's Rights. Failure of Holder to assert any right under this Note shall not be deemed a waiver of such right.

Section 8. California Law. This Note and the legality, validity and performance of the terms hereof shall be governed by, enforced, determined, and construed in accordance with the laws of the State of California.

Section 9. Waivers. Maker waives presentment, demand for payment, notice of dishonor, notice of protest, protest, and all other notices or demands in connection with the delivery, acceptance, performance, default, endorsement, or guaranty of this Note, and to the extent authorized by law, any and all homestead or other exemption rights which would apply to the debt evidenced by this Note.

Section 10. Binding Obligation. This Note shall be binding upon Maker and Maker's heirs, legal representatives, successors, and assigns.

Section 11. Amendment or Modification. The terms of this Note may only be amended or modified by a written agreement executed by Maker and Holder.

Section 12. Notices. All notices given under this Note shall be made in writing and shall be deemed received when delivered in accordance with the Loan Agreement.

SIGNATURES ON FOLLOWING PAGE

Exhibit 2-C

IN WITNESS WHEREOF, Maker has executed this Note as of the date first written hereinabove.

MAKER:

Downtown Madera Housing Associates,  
A California Limited Partnership

By: TPC HOLDINGS VII, LLC,  
an Idaho limited liability company  
Its: Administrative General Partner

By: \_\_\_\_\_  
Name: Caleb Roope  
Its: Manager

By: MADERA OPPORTUNITIES FOR RESIDENT ENRICHMENT AND SERVICES,  
INC.  
a California Nonprofit Public Benefit Corporation  
Its: Managing General Partner

By: \_\_\_\_\_  
Name: William J. Glover  
Its: Acting Chief Executive Officer