



REPORT TO THE CITY COUNCIL

January 15, 2008

FROM: NICK P. YOVINO, Director
Planning and Development Department

BY: MICHAEL SIGALA, Manager
Housing and Community Development Division

SUBJECT: APPROVE THE ASSIGNMENT OF CITY HOME PROGRAM CHDO PRE-DEVELOPMENT AGREEMENT AND HOME PROGRAM CHDO CONSTRUCTION AGREEMENT FROM CENTRAL COMMUNITY DEVELOPMENT CENTER TO EAH INC. AND LOCKHART FAMILY CENTER INC. FOR DEVELOPMENT OF AFFORDABLE RENTAL HOUSING FOR THE DISABLED

AGENDA ITEM NO.:
COUNCIL MEETING: January 15, 2008
APPROVED BY
DEPARTMENT DIRECTOR 
CITY MANAGER

KEY RESULT AREA

One Fresno

RECOMMENDATION

Staff recommends Council approve:

- 1) Assignment of HOME Investment Partnerships Program Community Housing Development Organization (CHDO) Agreement for Pre-Development of Affordable Rental Housing, and assignment of corresponding Promissory Note in the amount of \$37,000 from Central Community Development Center to EAH Inc., and Lockhart Family Center Inc., subject to prior approval by the City Attorney; and
- 2) Assignment of HOME Investment Partnerships Program CHDO Agreement for Construction of Affordable Multi-Family Disabled (HUD 811) Rental Housing, and assignment of corresponding Promissory Note in the amount of \$750,000.00 from Central Community Development Center to EAH Inc., for the development of the Laurel Homes project, subject to prior approval by the City Attorney.

EXECUTIVE SUMMARY

The City's Housing and Community Development Division has received a request to approve the assignment of the Laurel Homes Project from Central Community Development Center (CCDC) to EAH Inc., and Lockhart Family Center, Inc. The Laurel Homes project will provide 19 affordable rental housing units for disabled persons (see Exhibit A - Location Map, Site Plan and Elevations). On June 15, 2004, the City and CCDC executed a HOME CHDO Predevelopment Agreement for \$37,000, to study the project's feasibility and prepare an application to the U.S. Department of Housing and Urban Development (HUD) for project financing. On June 29, 2005, upon notification of the HUD award, the City, CCDC and Lockhart Family Inc., executed a HOME CHDO Construction Agreement in the amount of \$750,000 for gap financing needed in the development of the project. CCDC has requested that both Agreements be assigned to EAH Inc., and Lockhart Family Center Inc., along with all responsibilities, as they are unable to continue with the development of the Laurel Homes Project.

KEY OBJECTIVE BALANCE

The approval of the Laurel Homes assignments presents an opportunity to make a positive impact to the Customer Satisfaction, Employee Satisfaction, and Financial Management Key Objectives. Conditional approval impacts the Customer Service aspect by demonstrating the City's commitment to strengthening local and private partnerships to ensure adequate and affordable housing for disabled households at or below 60% of area median income. The conditional approval also attributes to Employee Satisfaction by supporting efforts that help achieve the Housing Element goals of producing affordable housing. In addition, it demonstrates creative and resourceful Financial Management by encouraging the practice of leveraging public funds to develop affordable housing.

BACKGROUND

CCDC is a local Community Housing Development Organization dedicated to providing affordable housing for Fresno residents. On June 15, 2004, the City approved a \$37,000 HOME CHDO Predevelopment loan to CCDC for a feasibility study and preparation of an application to the U. S. Department of Housing and Urban Development Section 811 Housing for the Disabled Program. CCDC was subsequently awarded \$2.27 million in HUD 811 Program funds and an additional \$750,000 in HOME CHDO funds from the City for development of the project. The project will construct 19 affordable rental housing units for disabled persons.

In 2006, CCDC hired a consultant, as directed by HUD, to assist in the development of the project and to provide 811 Program experience to the project. CCDC was tasked with meeting HOME Program rules, City regulations and HUD 811 Program requirements, while continuing to offer a myriad of services to the homeless population as part of their original mission.

Earlier this year, CCDC advised the City they would be seeking to assign the two HOME contracts to a separate entity, and they requested the City's approval of an assignment. The assignment was requested due to several reasons. First, CCDC re-assessed their non-profit's mission in the community and decided to focus their resources on projects that provide a more direct benefit to the area's homeless residents. Second, CCDC lacks the staff capacity and experience to administer an affordable housing project of this scope. Subsequently, CCDC and HUD identified EAH as the most qualified candidate to take over responsibility and ownership of the project.

EAH, Inc., is a non-profit housing corporation with a vested interest in providing affordable housing for Fresno residents. EAH has been collaborating with CCDC to effect a transfer of the Laurel Homes Project from CCDC to EAH and Lockhart Family Center, Inc. (LFCI). As part of the assignment, CCDC agrees to assign all ownership and contractual responsibilities to EAH and LFCI. LFCI is a local EAH affiliate and Community Housing Development Organization (CHDO) under the HOME Program, with 100% EAH-appointed board members. LFCI will approve a CHDO name change and project name change shortly after this item is considered by City Council. The two assignments will allow EAH and LFCI to continue development of the project.

EAH Inc., has provided the City an updated construction estimate, with an estimated gap financing of \$1.6 million. City staff is working with EAH to identify additional financing sources to ensure the developer is utilizing all available outside funding programs. Staff anticipates returning to Council in the near future with a recommendation to conditionally approve additional funding in HOME CHDO funds for the project, provided the project sponsor can secure other outside funding sources.

Development of Laurel Homes helps to fulfill the affordable housing goals and objectives of the Housing Element of the 2025 General Plan and the 2006-2010 Consolidated Plan to HUD.

HOUSING AND COMMUNITY DEVELOPMENT COMMISSION

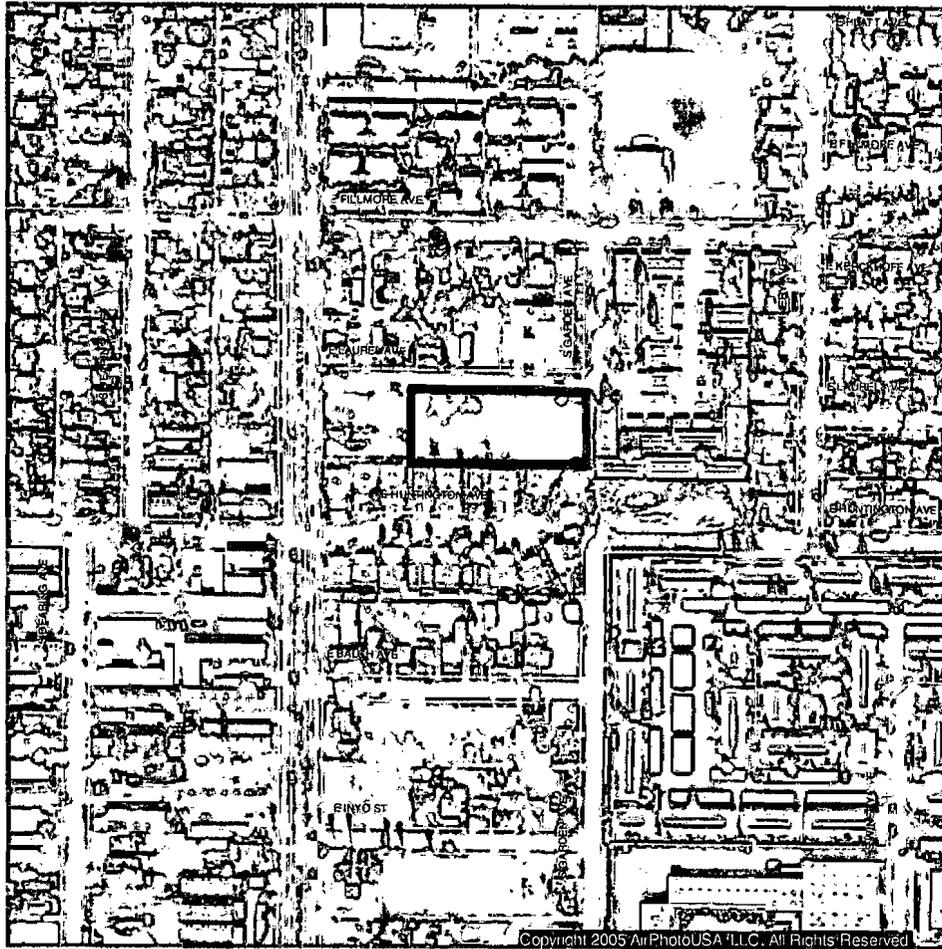
The Housing and Community Development Commission considered and recommended approval of this item on December 17, 2007.

FISCAL IMPACT

There is no fiscal impact associated with this item at this time.

APPENDICES

- Exhibit A - Project Map, Elevations, Site Plan
- Exhibit B - Draft Assignment of HOME CHDO Predevelopment Loan
- Exhibit C - Draft Assignment of HOME CHDO Construction Loan



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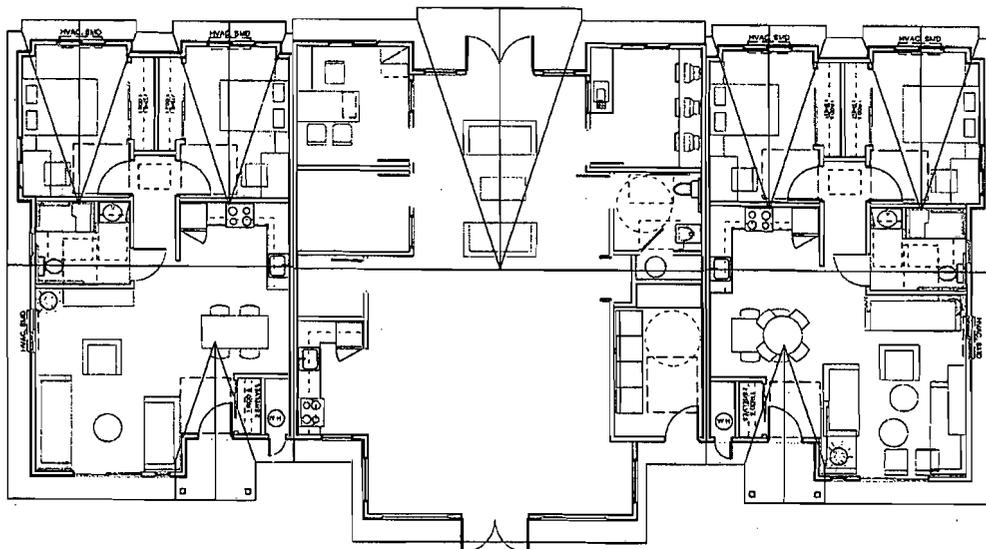


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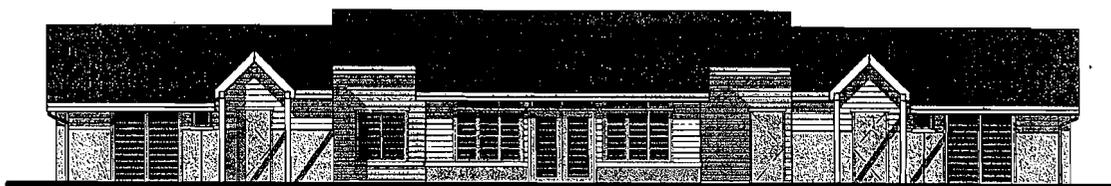
Exhibit A – Project Location Map



NORTH ELEVATION - COMMUNITY BUILDING



FLOOR PLAN - COMMUNITY BUILDING



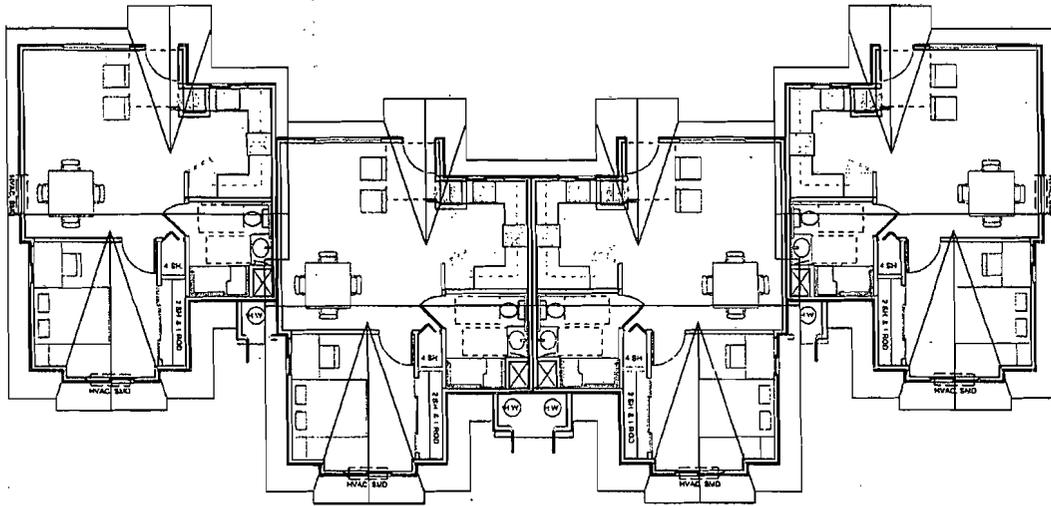
SOUTH ELEVATION - COMMUNITY BUILDING

ARBOR COURT
scale: 3/32"=1'-0"

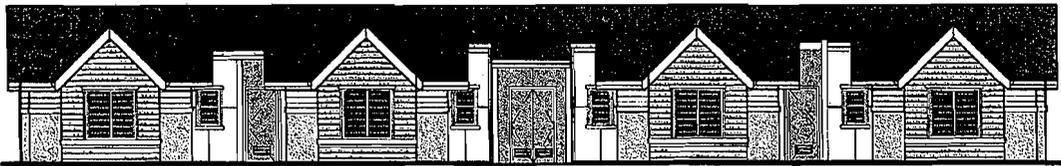




FRONT ELEVATION - BUILDING TYPE 1



FLOOR PLAN - BUILDING TYPE 1



REAR ELEVATION - BUILDING TYPE 1

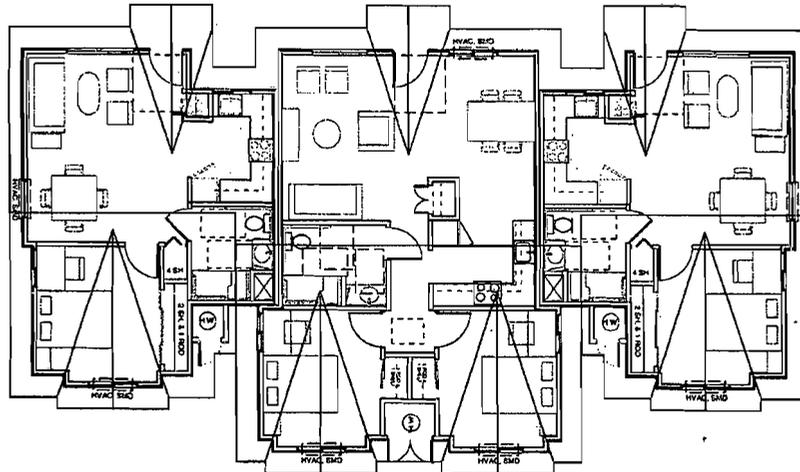
ARBOR COURT
scale: 3/32"=1'-0"



ARBON
Architecture and Planners
1725 Montgomery Street
San Francisco, CA 94111
tel: 415.298.1144
fax: 415.206.1193



FRONT ELEVATION - BUILDING TYPE 2



FLOOR PLAN - BUILDING TYPE 2



REAR ELEVATION - BUILDING TYPE 2

ARBOR COURT
scale: 3/32"=1'-0"



Architects and Planners
1225 Montgomery Street
San Francisco, CA 94111
Tel: 415 390 1144
Fax: 415 206 1155

DRAFT

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno
Planning and Development Department
Housing and Community Development Division
Attention: Division Manager
2600 Fresno St., Rm 3076
Fresno, CA 93721

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Agreement is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

CITY OF FRESNO

By: _____
Andrew T. Souza, City Manager

ASSIGNMENT/ASSUMPTION OF
HOME INVESTMENT PARTNERSHIPS PROGRAM
COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)
AGREEMENT AND PROMISSORY NOTE

REGARDING

PRE-DEVELOPMENT ANALYSIS FOR
PROPOSED AFFORDABLE RENTAL HOUSING PROJECT
4830 E. Laurel Avenue
APN: 463-120-10

By CENTRAL COMMUNITY DEVELOPMENT CENTER,
a California non-profit public benefit corporation
to

EAH, INCORPORATED, a California non-profit public benefit corporation and
LOCKHART FAMILY CENTER, INCORPORATED, a California non-profit public benefit
corporation, jointly and severally

EXHIBIT B

This Assignment/Assumption of HOME Investment Partnerships Program Community Housing Development Organization (CHDO) Predevelopment Agreement and Promissory Note ("Assignment"), effective as of _____, 2007 is entered between CENTRAL COMMUNITY DEVELOPMENT CENTER, a California non-profit public benefit corporation ("Assignor"), and EAH, INCORPORATED, a California non-profit public benefit corporation and the LOCKHART FAMILY CENTER, INCORPORATED, a California non-profit public benefit corporation, jointly and severally (collectively "Assignee"), as consented to by the CITY OF FRESNO, a California municipal corporation ("City"), and subject to any and all required U.S. HUD approval(s).

Recitals

A. City and Assignor are parties to a certain June 15, 2004 HOME Investment Partnerships Program Community Housing Development Organization (CHDO) Predevelopment Agreement ("Agreement"), as amended July 30, 2004, and a certain June 15, 2004 Promissory Note secured by Deed of Trust, ("Note") a true and correct copies of which are attached hereto as Exhibits "A" and "B" respectively and incorporated herein; and

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

C. City is willing to consent to a no cost assignment and assumption of the Agreement and Note in the public interest and upon the terms and conditions herein, subject to any and all required U.S. HUD approval(s); and

D. Lockhart Family Center Incorporated is and shall continue as the Project Community Housing Development Organization (CHDO) certified by the City as required in 24 CFR 92.300 in accordance with HUD's certification criteria.

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

Section 1. Assignment of Agreement and Note.

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

Section 2. Assumption of Obligations under Agreement and Note.

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

Section 3. Assignor's Covenants.

Assignor covenants that the Agreement and Note as incorporated herein is the only agreement relative to the subject matter hereof to which Assignor is a party.

Assignor covenants that the Agreement and Note is in full effect and no default exists under the Agreement and Note, nor any acts or events which, with the passage of time or the giving of notice or both, could become defaults.

Section 4. Litigation Costs.

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

Section 5. Indemnification.

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

Section 6. Successors and Assigns.

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

Section 7. Governing Law.

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

Section 8. Effective Date.

The effective date of this Assignment shall be the date the City consents to this Assignment following the parties' complete execution thereof, subject to any and all.

required U.S. HUD approval(s). This Agreement controls any/all prior in time negotiations/agreements in the event of any conflict.

///

The parties have executed this Assignment as of the date first above written.

ASSIGNOR: CENTRAL COMMUNITY DEVELOPMENT CENTER

By: _____
(Attach Notary Certificate of Acknowledgement)

Name: Donald Lockhart
Title: President
Address: 211 S. Barton, Fresno, CA 93702
Ph. No. (559) 252-7777
Date: _____

ASSIGNEE: EAH, INCORPORATED

By: _____
(Attach Notary Certificate of Acknowledgement)

Name: Alvin Bonnett
Title: Assistant Secretary, EAH Inc.
Address: 2169 E. Francisco Blvd., Suite B
San Rafael, CA 94901
Ph. No. (415) 295-8826
Date: _____

ASSIGNEE: LOCKHART FAMILY CENTER, INCORPORATED

By: _____
(Attach Notary Certificate of Acknowledgement)

Name: _____
Title: _____
Address: _____
Ph. No. _____
Date: _____

Attach: Exhibit "A" – June 15, 2004 HOME Investment Partnerships Program
Community Housing Development Organization (CHDO) Predevelopment
Agreement

Exhibit "B" - June 15, 2004 Promissory Note

CONSENT OF CITY TO ASSIGNMENT

The City of Fresno consents to the Assignment to Assignee of the Agreement and Note and Assignee's assumption thereof, provided however that City does not release, waive, relinquish, or compromise any rights under the Agreement and Note against Assignor and Assignee, and further provided that City's consent is conditioned upon any and all required U.S. HUD approval(s).

CITY OF FRESNO
a California municipal corporation

By: _____
(Attach Notary Certificate of Acknowledgement)
Name: Andrew T. Souza/Jon Ruiz for
Title: City Manager
Date: _____, 200__

APPROVED AS TO FORM:
James Sanchez
City Attorney

By: _____
Robert Coyle, Deputy
Date: _____, 200__

ATTEST:
Rebecca E. Klisch
City Clerk

By: _____
Deputy
Date: _____, 200__

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno
Planning and Development Department
Housing and Community Development Division
Attention: Division Manager
2600 Fresno St., Rm 3076
Fresno, CA 93721

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CITY OF FRESNO

By: _____
Andrew T. Souza/Jon Ruiz for,
City Manager

ASSIGNMENT/ASSUMPTION OF
HOME INVESTMENT PARTNERSHIPS PROGRAM
COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)
AGREEMENT AND PROMISSORY NOTE

by
CENTRAL COMMUNITY DEVELOPMENT CENTER, a California non-profit public
benefit corporation

to

EAH, INCORPORATED, a California non-profit public benefit corporation

regarding

CONSTRUCTION OF AFFORDABLE MULTI-FAMILY DISABLED
(HUD 811) RENTAL HOUSING
4830 E. Laurel Avenue
APN: 463-120-10

EXHIBIT C

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Recitals

A. City, LFC and Assignor are variously parties to a certain June 29, 2005 HOME Investment Partnerships Program Community Housing Development Organization (CHDO) Agreement ("Agreement"), and a certain June 30, 2005 Promissory Note secured by Deed of Trust, ("Note") a true and correct copies of which are attached hereto as Exhibits "A" and "B" respectively and incorporated herein; and

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

C. City and LFC are willing to consent to a no cost assignment and assumption of the Agreement and Note in the public interest and upon the terms and conditions herein, subject to any and all required U.S. HUD approval(s).

D. LFC is and shall continue as the project Community Housing Development Organization (CHDO) certified by the City as required in 24 CFR 92.300 in accordance with HUD's certification criteria.

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fulfill all the terms, covenants, conditions, and obligations required to be performed and fulfilled by Assignor under the Agreement and the Note.

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ASSIGNOR: CENTRAL COMMUNITY DEVELOPMENT CENTER

By: _____
 (Attach Notary Certificate of Acknowledgement)

Name: Donald Lockhart
 Title: President
 Address: 211 S. Barton, Fresno, CA 93702
 Ph. No. (559) 252-7777
 Date: _____

ASSIGNEE: EAH, INCORPORATED

By: _____
 (Attach Notary Certificate of Acknowledgement)

Name: Alvin Bonnett
 Title: Assistant Secretary, EAH Inc.
 Address: 2169 E. Francisco Blvd., Suite B
San Rafael, CA 94901
 Ph. No. (415) 295-8826
 Date: _____

CONSENTED TO BY: LOCKHART FAMILY CENTER, INCORPORATED

By: _____
 (Attach Notary Certificate of Acknowledgement)

Name: _____
 Title: _____
 Address: _____
 Ph. No. _____
 Date: _____

Attach: Exhibit "A" – June 29, 2005 HOME Investment Partnerships Program
Community Housing Development Organization (CHDO) Agreement

Exhibit "B" - June 30, 2005 Promissory Note

CONSENT OF CITY TO ASSIGNMENT

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CITY OF FRESNO
a California municipal corporation

By: _____
(Attach Notary Certificate of Acknowledgement)
Name: Andrew T. Souza/Jon Ruiz for
Title: City Manager

Date: _____, 200__

APPROVED AS TO FORM:
James Sanchez
City Attorney

By: _____
Robert Coyle, Deputy

Date: _____, 200__

ATTEST:
Rebecca E. Klisch
City Clerk

By: _____
Deputy

Date: _____, 200__