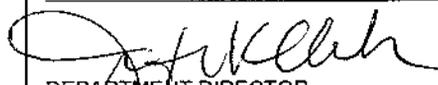


December 5, 2013

THROUGH: JENNIFER K. CLARK, AICP, Director  
Development and Resource Management Dept.

  
DEPARTMENT DIRECTOR

FROM: JOHN ROBERTSON, Interim Manager  
Housing and Community Development Division  
Development and Resource Management Dept.

  
CITY MANAGER

BY: CORRINA NUNEZ, Project Manager  
Housing and Community Development Division  
Development and Resource Management Dept.

SUBJECT: ACTIONS PERTAINING TO RESTRUCTURE OF ANNADALE HOUSING PARTNERS LOAN:  
1) INVOKE EXCEPTION TO BETTER BUSINESS ACT (**REQUIRES 5 VOTES**); 2)  
AUTHORIZE THE RESTRUCTURE OF THE ANNADALE HOUSING PARTNERS LOAN; 3)  
APPROVE THE SUPERSEDED AND RESTATED NOTE FOR THE ANNADALE HOUSING  
PARTNERS; AND 4) AUTHORIZE THE ACCUMULATED INTEREST TO BE WRITTEN-  
OFF IN ACCORDANCE WITH FRESNO MUNICIPAL CODE SECTION 7-910(B)(3).

### RECOMMENDATIONS

Staff recommends that the City Council:

- 1) Invoke exception to Better Business Act (requires 5 votes);
- 2) Authorize the restructure of the \$4,833,871 (Exhibit "A" – 1995 Restated Note) Annadale Housing Partners loan to \$2,996,720 (Exhibit "B" – 1989 Promissory note): the original amount borrowed to finance the construction of Kingsview Manor Apartments, a 106-unit development for low-income seniors, and Kingsview Estates Apartments, a 116-unit development for low-income households;
- 3) Approve the \$2,996,720 Superseded and Restated Note (Exhibit "C" – 2013 Superseded and Restated Note) for the Annadale Housing Partners; and
- 4) Authorize the accumulated Interest (Exhibit "D" – Interest Spreadsheet) to be written-off in accordance with Fresno Municipal Code Section 7-910(b)(3).

### EXECUTIVE SUMMARY

Approximately 28 years ago, the City of Fresno loaned \$2,996,720 in U.S. Department of Housing and Urban Development ("HUD"), Housing Development Grant ("HDG") Program funds to the Annadale Housing Partners to construct two adjoining housing complexes; Kingsview Manor Apartments and Kingsview Estates Apartments (Exhibit "E" - Location Map and Exhibit "F" - Photographs). Since that time \$8,152,333.77 has accrued in interest. One of the managing members of the Annadale Housing Partners is requesting that the \$4,833,871 loan be restated to \$2,996,720, the original amount borrow and eliminate the accrued interest. All of the other members and partners have either released their interest in the property or are in the process of releasing their interest in the property. As previously agreed, the managing member has paid the City \$3,000 for administrative costs associated with the loan restructure.

*REPORT TO COUNCIL*

*AUTHORIZE LOAN RESTRUCTURE WITH ANNADALE HOUSING PARTNERS AND AUTHORIZE INTEREST WRITE-OFF*

*December 5, 2013*

*Page 2 of 3*

Once the loan is restated, the managing member will seek financing to pay-off the \$2,996,720 Superseded and Restated Note and then demolish and redevelop the site as new affordable housing.

**BACKGROUND**

On February 26, 1989, the City loaned \$2,996,720 in former HDG Program funds to the Annadale Housing Partners for the construction of the Kingsview Manor Apartments and the Kingsview Estates Apartments, both affordable housing properties located in southwest Fresno. The original loan terms consisted of a 30-year Note at 9.8% interest, with payments deferred to 1994, payable from annual residual receipts, with a maturity date of approximately December 31, 2019. In return for the HDG loan funds, the 222 apartment units were set aside as affordable rental housing for low-income senior and households for a period of 20 years.

Additional funds to complete the development of the project came from the former Redevelopment Agency's Tax Increment Program, Low Income Housing Tax Credits ("LIHTC") and a \$3.9 million commercial loan. The City originally structured the \$2,996,720 HDG funds to the project as a loan so that the partnership could meet the LIHTC application requirement for debt service on the property.

Throughout the 1990s, the property began deteriorating and foreclosure was becoming inevitable. In 1994, in an attempt to avoid foreclosure, one of the limited partners filed an involuntary Chapter 11 bankruptcy against the general partners of Annadale Housing Partners, LP. On June 15, 1995, as part of the court-approved bankruptcy reorganization plan, the City received an interest earning Restated Note secured by a third position Deed of Trust in the sum of \$4,833,871, with a maturity date of March 1, 2021. Since there is no supporting documentation as to how the amount of the Note came to be restated at \$4,833,871, it is surmised that the new amount included interest due and various late charges at the time of the loan restatement. Repayment of the \$4,833,871 restated Note was to be made from annual residual receipts.

On December 23, 2002, Marc Wilson, President and CEO of San Mar Properties and the managing member of Central Valley Affordable Housing, LLC, a project partner, sent an audit confirmation request to the City for the \$4,833,871 Restated Note. The audit confirmation request led to a series of meetings from 2002 to 2007, between the Housing and Community Development Division staff, Marc Wilson, George Tamberi, Annadale's Accountant; the then City Manager and Assistant Planning Director, staff from the City Attorney's office, and staff from the City Finance Department to determine the actual amount owed. These discussions led to a conclusion that at the time nothing was to be done with the loan and that the Housing and Community Development Division staff was to begin monitoring the loan and property. As of October 30, 2010, the City of Fresno fulfilled its 20-year obligation to HUD under the HDG Program (Exhibit "G" – HUD Letter) to monitor the property affordability covenants.

In April, 2011, Housing and Community Development Division staff resumed discussions with Marc Wilson regarding the \$4,833,871 loan, which had increased to an estimated \$12 million. At a couple meetings thereafter, Marc Wilson and his development consultant requested that the City consider restructuring the \$4,833,871 loan to the original loan amount and eliminate the accrued interest. The loan restructure would alleviate the debt burden on the property and place the managing member in a position to seek financing to demolish the aging complexes and develop new affordable housing on the property (Exhibit "H" – Project Schedule).

Boston Capital, the original developer and general partner, has no desire to stay in the partnership and is slowly dissolving its ownership interest in the property over the next three years. Boston Capital would prefer to delease this affordable housing property and vacate the premises. Staff believes that the loan

**REPORT TO COUNCIL**

**AUTHORIZE LOAN RESTRUCTURE WITH ANNADALE HOUSING PARTNERS AND AUTHORIZE INTEREST WRITE-OFF**

December 5, 2013

Page 3 of 3

restructure and redevelopment of the property is in the best interest of the public, and health and safety of the tenants, and therefore recommends that the City Council approve the loan restructure, restate the Note to the original \$2,996,720, and write-off the accrued interest. It is further recommended that if the loan restructure is approved that the accumulated interest be written-off as "in the public interest" in accordance with the Fresno Municipal Code process at 7-910(b)(3).

In accordance with the September 26, 2013, Resolution No. 2013-166, amending the Better Business Act ("Act"), the restatement of the Note is subject to the terms of the Act, but eligible for an exception since the City does not reasonably expect repayment under the terms and conditions of the Note, and the Note was essentially a grant, but structured as a loan to meet the LIHTC requirement for debt service on the property. The Council may invoke the exception by a supermajority of five votes.

**FISCAL IMPACT**

The Finance Department currently has the \$4,833,871 (1995 Restated Note) reported as a receivable in the City's Comprehensive Annual Financial Report with an offset allowance for doubtful accounts in the same amount. Therefore, no fiscal impact is expected as a result of the loan restructure. This action will reduce the value in both accounts by \$4,833,871.

**APPENDICES**

- Exhibit A - 1995 Restated Note
- Exhibit B - 1989 Restated Promissory Note
- Exhibit C - 2013 Superseded and Restated Note
- Exhibit D - Interest Spreadsheet
- Exhibit E - Location Map
- Exhibit F - Photographs
- Exhibit G - HUD Approval of Loan Restructure
- Exhibit H - Project Schedule

**EXHIBIT "A"**  
**1995 RESTATED PROMISSORY NOTE**

# COPY

## RESTATED NOTE SECURED BY THIRD DEED OF TRUST

Fresno, California

June 15, 1995

### 1. BORROWER'S PROMISE TO PAY

FOR VALUE RECEIVED, the undersigned ("Maker") promises to pay the City of Fresno, a municipal corporation ("Lender"), or order, the principal sum of FOUR MILLION EIGHT HUNDRED THIRTY-THREE THOUSAND EIGHT HUNDRED SEVENTY ONE AND NO/100 DOLLARS (\$4,833,871.00) with interest on the unpaid balance at the rate or rates hereinafter specified.

The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Holder."

### 2. INTEREST

From and after June 1, 1995; the outstanding principal balance of the loan evidenced by this Note (the "Loan") shall bear interest at the rate per annum of Seven and 25/100 percent (7.25%), such interest rate being the "Initial Interest Rate". The Initial Interest Rate shall be in effect until April 1, 2001, (hereinafter referred to as "Initial Adjustment Date"). The interest rate may change in accordance with Section 4 of this Note.

### 3. PAYMENTS

#### (A) Time and Place of Payments

On or before April 1 in each calendar year (commencing April 1, 1996) (the "Payment Date"), Maker shall pay principal and interest at the Initial Interest Rate until March 30, 2001 and thereafter at the lesser of the Current Rate or the Actual Rate (as defined in Paragraph 4, below) by making payments in the amount of any Available Cash Flow (as hereinafter defined) arising in the prior calendar year. If Available Cash Flow is insufficient to pay all accrued interest as of the last day of such prior calendar year, the excess amount shall be added to the unpaid principal balance as of the first day of the current calendar year. Payments shall be payable to Holder at 2348 Mariposa Street, Fresno, California, or such other place as Holder may designate in writing.

If on March 1, 2021, any amounts are still owed under this Note, Maker shall pay those amounts in full on that date.

(B) Available Cash Flow

"Available Cash Flow" shall be defined as the excess of annual Operating Revenues over annual Operating Expenses for each calendar year beginning the calendar year beginning January 1, 1996. For the period June 1, 1995, through December 31, 1995, "Available Cash Flow" shall be defined as the excess of Operating Revenues over Operating Expenses for such period. "Operating Revenues" shall mean the gross cash flow of the Mortgaged Property (as defined in that certain Modification and Subordination of Deeds of Trust by and between Maker and Lender of even date herewith) from whatever source (including, without limitation, (i) rents, (ii) subsidy payments received on behalf of tenants, (iii) interest on contingency reserves or other reserves, and (iv) receipts from laundry, parking or other services for which a fee is charged separate from rent). "Operating Expenses" shall include all costs and expenses related to operation of the Mortgaged Property, paid or accrued in each calendar year in accordance with the operating and capital budgets and other expenditures approved by Holder (as provided in Paragraph 3(D), below), including, without limitation, (i) all direct costs and expenses necessary to operate the Mortgaged Property, (ii) debt service on that certain Note Secured by Deed of Trust from Borrower to Savings Associations Mortgage Company, Inc. ("SAMCO") dated February 1, 1991, as modified by that certain Modification of Note and Deed of Trust of even date herewith (the "First Note"), which is secured by a first priority deed of trust on the Mortgaged Property (the "First Trust Deed"), (iii) debt service on that certain Note Secured by Second Deed of Trust from Borrower to SAMCO dated June 15, 1995, which is secured by a second priority deed of trust of even date herewith on the Mortgaged Property (the "Second Trust Deed"), (iv) payments for on-site supportive services provided to residents of the Mortgaged Property, and (v) payments to reserves for contingencies, replacement of capital items, and other purposes as approved by Holder (provided, however, that reserves up to the aggregate amount of \$250,000, as set forth in Paragraph 3(D) below, are deemed approved).

(C) Crediting of Payments

Each timely payment received by Holder shall be credited as of the first day of the calendar year in which it is due, without regard to its date of receipt by Holder, first to any unpaid late charges and other costs and fees then due under this Note, then to accrued interest and then to principal. Principal, interest and charges are payable in lawful money of the United States.

(D) Approval of Budgets by Holder

So long as any amounts are still owed to Holder under this Note, Maker shall submit to Holder for Holder's

approval a budget for Operating Expenses (as defined in Paragraph 3(B), above) not less than 60 days before each impending calendar year commencing with the calendar year 1996. Holder shall thereafter have 30 days in which to give or withhold its approval of the budget or any item thereof. Maker shall submit to Holder for Holder's approval any proposed expenditure not in accordance with the currently approved budget (or a cumulative variance of not more than 5% therefrom for the current year as to non-reserve items) at least 30 days in advance of the proposed expenditure, whereupon Holder shall have 15 days in which to approve of the item (provided, however, that in the event of a genuine emergency, Maker shall obtain Holder's approval as circumstances permit). Holder shall exercise its right to approval in its reasonable discretion with due regard for prudent operation of the Mortgaged Property and in light of Maker's prior operation and management thereof. Maker and Lender hereby agree that the aggregate of all budget reserves shall not exceed \$250,000 once such reserves must be funded in whole or in part from Operating Revenues. The submission of budgets or items for and notification of approval or disapproval thereof shall be at the addresses provided in paragraph 8 hereof.

#### 4. INTEREST RATE ADJUSTMENTS

As of April 1, 2001, and until maturity hereof, every five (5) years thereafter, the interest rate shall be adjusted. The new interest rate for each five (5) year period shall not exceed 1% over the Monthly Weighted Average Cost of Funds from the FHLB-11th District. During the term of this Note, so long as the Borrower shall own the property secured by this Note, no adjustments shall be made in the interest rate hereof which would result in a rate in excess of 13.044%; provided, that (A) the pay rate shall be the lesser of (i) seven and one-quarter percent (7.25%) (the "Current Rate") or (ii) the actual interest rate determined pursuant to this paragraph 4 (the "Actual Rate") and (B) if the Actual Rate then in effect exceeds the Current Rate, then interest in an amount equal to the difference between the Current Rate and the Actual Rate then in effect shall continue to accrue on the outstanding principal balance under this Note and shall be added to the unpaid principal balance at maturity of this Loan. Holder will deliver or mail to Maker a notice of any changes in interest rate at least thirty (30) days before the effective date of any change. The notice will include any information required by the law to be given to Maker.

#### 5. LATE CHARGES

If any installment under this Note is not received by the holder hereof within fifteen (15) calendar days after the installment is due, the undersigned shall pay to the holder hereof a late charge of ten (10%) percent of such installment,

such late charge to be immediately due and payable without demand by the holder. Maker agrees that it would be impractical or extremely difficult to fix the Holder's actual damages in the event that any installment shall not be paid when due, and agrees that such amount as specified above shall be presumed to be the amount of damages for such late payment. This paragraph and the amount which it provides shall not limit the Holder's right, under this Note, the Deed of Trust securing it, or otherwise, to complete prompt performance thereunder.

6. DEFAULT IN PAYMENT

If any installment under this Note is not paid when due, or Maker defaults in the performance of any provision or condition contained in the Deed of Trust securing this Note, the entire principal amount outstanding hereunder and accrued interest thereon shall at once become due and payable, at the option of the Holder hereof. The Holder may exercise this option to accelerate during any default by the undersigned regardless of any prior forbearance. In the event of any default in the payment of this Note, and if the same is referred to an attorney at law for collection or any action at law or equity is brought with respect hereto, the Maker shall pay the Holder hereof all expenses and costs, including, but not limited to, attorney's fees (established in accordance with the standards of otherwise applicable law).

7. PREPAYMENTS

The principal amount due on this Note may be prepaid in whole at any time without prepayment charge.

8. GIVING OF NOTICES

Unless otherwise required by applicable law, any notice that must be given to Maker under this Note shall be personally delivered by any service furnishing a signed receipt for delivery or sent by certified mail to Maker at the address shown on the signature page hereof or such other address specified in writing to Holder.

Any notice that must be given to Holder shall be personally delivered by any service furnishing a signed receipt for delivery or sent by certified mail to Holder at the address to which payments on the Note are to be made, or such other address specified in writing to Maker.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one Maker is identified below, this Note shall be the joint and several obligation of each Maker. In this Note the singular shall include the plural.

10. NOTICE WAIVED

Presentment, notice of dishonor, demand, protest and notice of protest are hereby waived by all Makers, sureties, guarantors and endorsers hereof.

11. SECURITY

This Note is secured by a Deed of Trust executed by Maker dated February 26, 1989 and recorded as Document No. 89021519 on February 28, 1989 in the Official Records of Fresno County, California, which Deed of Trust has been modified and subordinated to the lien of the First Trust Deed and the Second Trust Deed by that certain Modification and Subordination of Deeds of Trust of even date herewith made by Borrower and Lender (as amended, modified or supplemented from time to time, and together with any Riders thereto, the "City Deed of Trust"), and reference is hereby made to the City Deed of Trust for a statement of its terms and provisions.

12. SEVERABILITY

If any one or more of the provisions contained in this Note shall be held to be invalid, illegal or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provisions herein and this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. GOVERNING LAW

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

14. NONRECOURSE TO MAKER

(A) Except as otherwise provided in subsection (b) of this paragraph, in any action brought to enforce the obligations of the Maker under this Note or any other instrument or agreement evidencing, securing or relating to the indebtedness evidenced by this Note (collectively, the "Loan Documents"), the judgment or decree shall be enforceable against the Maker only to the extent of its interests in any collateral security for the payment of the Note, and Lender shall not seek any deficiency judgment against the Maker. The foregoing provisions shall not prevent recourse to the collateral security for the Loan or constitute a waiver, release or discharge of, or otherwise affect the obligation to pay, any indebtedness evidenced by the Loan Documents or limit the right of any person to name the Maker or any other person claiming an interest in or right to such collateral as party defendant in any action or suit for judicial foreclosure or in the exercise of any other remedy, including injunctive or other equitable relief, under any of the Loan Documents so

long as no deficiency judgment shall be sought against the Maker and/or any such other person.

(B) Notwithstanding the foregoing, Maker shall, however, indemnify, defend, protect and hold Lender harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorney's fees and expenses) incurred by Lender as a result of any (i) fraud or material misrepresentation on or after the date hereof under or in connection with the Loan Documents; (ii) intentional bad faith waste of the Mortgaged Property on or after the date hereof; (iii) losses resulting from Maker's failure to maintain insurance as required under the City Deed of Trust on or after the date hereof; and (iv) application on or after the date hereof of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security in a manner prohibited by the Loan Documents.

15. RESTATEMENT

This Note is an amendment, restatement and full replacement of that certain Promissory Note dated February 26, 1989 by Maker in favor of Holder in the original principal amount of Two Million Nine Hundred Ninety-Six Thousand Seven Hundred Twenty and No/100 Dollars (the "Original Note"). From and after the date hereof, this Note shall evidence all of the indebtedness evidenced by the Original Note and the Original Note shall be and shall be deemed to be cancelled and of no further force and effect.

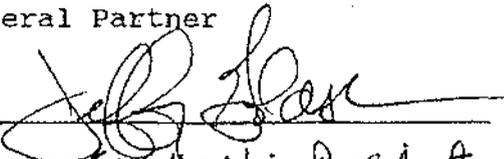
Witness the hand and seal of the undersigned.

Maker:

ANNADALE HOUSING PARTNERS,  
a California Limited Partnership

By: Annadale Housing Corporation,  
a Massachusetts corporation

Its: General Partner

By: 

Its: Executive Vice President

Address for Notice Purposes:

Annadale Housing Partners  
c/o Annadale Housing Corporation  
c/o Boston Capital  
313 Congress Street  
Boston, MA 02210  
Attention: Jeffrey H. Goldstein

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**EXHIBIT "B"**  
**1989 PROMISSORY NOTE**

ORIGINAL

PROMISSORY NOTE

For value received, ANNADALE HOUSING PARTNERS, a California limited partnership ("Owner"), shall pay to the CITY OF FRESNO, a municipal corporation ("Grantee"), or order, at 2348 Mariposa Street, Fresno, CA 93721, the sum of two million, nine hundred and ninety-six thousand, seven hundred and twenty and 00/100 dollars (\$2,996,720.00), or so much as may be advanced by the Grantee (the "Loan"), as provided in the Owner/Grantee Agreement to be entered into between the Owner and Grantee (the Owner/Grantee Agreement"), for the Annadale Housing Project, HUD Project No. CA015HG401 (the "Project").

The above amount shall be paid as follows:

1. Definitions

All capitalized terms not otherwise defined in this Note shall have the meanings given to them in the Owner/Grantee Agreement or the Grant Agreement between the Grantee and the Secretary of Housing and Urban Development dated November 29, 1984, as amended from time to time.

2. Loan

a. Principal. The principal amount of the Loan and this Note shall be two million, nine hundred and ninety-six thousand, seven hundred and twenty and 00/100 (\$2,996,720.00), or so much as may be advanced by the Grantee to the Owner as provided in the Grant Agreement and the Owner/Grantee Agreement.

b. Term. The term of the Loan shall be thirty years, commencing on the date of the first disbursement of Loan funds by the Grantee to the Owner pursuant to the Owner/Grantee Agreement.

c. Interest. This Note shall bear interest at a rate of 9.08 percent on unpaid principal and interest from the first day of the Loan term. Interest shall begin accruing on each disbursement of Loan funds on the date such disbursement is made to the Owner under the Owner/Grantee Agreement and shall be compounded semi-annually. Subject to paragraph e. of this Section, interest payments shall be deferred until the last year of the Loan term.

d. Repayment. Subject to paragraph e. of this Section, payments on this Note shall be deferred for the first five years of the Loan term. Each year during the sixth through the tenth years of the Loan term, the Owner shall pay the sum of fifty thousand, five hundred and ninety-two and 00/100 dollars (\$50,592.00). Each year during the eleventh through twenty-ninth years of the Loan term, the Owner shall pay the sum of seventy thousand and 00/100 dollars (\$70,000.00). In the thirtieth year of the Loan term, the Owner shall pay a sum equal to all unpaid principal and all accrued and unpaid interest. Each payment shall be made on or before December 31 of the year in which it is due.

The Owner acknowledges that if any payment of principal or interest on this Note becomes in default, it

will be impracticable or extremely difficult to fix actual damages resulting therefrom to the Grantee. Therefore, the Owner shall pay to the Grantee the sum of five thousand dollars (\$5,000.00) for each such default as liquidated damages, not a penalty, to compensate the Grantee for expenses in administering the default.

e. Without limiting the Owner's obligations under this Note, commencing on the first day of the Loan term the Owner shall commit all surplus cash from the Project, as defined in attached Exhibit A, to make payments on this Note. Exhibit A is made part of this Note. Payments on this Note shall have priority over all other distributions, payments or uses of such surplus cash. All surplus cash shall be applied first to make payments on this Note when due, second to pay any delinquent payments and any liquidated damages for delinquent payments pursuant to paragraph d., and third to reduce the amount of deferred payments of principal and interest.

f. Maturity. Any remaining balance under this Note, including all unpaid principal and all accrued and unpaid interest, shall in any event become due and payable in full on December 31 of the thirtieth year of the Loan term.

g. Prepayment. The Owner may prepay this Note in full, including all accrued interest, at any time without premium, penalty or restriction.

### 3. Security

This Note is given to evidence the Loan made by the Grantee to the Owner pursuant to the Owner/Grantee

Agreement. This Note is secured by the benefits of the Owner/Grantee Agreement and by the deed of trust on the Project of the same date as this Note between the Owner as trustor, the Grantee as beneficiary, and Central Title Company as trustee, including all amendments thereto ("Deed of Trust"). The Owner/Grantee Agreement and the Deed of Trust are incorporated in this Note by reference.

4. Default and Remedies

Any of the following shall be a default by the Owner under this Note:

a. Failure to make, when due, a payment of principal or interest hereunder; or

b. Any default by the Owner under the Owner/Grantee Agreement or the Deed of Trust which is not cured within any applicable cure period; or

c. Any default by the Owner under the construction loan and deed of trust on the Project ("Senior Construction Financing") between the Owner and Midland Mortgage Investment Corporation, a Florida corporation ("Midland"), or under the permanent loan and deed of trust on the Project ("Senior Permanent Financing") between the Owner and SAMCO Mortgage Co. ("SAMCO"), which default could result in foreclosure on the Project under the Senior Construction Financing or Senior Permanent Financing, as applicable; or

d. Any action by Midland or SAMCO, or by the trustee under the Senior Construction Financing or the Senior Permanent Financing, that, in the opinion of the Grantee or

HUD, is or may be adverse to or impair the security of the Grantee under the Deed of Trust.

In the event of a default by the Owner, all unpaid principal and accrued interest under this Note shall become immediately due and payable in full, at the Grantee's or holder's option and without notice to the Owner.

Without limiting the foregoing, in the event the default constitutes a Substantive Violation by the Owner under the Owner/Grantee Agreement or applicable HUD regulations, (i) the amount of HUD Grant Funds made available to the Owner and to be repaid shall be reduced by ten percent for each full year in excess of ten years between the effective date of the Owner/Grantee Agreement and the date of the Substantive Violation; and (ii) the Owner shall pay additional interest on such Grant Funds from the date of the Substantive Violation at a rate determined by adding two percent to the average yield on outstanding marketable long term obligations of the United States during the month immediately preceding the date on which the Loan term commenced.

Notwithstanding the ten percent reduction described in the preceding paragraph, if the Owner commits a Substantive Violation after ten years from the effective date of the Owner/Grantee Agreement, the Owner shall pay to the Grantee the greater of (i) the amount to be repaid pursuant to the Substantive Violation calculation specified in the preceding paragraph; or (ii) the Loan amount accelerated to be due and payable as if no Substantive Violation had been committed.

This Note is a nonrecourse note; the Owner's liability under this Note is limited to the assets of the Owner which are mortgaged and pledged under the Deed of Trust, without recourse to the general partners of the Owner. Subject to the preceding sentence, all rights and remedies conferred on the Grantee or other holder under this Note, the Owner/Grantee Agreement or the Deed of Trust are in addition to and without limitation on any other rights and remedies available at law or equity. All rights and remedies are cumulative and may be exercised concurrently or consecutively, at the option of the Grantee or other holder of this Note.

None of the rights or remedies of the Grantee or other holder under this Note, the Owner/Grantee Agreement or the Deed of Trust shall be waived or affected by the failure to exercise them. By accepting payment of any amount under this Note after its due date, the Grantee or holder does not waive its right to require prompt payment when due of all other amounts under this Note or to declare a default for failure to so pay.

The Owner waives demand, presentment for payment, protest, and notice of non-payment or protest.

5. Attorneys' Fees

If the Grantee or other holder commences legal action to collect any payments due hereunder or to otherwise enforce the provisions of this Note, the Deed of Trust or the Owner/Grantee Agreement, the Owner shall pay the Grantee or holder all attorneys' fees and legal expenses

incurred by the Grantee or holder in connection with such action.

6. Governing Law

This Note shall be interpreted and enforced, and the rights and duties of the parties hereunder (both procedural and substantive) shall be determined, according to California law.

Executed in the City of Fresno, California.

DATE: February, 26, 1989.

"OWNER"

ANNADALE HOUSING PARTNERS, a  
California limited partnership

By: [Signature]

Title: General Partner

DON:pn  
1019-303  
02/24/89

**EXHIBIT "C"**  
**2013 SUPERSEDED AND RESTATED NOTE**

**SUPERSEDED AND RESTATED  
PROMISSORY NOTE  
SECURED BY DEED OF TRUST**

(Project: Kingsview Manor/Kingsview Estates, Fresno CA)

DO NOT DESTROY THIS NOTE: When paid, this note must be surrendered to Borrowers for Cancellation.

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<b>Loan Amount:</b>	<b>\$2,996,720.00</b>	<b>Date: November __, 2013</b>
<b>Property Address:</b>	<b>2787 Martin Luther King Jr. Blvd Fresno, CA 93706 APN: 479-040-52</b>	

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For value received, the undersigned, Annadale Housing Partners, a California Limited Partnership ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation ("Lender"), the sum of Two Million Nine Hundred Ninety-Six Thousand Seven Hundred Twenty dollars and 00/100 (\$2,996,720.00), at zero percent interest with principle due and payable in full on the payment date or before the December 1, 2017, maturity date, subject to the following terms and conditions:

- (1) This Superseded and Restated Note restates and replaces in full, that certain Promissory Note dated February 26, 1989, in the original principal amount of Two Million Nine Hundred Ninety-Six Thousand Seven Hundred Twenty dollars and 00/100 (\$2,996,720.00) [the "Original Note"], as restated in the "Restated Note Secured By Third Deed of Trust" dated June 15, 1995, in the amount of Four Million Eight Hundred Thirty-Three Thousand Eight Hundred Seventy-One dollars and 00/100 (\$4,833,871.00) ["Restated Note"], by the Lender in favor of the Note holder. This Superseded and Restated Note shall evidence all of the indebtedness evidenced by the original Note and Restated Note that are deemed cancelled and no longer in force or effect.
- (2) This Superseded and Restated Note is to remain secured by that Deed of Trust executed by the Borrower dated February 26, 1989, and recorded as Document No. 89021519 on February 28, 1989, in the Official Records of Fresno County, California, which Deed of Trust has been modified and subordinated to the lien of the First Trust Deed and the Second Trust Deed by that certain Modification and Subordination of Deeds of Trust of even date herewith made by Borrower and Lender (as amended, modified or supplemented from time to time, the "City Deed of Trust" insured in the same 3<sup>th</sup> position lien on the property), and referenced is here made to the City Deed of Trust for a statement of its terms and provisions.
- (3) Any failure to make payment in full on the payment date or before the maturity date shall constitute a default under this Superseded and Restated Note. On the occurrence of an uncured default or on the occurrence of any other event that under the terms of the Superseded and Restated Note give rise to the right to accelerate the balance of the indebtedness, then, at the option of the Lender, this Note will immediately become due without any further presentment, demand, protest, or notice of any kind.

- (4) In the event of default, the Borrower agrees to pay all costs including, without limitation, reasonable attorney fees, incurred by the holder of this Superseded and Restated Note in enforcing payment, whether or not suit is filed, and including, without limitation, all costs, attorney fees, and expenses incurred by the holder of this Superseded and Restated Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by the holder of this Superseded and Restated Note of its rights and remedies under this Superseded and Restated Note. All costs incurred by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by the Borrower. The Borrower will pay to the Lender all attorney fees and other costs referred to in this paragraph on demand.
- (5) The Lender hereby agrees that the Borrower shall first pay-off the balance of outstanding loans secured by the First Trust Deed and Second Trust Deed.
- (6) The Borrower hereby agrees not to request, and the Lender will not provide, any additional City of Fresno funds to the Borrower for the Borrower's proposed redevelopment project at the property.
- (7) The Lender hereby agrees to support the Borrower in the Borrower's efforts to secure funding for: 1) the Borrower's redevelopment project at the property and 2) pay-off of the Superseded and Restated Note.
- (8) The Superseded and Restated Note pay-off shall be paid in lawful money of the United States of America at: City of Fresno, Finance Department, 2600 Fresno Street, Room 2156, Fresno, CA 93721.

In addition, as used in this Superseded and Restated Note, the following terms will have the following meanings:

Payment Date. means the date the Borrower secures funding from refinancing, take out financing, or project financing and pays in full the Superseded and Restated Note.

Maturity Date. means four (4) years from the date the Lender enters the date above.

Any notice, payoff, demand, or request relating to any matter set forth herein shall be in writing and shall be delivered to:

City of Fresno:           Development and Resource Management Department  
                                  Housing and Community Development Division  
                                  2600 Fresno Street, Room 3070  
                                  Fresno, CA 93721

Annadale Housing  
Partners, LP:            Marc A. Wilson, President  
                                  Central Valley Affordable Housing, LLC,  
                                  6356 N. Fresno Street  
                                  Fresno, CA 93710

In witness whereof, the Borrower has caused this Superseded and Restated Note to be executed by its authorized agent as of the date and year first above written.

Annadale Housing Partners, a California Limited Partnership

By: Its General Partner and Investment Limited Partner  
Central Valley Affordable Housing, LLC  
a California Limited Liability Company

By: \_\_\_\_\_

Name: Marc A. Wilson

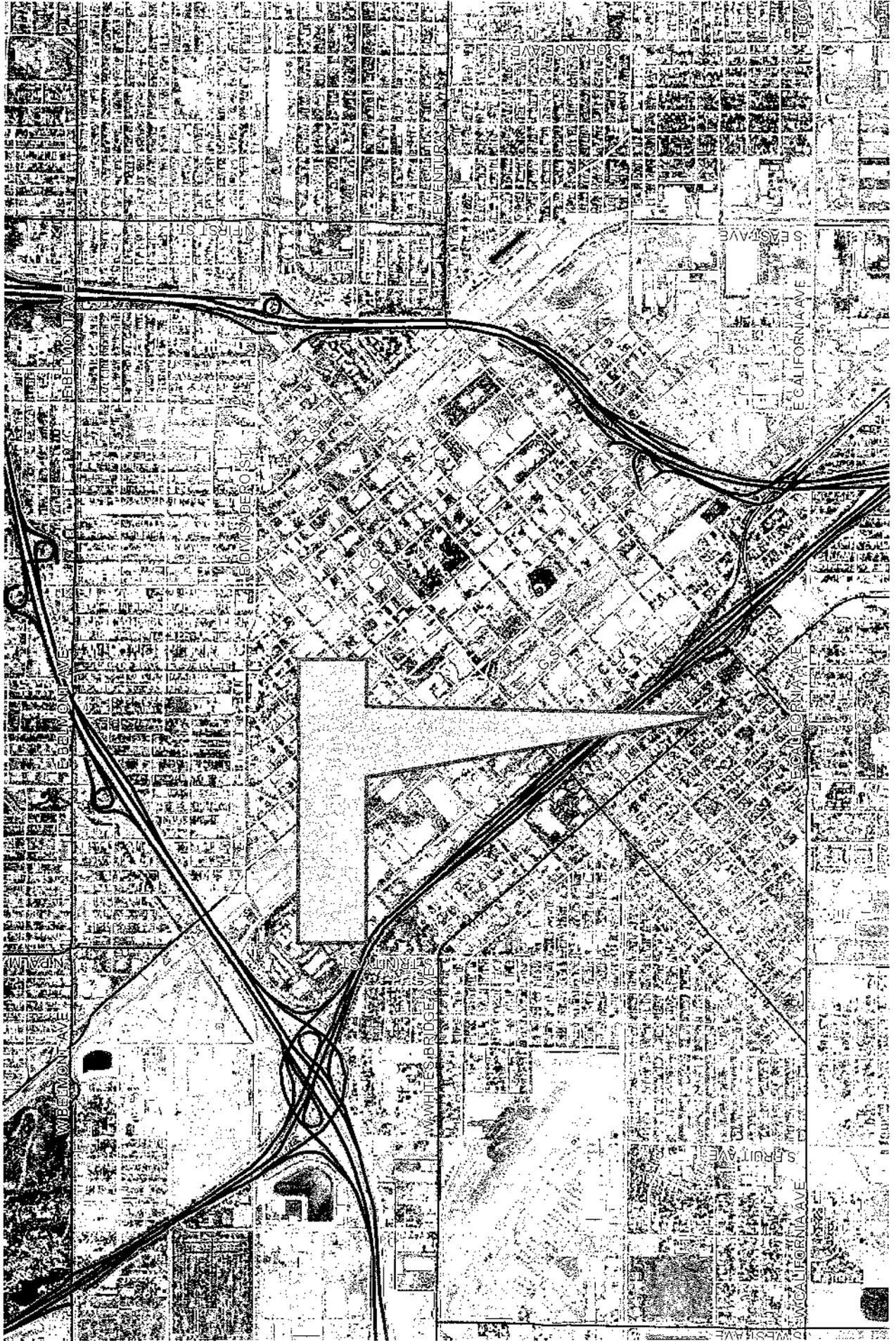
Title: President

(Attach notary certificate of acknowledgment)

Date: \_\_\_\_\_

**EXHIBIT "E"**  
**LOCATION MAP**

LOCATION MAP



**EXHIBIT "F"  
PHOTOGRAPHS**

# KINGSVIEW MANOR AND KINGSVIEW ESTATES

APN: 479-040-52



Looking North in Kings View Estates



Looking East at 949 E Annadale



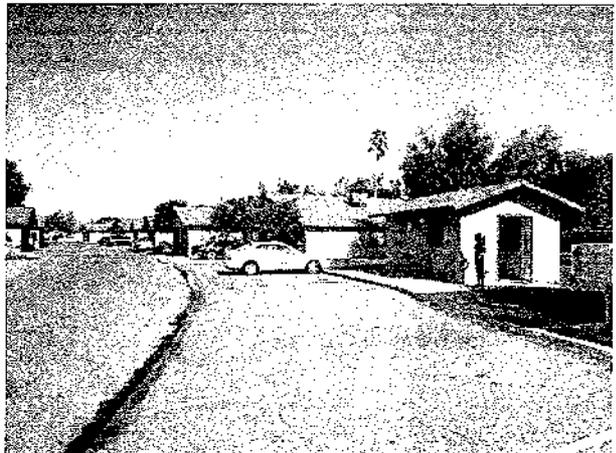
956 E Annadale Looking North at office



956 E Annadale Looking East away from office



949 E Annadale looking East



Looking north in Kings View Estates



Looking North in Kings View Estates



Looking West at back of 949 E Annadale



looking North towards Kings View Estates



949 E Annadale looking North



Looking West in Kings View Estates



looking NW in Kings View Estates



Looking West In Kings View Estates



Looking West Kings View Estates



Looking North Kings View Estates



Looking East in Kings View Estates



Looking North inside Kings View Estates



Looking North in Kings View Estates



Looking West Kings View Estates



Looking South at unit in Kings View Estates



Looking south at back of 949 E Annadale

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**EXHIBIT "D"**  
**INTEREST SPREADSHEET**

**City of Fresno Loan  
Annadale Housing Project**

YR	Date	Principal	Interest 7.250%	PAYMENT DUE APRIL 1ST	
				Total Principal and Interest	Total Interest Accrued
1	6/1/1995-3/31/1996	4,833,871.00	292,046.37	5,125,917.37	292,046.37
2	4/1/1996-3/31/1997	5,125,917.37	371,629.01	5,497,546.38	663,675.38
3	4/1/1997-3/31/1998	5,497,546.38	398,572.11	5,896,118.49	1,062,247.49
4	4/1/1998-3/31/1999	5,896,118.49	427,468.59	6,323,587.08	1,489,716.08
5	4/1/1999-3/31/2000	6,323,587.08	458,460.06	6,782,047.14	1,948,176.14
6	4/1/2000-03/31/2001	6,782,047.14	491,698.42	7,273,745.56	2,439,874.56
7	4/1/2001-03/31/2002	7,273,745.56	FHLB INT 5.946% 432,496.91	7,706,242.47	2,872,371.47
8	4/1/2002-3/31/2003	7,706,242.47	458,213.18	8,164,455.65	3,330,584.65
9	4/1/2003-3/31/2004	8,164,455.65	485,458.53	8,649,914.18	3,816,043.18
10	4/1/2004-3/31/2005	8,649,914.18	514,323.90	9,164,238.08	4,330,367.08
11	4/1/2005-3/31/2006	9,164,238.08	544,905.60	9,709,143.68	4,875,272.68
12	4/1/2006-3/31/2007	9,709,143.68	FHLB INT 4.759% 462,058.15	10,171,201.83	5,337,330.83
13	4/1/2007-3/31/2008	10,171,201.83	484,047.50	10,655,249.33	5,821,378.33
14	4/1/2008-3/31/2009	10,655,249.33	507,083.32	11,162,332.65	6,328,461.65
15	4/1/2009-3/31/2010	11,162,332.65	531,215.41	11,693,548.06	6,859,677.06
16	4/1/2010-3/31/2011	11,693,548.06	556,495.95	12,250,044.01	7,416,173.01
17	4/1/2011-3/31/2012	12,250,044.01	FHLB INT 2.359% 288,978.54	12,539,022.55	7,705,151.55
18	4/1/2012-3/31/2013	12,539,022.55	295,795.54	12,834,818.09	8,000,947.09
		Principal due		4,833,871.00	
		Interest thru 3/31/13		8,000,947.09	
		Interest - 4/1/13 - 9/30/13 (6 mos)		151,386.68	
				<u>8,152,333.77</u>	
		Total due at 9/30/2013		12,986,204.77	
19	4/1/2013-3/31/2014				
20	4/1/2014-3/31/2015				
21	4/1/2015-3/31/2016				
			FHLB INT New Rate		
22	4/1/2016-3/31/2017				

**EXHIBIT "G"**  
**HUD APPROVAL OF LOAN RESTRUCTURE**



U.S. Department of Housing and Urban Development  
San Francisco Regional Office - Region IX  
600 Harrison Street, 3<sup>rd</sup> Floor  
San Francisco, California 94107-1387  
[www.hud.gov](http://www.hud.gov)  
[espanol.hud.gov](http://espanol.hud.gov)

November 22, 2011

Corrina Nunez, Project Manager  
Housing and Community Development  
Division  
2600 Fresno Street, Room 3070  
Fresno, CA 93721

Subject: Annadale Housing  
Grant # CA015HG-401  
Housing Development Grant Program

Dear Ms. Nunez:

This letter serves to confirm that the City of Fresno has fulfilled its obligations under the Housing Development Grant Program. The enclosed Grant Settlement Agreement indicates that the 20-year compliance period expired on October 31, 2010. The City of Fresno is therefore free to negotiate new loan / repayment terms with the borrower.

The City of Fresno may retain any loan repayments for use on other affordable housing activities.

If you have any additional questions, please contact me at (415) 489-6606 or by e-mail at [Angela.M.Corcoran@hud.gov](mailto:Angela.M.Corcoran@hud.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Angela Corcoran".

Angela Corcoran  
Operations Director  
Multifamily Housing Department

Enclosure

**Housing Development  
Grant Settlement Agreement  
Housing Development Grant Program**

U.S. Department of Housing  
and Urban Development  
Office of Housing



OMB Approval No. 2502-0382 (exp. 8-31-91)

Public Reporting Burden for this collection of information is estimated to average 1.50 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2502-0382), Washington, D.C. 20503.

Grantee	Project Name	Project Number
City of Fresno, California	Annadale Housing Development	CA015HG401

This Agreement, entered into by and between the City of Fresno, California (hereinafter referred to as the "Grantee") and the Department of Housing and Urban Development (hereinafter referred to as "HUD").

**Witnesseth**

1. Whereas, the expiration date of this Agreement is determined as 20 years after October 31, 1990, the date on which the Project reached 50 percent occupancy, and;

2. Whereas, the grantee undertook Housing Development Grant (HDG) Project (hereinafter referred to as the "Project"), with financial assistance from HUD pursuant to Section 17(d) of the U.S. Housing Act of 1937, as amended, and;

3. Whereas, the Grantee and HUD entered into a Grant Agreement, dated August 7, 1985, (as revised by 2 amendment(s)), hereinafter referred to as the Grant Agreement) and;

4. Whereas, the Grantee entered into legally binding commitments with the participating parties identified in Section 1.02 of the Grant Agreement, and;

5. Whereas, the authorized development activities which comprise the Project, have been completed by the Grantee, Owner and/or other participating parties, as required by the Grant Agreement, and;

6. Whereas, the Grant Agreement and other legally binding commitments, including the Owner/Grantee Agreement and recorded HDG Covenants, require the percentage, number and type of units specified in Section 1.01 of the Grant Agreement be maintained, occupied or available for occupancy by lower income households at HDG rents for the Project Term, and;

7. Whereas, the parties hereto desire to enter final financial settlement of development costs for the Project: in reliance upon (1) the Grantee Certification of Readiness to Initiate Project Settlement (Exhibit 1, dated June 12, 1991), (2) the Grantee's Determination of Project Costs and Sources of Financing as may be amended by HUD (Exhibit 2), (3) the Grantee's Determination of Equity Investment and Grant Amount as may be amended by HUD (Exhibit 3), and (4) the Grantee's Certification of Settlement Findings (Exhibit 4) as may be amended by HUD, dated April 28, 1992, all of which are attached hereto and made a part hereof.

Now therefore, in consideration of the mutual covenants, promises and representations contained herein, the parties hereto agree as follows:

**Section A:** For the remainder of the Project Term, the Grantee shall comply with all governing regulations and shall take appropriate legal action to enforce the HDG program requirements, as specified in the Grant Agreement and other legally binding commitments approved by HUD, including, but not limited to the Owner/Grantee Agreement and recorded HDG covenants.

**Section B:** For the remainder of the Project Term, HUD shall monitor the Grantee's performance to assure compliance with this Agreement and the Grant Agreement.

**Section C:** The Grantee agrees to the Total Grant Amount for the Project, including any reduction in the grant amount caused by a decrease in cost, as indicated on the Certification of Final Costs and Settlement Requirements attached hereto and made a part hereof.

**Section D:** If necessary to satisfy a shortfall in Owner's equity obligation in the amount specified in Exhibit 3, the Grantee has either collected cash from the Owner, received evidence from the Owner that a mortgage loan on the project other than the HDG loan has been prepaid in part, and/or has executed an agreement with the Owner committing the Owner to pay cash to the Grantee at the end of the specified rent-up period to the extent that expenditures for initial operating deficits have not been sufficient to cover the outstanding equity requirement.

**Section E:** Excess grant funds drawn by the Grantee, in the amount specified in Exhibit 2 to this Agreement (Appendix 2, Item C.2.h.) shall have been or shall be immediately returned to HUD under the following repayment schedule:

N/A

**Section F:** Any grant funds remaining in the Grantee's Letter of Credit for the referenced Project have been reduced to zero.

**Section G:** The requirements of the Grant Agreement governing resources to be provided after settlement by participating parties shall be considered amended as follows: Indicate any change in the terms or amount of project operating period subsidies and accounts to cover shortfalls agreed to by HUD and the Grantee.

**Section H:** Program Income received after completion of HDG funded activities shall be deemed miscellaneous revenues, the use of which is governed by 24 CFR 850.71. Amounts recovered by the Grantee due to breach of owner's obligations under 24 CFR 850.155 must be used in accordance with the HDG or Rental Rehabilitation Program at Grantee's option.

**Section I:** Execution of this Agreement shall constitute completion of development activities for the Project and financial settlement of development costs. Financial requirements with respect to the obligation to maintain the Project in accordance with HDG program requirements shall continue in effect for the remainder of the Project Term, as required by the Grant Agreement.

**Section J:** This Agreement shall be executed in three parts, each of which shall be considered to be an original, and each such counterpart shall constitute one and the same agreement.

**Section K:** If any provision of this Agreement is held invalid, such holding shall not affect the validity of the remainder of this Agreement.

Section L: If a default occurs under this agreement or the Grant Agreement, or if the Grantee fails to comply with any provision of 24 CFR Part 850, HUD may at any time or from time to time proceed to protect all rights available to HUD under this Agreement, the Grant Agreement and 24 CFR Part 850.

Section M: Special Conditions required by this Agreement are attached as Exhibit 5.

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This HDG Settlement Agreement is hereby executed and delivered by the parties on the date set forth below their representative signatures and effective as of the date executed by HUD.

The City of Fresno, California  
(Name of Grantee)

By: Michael A. Bevin  
(Signature)

Date: 10/19/92

The Secretary of the Department of Housing and Urban Development

By: Kerth Aptell  
Director, Office of Housing

Date: 9/29/92

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**EXHIBIT "H"**  
**PROJECT SCHEDULE**

## Annadale Housing Partners Milestones

Tasks	Days	Cumulative
1 Development Agreement Approved by council	80	80
2 Preliminary project design begins	90	170
3 CUP/Development agreement submitted to city	60	230
4 [REDACTED]	120	350
5 Acquisition Rehabilitation Tax Credits request submitted to city for sponsorship	95	445
6 Acquisition Rehabilitation Tax Credits approved	90	535
7 Project improvement plans prepared/submitted to city	30	565
8 Project improvement plan approved by the city	75	640
9 Financing approved	5	645
10 City of Fresno loan payback	1	646
11 [REDACTED]	10	656

Days    25    50    75    100    125    150    175    200    225    250    275    300    325    350    375    400    425    450    475    500    525    550    575    600    625    650    670

