

REFORMATION OF
DISPOSITION AND DEVELOPMENT AGREEMENT
WITH
EDISON PLAZA PARTNERS, L.P.

This Reformation of Disposition and Development Agreement (“Reformation of Agreement”) is entered into this 24th day of January, 2012, between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic (the “Agency”), and EDISON PLAZA PARTNERS, L.P., a California limited partnership (the “Developer”). This Reformation of Agreement is entered into in respect to that certain Disposition and Development Agreement between Agency and Developer, with an effective date of March 9, 2011.

WHEREAS, the Agency and Developer entered into a Disposition and Development Agreement (the “Agreement”) effective March 9, 2011, pursuant to which the Developer proposes to purchase 6.9 acres of property from the Agency at fair market value and develop in two phases a multi-family apartment complex anticipated to include 200 units, 160 of which would be affordable (the “Project”); and

WHEREAS, the current Agreement does not express the original intent of the parties because certain details in the Project description were mistakenly incorrect concerning the calculation of the number of units per acre of available property; and

WHEREAS, California Civil Code section 3399 provides that when, through mutual mistake of the parties, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention; and

WHEREAS, the parties now must reform the Agreement to match the actual agreement as understood by the parties and to express their original intent.

NOW, THEREFORE, with reference to the above recitals, and in consideration of the mutual covenants and agreements contained in the Agreement and this Reformation of Agreement, the Agency and Developer agree as follows:

1. The total number of apartment units in the Project shall be reduced from 200 to 128. Of those 128 units, 88 shall be restricted to occupancy by Low Income Households at an Affordable Rent as defined in the Agreement and Regulatory Agreement attached thereto. The Agency Assistance per affordable unit shall remain the same.
2. Exhibit B to the Agreement (Scope of Development), shall be revised as set forth in the attached Exhibit B-1.
3. Exhibit C to the Agreement (Schedule), shall be revised as set forth in the attached Exhibit C-1.

4. Exhibit G to the Agreement (Regulatory Agreement), shall be revised as set forth in the attached Exhibit G-1.

5. All terms and provisions of the Agreement not expressly reformed hereby shall remain in full force and effect.

6. If, for any reason, this Reformation of Agreement is found to be invalid or unenforceable, then this Reformation shall be stricken and the Agreement shall remain in full force and effect.

7. The Parties may sign this Reformation of Agreement in counterparts. Each counterpart, when executed and delivered, will be one instrument with the other counterparts.

IN WITNESS WHEREOF, Agency and Developer have executed this Reformation of Agreement on the dates set forth below.

REDEVELOPMENT AGENCY OF THE CITY OF FRESNO

EDISON PLAZA PARTNERS, L.P., a California limited partnership

By: Marlene Murphey
Marlene Murphey,
Executive Director

By: Thomas G. Richards
Thomas G. Richards
Chief Executive Officer

Dated:

Dated:

By: James Hendricks
James Hendricks
General Partner - HAW 56

Dated:

ATTEST:
YVONNE SPENCE, CMC
Ex Officio Clerk
Redevelopment Agency of the
Fresno
City of Fresno

APPROVED AS TO FORM:
JAMES SANCHEZ
Ex Officio Attorney
Redevelopment Agency of the City of

By: Cindy Bauer
Deputy

By: DOERR
Deputy

Dated: 3/22/12

Dated: 3/22/12

Exhibit B-1: Reformed Scope of Development
Exhibit C-1: Reformed Schedule
Exhibit G-1: Reformed Regulatory Agreement

Exhibit "B-1"

Phased Scope of Development – Proforma Budget

I. PRIVATE DEVELOPMENT

A. General

The Developer agrees that the Property shall be developed and improved in accordance with the provisions of this Agreement and the Basic Design (Exhibit "F") approved by the Agency pursuant hereto. The Developer and its supervising architect, engineer and contractor shall work with Agency staff to coordinate the overall design, architecture and color of the improvements on the Property.

B. Developer's Improvements

The Developer shall construct, or cause to be constructed, on the Property the following:

A multi-family residential community consisting of 128 units with unit size and specifications consisting of one-bedroom, two-bedroom, and three-bedroom units. The total square footage of the project at completion is estimated to be 142,850 square feet (including common area) which includes four tot lots, a community center, and pool and community gardens. The on-site improvements consisting of parking lots with improvement, lighting, landscaping will be constructed as required by City of Fresno and Redevelopment Agency development standards. The units will have the following rent specifications/restrictions:

- 40 units at 80/120% Median Income
- 45 units at 60% Median Income
- 43 units at 50% Median Income

The project will be constructed in one phase.

C. Architecture and Design

The Developer's improvements shall be of high architectural quality, shall be well landscaped and shall be effectively and aesthetically designed. The shape, scale of volume, exterior design and exterior finish of the building must be consonant with, visually related to, physically related to and an enhancement of adjacent buildings within the Project Area.

D. Landscaping

Landscaping shall embellish all open spaces on the Property. Landscaping includes such materials as paving, trees, shrubs and other plant materials, landscape containers, plaza furniture, top soil preparation, automatic irrigation and landscape and pedestrian lighting. Landscaping

shall carry out the objectives and principles of the Agency's desire to accomplish a high quality aesthetic environment.

E. Signs

All signs on the exterior of the buildings are of special concern to the Agency and must be approved by the Agency (which approval shall not be unreasonably withheld).

F. Screening

Trash areas shall be screened on at least three (3) sides and have movable doors or other devices to obscure such areas from view. All fire standpipes and such other fire related mechanical devices shall be screened with plant materials. Rooftop equipment shall be reasonably hidden so as to mitigate views from principal elevations surrounding the development.

G. Applicable Codes

The Developer's improvements shall be constructed in accordance with the Uniform Building Code (with City modifications) and the Municipal Code.

II. **SITE CLEARANCE AND PREPARATION**

The Developer shall perform, or cause to be performed, at its sole cost and expense, the following work:

A. On-Site Clearance.

On the Property, clear and grub The Property is vacant and unimproved. The Agency, as of the Effective Date is unaware of any subsurface structures, foundations, obstructions, basements, tanks, and the like.

B. Compaction, Finish Grading and Site Work

The Developer shall compact, finish grade and do such site preparation as is necessary for the construction of the Developer's improvements on the Property.

III. **OFF-SITE IMPROVEMENTS**

The Developer shall design, construct and install required Off-Site Public Improvements, at its sole cost and on a schedule which coordinates with the development.

**Project Summary
Edison
Rents and Income**

Unit Type	Number of Units	Floor Area	PMR Rent	Restricted Rent Amounts	Actual Rents	Rents PSF	Total Annual Rent
1 bedroom MKKT/80%/120%	5	720	\$ 711.00	\$ 711.00	\$ 634.00	\$ 0.88	\$ 22,824
2 bedroom MKKT/80%/120%	15	940	\$ 840.00	\$ 840.00	\$ 760.00	\$ 0.81	\$ 136,800
3 bedroom - MKKT/80%/120%	22	1,160	\$ 1,100.00	\$ 1,100.00	\$ 879.00	\$ 0.76	\$ 232,056
4 bedroom - MKKT/80%/120%	0	1,300	\$ 1,316.00	\$ 1,316.00	\$ 987.00	\$ 0.76	\$ 0
1 bedroom 60%	7	720	\$ 711.00	\$ 634.00	\$ 634.00	\$ 0.88	\$ 53,256
1 bedroom 50%	6	720	\$ 711.00	\$ 528.00	\$ 528.00	\$ 0.73	\$ 38,016
2 bedroom 60%	33	940	\$ 840.00	\$ 760.00	\$ 760.00	\$ 0.81	\$ 300,960
2 bedroom 50%	32	940	\$ 840.00	\$ 633.00	\$ 633.00	\$ 0.67	\$ 243,072
3 bedroom 60%	5	1,160	\$ 1,100.00	\$ 879.00	\$ 879.00	\$ 0.76	\$ 52,740
3 bedroom 50%	5	1,160	\$ 1,100.00	\$ 732.00	\$ 732.00	\$ 0.63	\$ 43,920
4 bedroom 60%	0	1,300	\$ 1,316.00	\$ 987.00	\$ 987.00	\$ 0.76	\$ 0
4 bedroom 50%	0	1,300	\$ 1,316.00	\$ 817.00	\$ 817.00	\$ 0.63	\$ 0
Total	128						\$1,123,644

\$8,778 per unit

123,840 Total Rent Square Feet
19,010 Common Area
142,850 Total Square Feet

PREMIUM INC.	Units	Mo. Prem	Annual
View	0	\$	\$
Pool View	0	\$	\$
Vaulted Ceilings	0	\$	\$
First Floor	0	\$	\$
Second Floor	0	\$	\$
Third Floor	0	\$	\$
TOTAL ANNUAL PREMIUMS			\$

OTHER INCOME	Units/Mo.	Annual	Comments
NNN Recapture	0	\$	
Other	0	\$	
TIF	0	\$	See attached projection
Forfeited Deposits	5	\$	1,250
Late Fees	5	\$	2,100
NSF Fees	0	\$	-
Short Lease Premiums	0	\$	
Lease Termination Fees	0	\$	
Utility Reimbursement	128	\$	76,800
Clubroom Rental	1	\$	1,536
Concertge	0	\$	
Parking	0	\$	
Peak and Recreation	0	\$	
TOTAL OTHER INCOME		\$	\$1,686

Project Summary
Edison
Operating Expenses

					Proposed 128	
			Units	Total	Per Unit	
Administrative Expenses						
Advertising			0	\$32,000	250.0	
Office Salaries / Incentive Wages			0	\$80,000	625.0	
Office Supplies/Telephone/Screening			0	\$1,920	15.0	
Legal Expenses/Accounting			0	\$2,560	20.0	
Miscellaneous/Unallocated			0	\$3,200	25.0	
Management Fee			0	\$39,328	307.2	
Total Administrative Expenses		\$0	\$0	\$159,008	1,242.2	
Utility Expenses						
Electricity			0	\$35,000	273.4	
Water & Sewer			0	\$35,000	273.4	
Fuel			0	\$12,800	100.0	
Trash Removal			0	\$12,800	100.0	
Total Utility Expenses		\$0	\$0	\$95,600	746.9	
Maintenance Expenses						
Repair Materials and Supplies			0	\$41,600	325.0	
Elevator			0	\$0	-	
Pool			0	\$25,000	195.3	
Grounds Supplies/Contracts /Pest			0	\$55,000	429.7	
Decorating/Turnover			0	\$5,400	50.0	
Miscellaneous/Unallocated			0	\$0	-	
Total Maintenance Expenses		\$0	\$0	\$128,000	1,000.0	
Taxes & Insurance Expenses						
Real Estate Taxes			0	\$60,707	474.3	
Property Insurance			0	\$50,000	390.6	
Land Lease			0	\$0	-	
Total Taxes & Insurance Expenses		\$0	\$0	\$110,707	864.9	
Other Expenses						
Replacement Reserves			0	\$50,000	390.6	
			0	-	-	
			0	-	-	
Total Other Expenses		\$0	\$0	\$50,000	390.6	
Total Operating Expenses		\$0	\$0	\$543,315	4,244.6	
Office/Retail Space Exp. Before NNN				\$0	-	
TOTAL OPERATING EXPENSES & RESERVES		\$0	\$0	\$543,315	4,244.6	

Cash Flow Projections: Years 1-7

	1	2	3	4	5	6	7
INCOME							
Gross Rent	1,123,644	1,157,553	1,192,074	1,227,836	1,264,671	1,302,611	1,341,690
Base Rent Abatements		0	0	0	0	0	0
Other Income	81,636	84,137	86,661	89,260	91,938	94,696	97,537
Vacancy:	(78,655)	(81,015)	(83,445)	(85,949)	(88,527)	(91,183)	(93,918)
Collections	(22,473)	(23,147)	(23,841)	(24,557)	(25,293)	(26,052)	(26,834)
Total Net Income:	1,104,202	1,137,328	1,171,448	1,206,591	1,242,789	1,280,073	1,318,475
OPERATING EXPENSES & REPLACEMENT RESERVE							
Administrative	159,008	163,778	168,691	173,752	178,964	184,333	189,863
Utility	95,600	98,468	101,422	104,465	107,599	110,827	114,151
Maintenance	128,000	131,840	135,795	139,869	144,065	148,387	152,839
Taxes & Insurance	110,707	114,029	117,450	120,973	124,602	128,340	132,191
Replacement Reserve	50,000	51,500	53,045	54,636	56,275	57,964	59,703
Total Operating Expenses & Replacement Reserve	543,315	559,614	576,403	593,695	611,506	629,851	648,747
Operating Expenses/ SQFoot	\$ 3.45	\$ 3.56	\$ 3.66	\$ 3.77	\$ 3.89	\$ 4.00	\$ 4.12
Total Operating Expenses & Replacement Reserve/Unit	\$ 3.80	\$ 3.92	\$ 4.04	\$ 4.16	\$ 4.28	\$ 4.41	\$ 4.54
Net Operating Income:	560,887	577,714	595,045	612,896	631,283	650,222	669,728
DEBT SERVICE PAYABLE							
Financing	373,860	373,860	373,860	373,860	373,860	373,860	373,860
Debt Service Coverage Ratio	1.50	1.55	1.59	1.64	1.69	1.74	1.79
Cash Flow After 1st Mortgage	187,027	203,854	221,186	239,037	257,424	276,362	295,869
UPB 1st Mortgage	4,815,176	4,752,456	4,685,536	4,614,134	4,537,950	4,456,663	4,369,934
Stabilized Value at 8% CAP	7,011,088	7,221,420	7,438,063	7,661,205	7,891,041	8,127,772	8,371,605
Residual Cash upon Liquidation:	2,073,218	2,342,590	2,622,361	2,913,000	3,214,998	3,528,873	3,855,169

75% of First Year Stabilized Value 8% Cap Requested Loan Amount

7,011,088
4,929,052

Inflation Factors	Vacancy Factors
Income: 3.0%	Vacancy: 7%
Expense: 3.0%	Collection: 2%

Development Cost Budget

Total Units	128
Unit Square Feet	142,850
Common Area Square Feet	0
Total Net Square Feet	142,850

	Total Costs	Eligible Basis	Per Unit	Per NSF
Construction Costs (Building & Site)		100%		
New Buildings	\$ 11,428,000	\$ 11,428,000	\$ 89,281	\$ 80.00
Land	\$ 655,000	\$ -	\$ 5,117	\$ 4.59
other	\$ -	\$ -	\$ -	\$ -
other	\$ -	\$ -	\$ -	\$ -
other	\$ -	\$ -	\$ -	\$ -
Site Costs, Contingency & Bonds	\$ 2,750,000	\$ 2,750,000	\$ 21,484	\$ 19.25
TOTAL CONSTRUCTION COSTS	\$ 14,833,000	\$ 14,178,000	\$ 115,883	\$ 103.84

Permits and Fees

Impact Fees (Non-Utility)	\$ 1,732,500	\$ 1,732,500	\$ 13,535	\$ 12.13
TOTAL PERMITS AND FEES	\$ 1,732,500	\$ 1,732,500	\$ 13,535	\$ 12.13

Technical Fees

Architect Fees -- Design	\$ 450,000	\$ 450,000	\$ 3,516	\$ 3.15
Supervision	\$ -	\$ -	\$ -	\$ -
Surveying	\$ -	\$ -	\$ -	\$ -
Engineering/Soil Testing	\$ 50,000	\$ 50,000	\$ 391	\$ 0.35
TOTAL TECHNICAL FEES	\$ 500,000	\$ 500,000	\$ 3,906	\$ 3.50

Interest

Property Insurance	\$ 100,000	\$ 100,000	\$ 781	\$ 0.70
Property Taxes	\$ 25,000	\$ 25,000	\$ 195	\$ 0.18
Construction Interest	\$ 627,622	\$ -	\$ 4,903	\$ 4.39
Lease Up Fee	\$ -	\$ -	\$ -	\$ -
TOTAL INTERIM COSTS	\$ 752,622	\$ 125,000	\$ 5,880	\$ 5.27

Financing Costs

Loan Fee	\$ 100,000	\$ -	\$ 781	\$ 0.70
Construction Inspection Fees	\$ 15,000	\$ -	\$ 117	\$ 0.11
TOTAL FINANCING COSTS	\$ 115,000	\$ -	\$ 898	\$ 0.81

Soft Development Costs

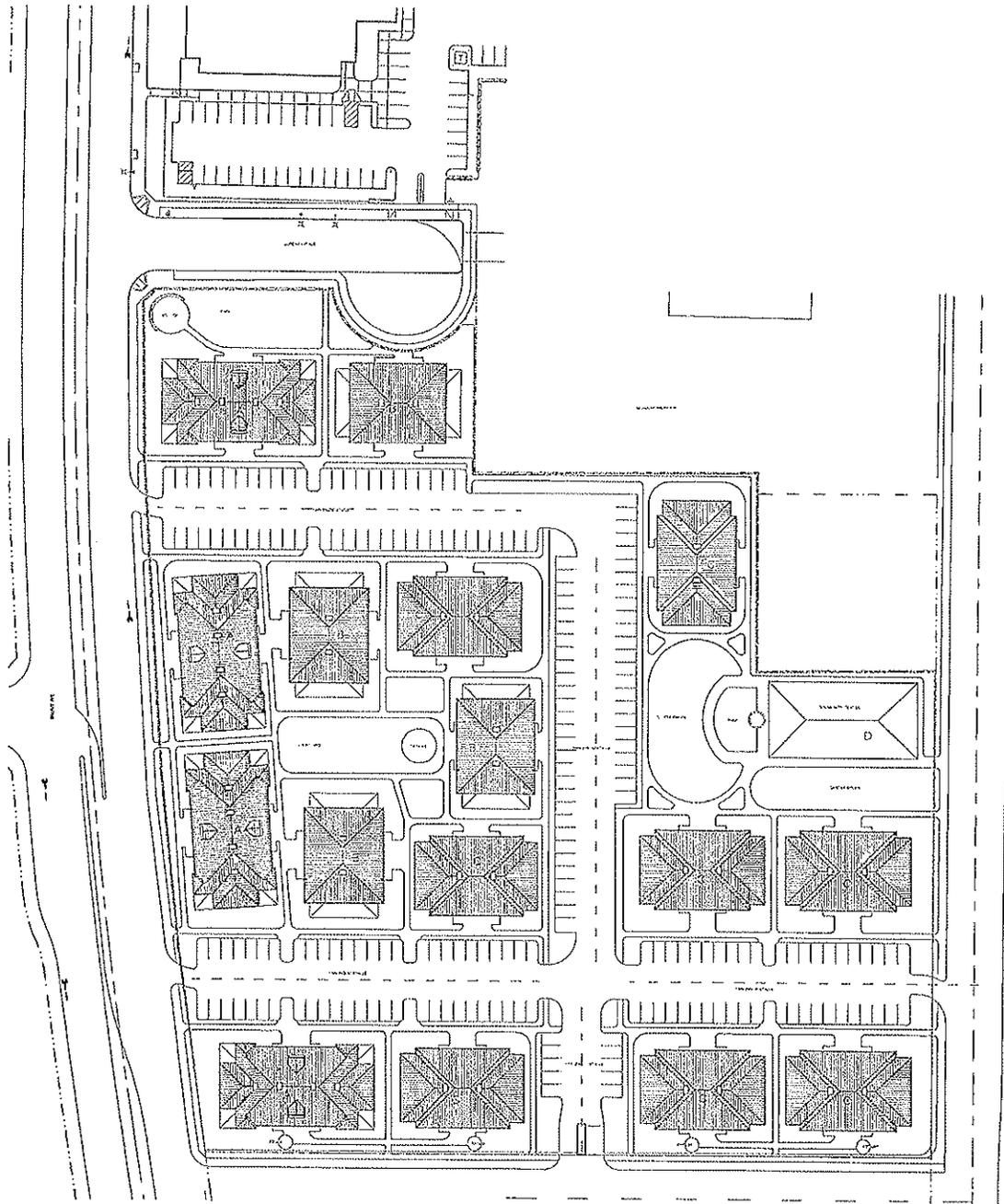
Appraisal	\$ 10,000	\$ -	\$ 78	\$ 0.07
Title/Recording/Doc Stamps	\$ 25,000	\$ -	\$ 195	\$ 0.18
Environmental Report	\$ 25,000	\$ -	\$ 195	\$ 0.18
Legal	\$ 100,000	\$ -	\$ 781	\$ 0.70
Tax Credit Fees	\$ 100,000	\$ -	\$ 781	\$ 0.70
TOTAL SOFT COSTS	\$ 260,000	\$ -	\$ 2,031	\$ 1.82

Franchise Partnership & Developer Fee

Franchise Partnership	\$ -	\$ -	\$ -	\$ -
Developer Fee	\$ 1,800,000	\$ 1,800,000	\$ 14,063	\$ 12.60
Deferred Developer Fee	\$ (1,800,000)	\$ -	\$ (14,063)	\$ (12.60)
TOTAL FRANCHISE PARTNERSHIP & DEVELOP	\$ -	\$ 1,800,000	\$ -	\$ -

Project Reserves

Initial Marketing Costs	\$ 75,000	\$ -	\$ 586	\$ 0.53
Operating Reserves	\$ 50,000	\$ -	\$ 391	\$ 0.35
TOTAL PROJECT RESERVES	\$ 125,000	\$ -	\$ 977	\$ 0.88
TOTAL DEVELOPMENT COSTS	\$ 18,318,122	\$ 18,335,500	\$ 143,110	\$ 128.23



RESIDENTIAL UNIT C
 4 BUILDINGS AT 9,595 SF EA
 66,420 SF TOTAL
 8 UNITS/BLDG = 32 UNITS
 64 TWO-BEDROOM UNITS

COMMUNITY CENTER D
 2,570 SF COMMUNITY CENTER
 TOTAL BLDG AREA: 113,200 SF

RESIDENTIAL UNIT A
 4 BUILDINGS AT 8,460 SF EA
 35,440 SF TOTAL
 8 UNITS/BLDG = 32 UNITS
 32 THREE-BEDROOM UNITS

RESIDENTIAL UNIT B
 4 BUILDINGS AT 6,450 SF EA
 25,800 SF TOTAL
 8 UNITS/BLDG = 32 UNITS
 16 QTVL-BEDROOM UNITS
 16 TWO-BEDROOM UNITS

APPROX. SITE AREA = 407,164.425 SF (6.09 AC)
 125 UNITS/25.1 UNITS/AC/PL

EDISON PLAZA II
 FRESNO CA

SITE PLAN - R3
 04-25-2011 1" = 30'-0"



SCOTT BECK ARCHITECT
 10113 WASHINGTON BOULEVARD SUITE 100
 GAITHERSBURG, CA 94030 (916) 455-4575

CALIFORNIA/WALNUT HOUSING PROJECT														
Activity ID	Activity Name	Original Duration	Start	Finish	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
A-1000	DESIGN DEVELOPMENT	23d	Jan-30-12	Feb-29-12										
A-1010	PROJECT APPROVAL	43d	Mar-01-12	Apr-30-12										
A-1020	COMPLETE WORKING DRAWINGS	67d	Apr-30-12	Jul-31-12										
A-1030	CITY PERMIT PROCESS	22d	Aug-01-12	Aug-30-12										
A-1040	PROJECT BIDDING	22d	Aug-01-12	Aug-30-12										
A-1050	SITE DEVELOPMENT	21d	Sep-03-12	Oct-01-12										
A-1055	FOUNDATION / U.G.	43d	Oct-01-12	Nov-28-12										
A-1060	FRAMING / STRUCTURAL	65d	Nov-01-12	Jan-30-13										
A-1070	EXTERIOR SKIN	65d	Jan-21-13	Apr-19-13										
A-1080	INTERIOR FINISHES	70d	Apr-01-13	Jul-05-13										
A-1090	FURNITURE	15d	Jul-08-13	Jul-26-13										
A-1100	PROJECT COMPLETION	18d	Jul-08-13	Jul-31-13										

Version 1 - Created 1/18/12

PRELIMINARY MASTER SCHEDULE
 EDISON PLAZA PARTNERS
 EDISON PLAZA 2
 CALIFORNIA/WALNUT HOUSING PROJECT
 ~ JOHNSTON CONTRACTING, INC. ~

Remaining Work
 Critical Remaining Work
 Milestone
 Summary

EXHIBIT G-1

EDISON PLAZA PARTNERS, L.P., DDA

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

REDEVELOPMENT AGENCY
OF THE CITY OF FRESNO
2344 Tulare Street
Fresno, CA 93721
Attn: Executive Director

(Space Above This Line for Recorder's Office Use Only)

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this ____ day of _____, _____, by and between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic ("Agency"), and EDISON PLAZA PARTNERS, L.P., a California limited partnership ("Owner").

R E C I T A L S :

A. Pursuant to Disposition and Development Agreement by and between Agency and Owner dated March 9, 2011 and Reformation dated _____, 2012 (the "DDA"), Agency has provided to Owner real property and financial assistance in the amount of approximately Five Million Six Hundred Sixty Five Thousand Dollars (\$5,665,000.00) (collectively, the "Agency Assistance"), all for the purpose of assisting Owner in the acquisition of real property and the development of a residential apartment complex thereon wherein the units shall be rented to very low and lower income households, on that certain real property located in the City of Fresno, County of Fresno, State of California, more particularly described in Attachment "1" attached hereto and incorporated herein by reference (the "Site").

B. Pursuant to the DDA, Owner has agreed to develop, construct, and maintain a rental apartment housing project consisting of one hundred twenty-eight (128) total residential units (hereinafter referred to collectively as the "Project") on the Site. The Project is also referred to in the DDA as the "Project," and is further described in the Scope of Development attached to the DDA.

C. Agency and Owner now desire to place restrictions upon the use and operation of the Project, in order to ensure that the Project shall be operated continuously as a rental apartment housing project available for rental by very low and lower income persons for the term of this Agreement.

D. It is the intent of the parties that the title vested in Owner by the Grant Deed for the Site dated _____ ("Grant Deed"), recorded concurrently herewith in Office of the County Recorder for the County of Fresno be subject to this Regulatory Agreement, and that the

terms hereof shall be binding on the Owner and its successors in interest in the Site for so long as the Regulatory Agreement shall remain in effect.

A G R E E M E N T :

NOW, THEREFORE, the Owner and Agency declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of the Agency, the residents of the City of Fresno, and every person renting a dwelling unit on the Site.

A. DEFINITIONS.

1. Affordable Lower Income Rent. As used in this Agreement, the term "Affordable Lower Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of sixty percent (60%) of the Fresno County Median Income adjusted for the family size appropriate for the Unit.

2. Affordable Rent. As used in this Agreement, the term "Affordable Rent" shall refer to Affordable Low Income Rent.

3. Affordable Very Low Income Rent. As used in this Agreement, the term "Affordable Very Low Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of fifty percent (50%) of the Fresno County Median Income adjusted for the family size appropriate for the Unit.

4. Eligible Tenant. As used in this Agreement, the term "Eligible Tenant" shall refer to a Lower Income Tenant.

5. Fresno County Median Income. For purposes of this Agreement, the "Fresno County Median Income" shall be determined by reference to the regulations published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093, or its successor.

6. Lower Income Tenant. As used in this Agreement, the term "Lower Income Tenant" shall mean those tenants whose household income does not exceed eighty percent (80%) of the Fresno County Median Income.

7. Project Manager. As used in this Agreement, the term "Project Manager" shall refer to that entity, to be designated by Owner and approved by Agency, who shall be responsible for operating and maintaining the Project in accordance with the terms of this Agreement. Prior to Agency's approval, Owner shall act as Project Manager.

8. Resident Manager. As used in this Agreement, the term "Resident Manager" shall refer to that individual (or those individuals) who may reside in the Project and who are responsible for day-to-day management of the Project.

9. Unit. As used in this Agreement, the term "Unit" shall refer to any of the two hundred (200) residential units reserved for Eligible Tenants or the Resident Manager.

10. Very Low Income Tenant. As used in this Agreement, the term "Very Low Income Tenant" shall mean those tenants whose income does not exceed fifty percent (50%) of the Fresno County Median Income.

B. RESIDENTIAL RENTAL PROPERTY. The Owner hereby agrees that the Project is to be owned, managed, and operated as a project for lower income residential rental purposes for a term equal to fifty-five (55) years, commencing upon the date of the recordation of the Certificate of Completion for the Site in accordance with the DDA (the "Term"). To that end, and for the term of this Agreement, the Owner hereby represents, covenants, warrants and agrees as follows:

1. Purpose. The Site is being acquired and the Project constructed for the purpose of providing very low and lower income rental housing and the Owner shall own, manage, and operate the Project as a project to provide very low and lower income rental housing comprised of several interrelated buildings or structures, together with any functionally related and subordinate facilities.

2. Residential Use. None of the Units in the Project will at any time be utilized on a transient basis or used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park without the Agency's prior consent which consent may be given or withheld in its sole and absolute discretion.

3. Conversion of Project. No part of the Project will at any time be owned by a cooperative housing corporation, nor shall the Owner take any steps in connection with the conversion to such ownership or uses to condominiums, or to any other form of ownership, without the prior written approval of Agency which approval may be given or withheld in its sole and absolute discretion.

4. Preference to Eligible Tenants. All of the Units will be available for rental in accordance with the terms of this Agreement, and the Owner shall not give preference to any particular class or group in renting the Units in the Project, except to the extent that the Units are required to be leased or rented to Eligible Tenants and except as provided in Section C.6 below.

5. Resident Manager. One, and only one, Unit in the Project may be occupied by a Resident Manager.

6. Liability of Owner. Owner and Resident Manager shall not incur any liability under this Agreement as a result of fraud or intentional misrepresentation by a tenant.

C. OCCUPANCY OF PROJECT BY ELIGIBLE TENANTS. Owner hereby represents, warrants, and covenants as follows:

1. Occupancy. Except as expressly provided herein, throughout the term of this Agreement the occupancy of the 88 Restricted Units in the Project (excluding the Resident Manager Unit) shall be restricted to Eligible Tenants and qualified members of the Eligible Tenant's household.

2. Expiration of Occupancy and Rent Restrictions. The Units shall be subject to the restrictions contained in this Section C for the Term of this Agreement. All tenants residing in the Units during the final two (2) years of the Term shall be given notice of the expiration of the Term at least once every six (6) months during the final two years. After the expiration of the Term, the rents payable on the Units may be raised to market rates.

3. Rental Rates. Owner hereby agrees to rent those Restricted Units occupied by Lower Income Tenants at no greater than Affordable Lower Income Rent, and to rent those Units occupied by Very Low Income Tenants at no greater than Affordable Very Low Income Rent.

4. Occupancy By Eligible Tenant. A Unit occupied by an Eligible Tenant shall be treated as occupied by an Eligible Tenant until a recertification of such tenant's income in accordance with Section C.8 below demonstrates that such tenant no longer qualifies as an Eligible Tenant.

5. Income Computation Certificate. Immediately prior to an Eligible Tenant's occupancy of a Unit, Owner shall obtain and maintain on file an Income Computation and Certification form (which form shall be approved in advance by the Agency) from each such Eligible Tenant dated immediately prior to the date of initial occupancy in the Project by such Eligible Tenant. In addition, the Owner will provide such further information as may be reasonably required in the future by the Agency. Owner shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income as is satisfactory to the Agency; or (v) such other information as may be requested by the Agency. A copy of each such Income Computation and Certification shall be filed with the Agency prior to the occupancy of a Unit by an Eligible Tenant whenever possible, but in no event more than thirty (30) days after initial occupancy by said tenant.

6. Rental Priority. During the term of this Agreement, and subject to compliance with state and federal fair housing laws, Owner shall use its best efforts to lease vacant Units reserved for Eligible Tenants in the following order of priority: (i) displaced persons entitled to a preference pursuant to California Health and Safety Code Section 33411.3 or successor statute, with highest priority in this category to residents of Fresno; (ii) residents of the City of Fresno; and (iii) other persons meeting the eligibility requirements of this Agreement. Owner shall and Agency may maintain a list (the "Housing List") of persons who have notified Owner and/or Agency of their desire to rent a Unit in the Project and who have incomes which would qualify them as an Eligible Tenant, and Owner shall offer to rent Units on the above-referenced priority basis. Should multiple tenants be equally eligible and qualified to rent a Unit, Owner shall rent available Units to Eligible Tenants on a first-come, first-served basis.

7. Renting Vacant Units. When a Unit becomes available as a result of a tenant vacation, Owner shall rent the Unit to an Eligible Tenant in accordance with the order of priority set forth in Section C.6.

8. Income Recertification. Immediately prior to the first anniversary date of the occupancy of a Unit by an Eligible Tenant and on each anniversary date thereafter, Owner

shall recertify the income of such Eligible Tenant by obtaining a completed Income Computation and Certification based upon the current income of each occupant of the Unit. Owner shall provide the Agency with a copy of each such recertification with the next submission of Certificate of Continuing Program Compliance pursuant to Section C.10.

9. Terminating Ineligible Tenant. The tenant may be evicted for good cause as defined by Section 42 of the Internal Revenue Service regulations.

10. Certificate of Continuing Program Compliance. Upon the issuance of the Certificate of Completion and annually by March 15 of each year, or at any time upon the written request of Agency, Owner shall advise the Agency of the occupancy of the Project by delivering a Certificate of Continuing Program Compliance in the form attached hereto as Attachment "2" certifying: (i) the number of Units of the Project which were occupied or deemed occupied pursuant to Section C.1 by an Eligible Tenant during such period, and (ii) to the knowledge of Owner either (a) no unremedied default has occurred under this Agreement, (b) a default has occurred, in which event the Certificate shall describe the nature of the default and set forth the measures being taken by the Owner to remedy such default.

11. Maintenance of Records. Owner shall maintain complete and accurate records pertaining to the Units, and shall permit any duly authorized representative of the Agency to inspect the books and records of Owner pertaining to the Project including, but not limited to, those records pertaining to the occupancy of the Units.

12. Reliance on Tenant Representations. Each lease shall contain a provision to the effect that Owner has relied on the income certification and supporting information supplied by the tenant in determining qualification for occupancy of the Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

13. Conflicts. The leasing preference provision set forth in Section C.6 and termination or non-renewal provisions set forth in Sections C.8 and C.9 shall apply only in the event, and to the extent, such provisions are not in conflict with Internal Revenue Code provisions or IRS regulations.

14. Agency Remedy For Excessive Rent Charge.

a. It shall constitute a default for Owner to charge or accept for a Unit rent amounts in excess of the amount provided for in Section C.3 of this Agreement. In the event that Owner charges or receives such higher rental amounts, in addition to any other remedy Agency shall have for such default, Owner shall be required to pay to Agency the entire amount of rent received in excess of the amount permitted pursuant to this Agreement.

b. It shall constitute a default for Owner to rent any Unit to a tenant who is not an Eligible Tenant for the particular Unit pursuant to the rental rate requirements set forth in Section C.3 of this Agreement. In the event Owner rents a Unit to an ineligible tenant, in addition to any other equitable remedy Agency shall have for such default, Owner, for each separate violation shall be required to pay to Agency an amount equal to (i) two times the greater of (A) the total rent Owner received from such ineligible tenant, or (B) the total rent Owner was entitled to receive for renting that Unit, plus (ii) any relocation expenses incurred by Agency or City as a result of Owner having rented to such ineligible person.

c. It shall constitute a default for Owner to rent any of the Units in violation of the leasing preference requirements of Sections C.6 of this Agreement so long as such leasing preference requirements are not in violation of any state or federal fair housing laws. In the event Owner rents a Unit in violation of the leasing preference requirements, in addition to any other equitable remedy Agency shall have for such default, Owner, for each separate violation shall be required to pay Agency an amount equal to two (2) months of rental charges for the Unit with the highest rent. The terms of this Section C.14 shall not apply if Owner rents to an ineligible person as a result of such person's fraud or misrepresentation.

THE PARTIES HERETO AGREE THAT THE AMOUNTS SET FORTH IN SUBPARAGRAPHS (a) THROUGH (c) OF THIS SECTION C.14 (THE "DAMAGE AMOUNTS") CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT AGENCY WOULD SUFFER DUE TO THE DEFAULTS BY OWNER SET FORTH IN SUBPARAGRAPHS (a) THROUGH (c), CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO AGENCY AND ACCOMPLISHMENT OF AGENCY'S PURPOSE OF ASSISTING IN THE PROVISION OF AFFORDABLE HOUSING TO ELIGIBLE TENANTS THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE AMOUNTS SET FORTH IN THIS SECTION C.14 SHALL BE THE SOLE MONETARY DAMAGES REMEDY FOR THE DEFAULTS SET FORTH IN THIS SECTION C.14, BUT NOTHING IN THIS SECTION C.14 SHALL BE INTERPRETED TO LIMIT AGENCY'S REMEDY FOR SUCH DEFAULT TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIAL AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO HAS EXPLAINED THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

OWNER'S INITIALS: _____

AGENCY'S INITIALS: _____

15. Section 8 Tenants. Owner shall accept as tenants on the same basis as all other Eligible Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor. Owner shall not apply selection criteria to Section 8 certificate holders that are more burdensome than criteria applied to all other Eligible Tenants.

D. MAINTENANCE.

1. Maintenance Obligation. Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such pavings at all times be kept in a level and smooth condition. In addition, Owner shall be required to maintain the Property in such a

manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

2. Parking and Driveways. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times. No vehicles or other obstruction shall project into any of such driveways or traffic aisles. Vehicles associated with the operation of the Site, including delivery vehicles, vehicles of employees and vehicles of persons with business on the Site shall park solely on the Site.

3. Tenant Compliance. Owner shall provide any proposed tenants of any portion of the Site with a copy of this Agreement and shall, prior to entering into any lease agreement, have the proposed tenant execute an affidavit agreeing to comply with the provisions of this Agreement. All lease agreements shall be in writing and shall contain provisions which make compliance with the conditions of this Agreement express covenants of the lease.

4. Right of Entry. In the event Owner fails to maintain the Site in the above-mentioned condition, and satisfactory progress is not made in correcting the condition within thirty (30) days from the date of written notice from Agency, City or Agency may, at their option, and without further notice to Owner, declare the unperformed maintenance to constitute a public nuisance. Thereafter, either Agency or City, their employees, contractors or agents, may cure Owner's default by entering upon the Site and performing the necessary landscaping and/or maintenance. The Agency or City shall give Owner, its representative or the residential manager reasonable notice of the time and manner of entry, and entry shall only be at such times and in such manner as is reasonably necessary to carry out this Regulatory Agreement. Owner shall pay such costs as are reasonably incurred by Agency or City for such maintenance, including attorneys' fees and costs.

5. Lien. If such costs are not reimbursed within thirty (30) days after Owner's receipt of notice thereof, the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate of the lower of ten percent (10%) per annum or the legal maximum until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney's fees, shall be an obligation of Owner as well as a lien and charge, with power of sale, upon the property interests of Owner, and the rents, issues and profits of such property. City and/or Agency may bring an action at law against Owner obligated to pay any such sums or foreclose the lien against Owner's property interests. Any such lien may be enforced by sale by the City or Agency following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, et seq., of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership interest or leasehold or subleasehold estate in and to any Site approved by Agency pursuant to the DDA, and any purchaser at any foreclosure or trustee's sale (as well as any deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such monetary lien, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such

mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure, assessed hereunder to the purchaser at the foreclosure sale, as owner of the subject Site after the date of such foreclosure sale, shall become a lien upon such Site upon recordation of a Notice of Assessment or Notice of Claim of Lien as herein provided.

E. MANAGEMENT.

1. Approval of Project Manager; Designation of Resident Manager. Subject to the terms and conditions contained hereinbelow, Owner shall at all times during the operation of the Project pursuant to this Agreement retain an entity to perform the management and/or supervisory functions ("Project Manager") with respect to the operation of the Project including day-to-day administration, maintenance and repair. Owner shall, before execution or any subsequent amendment or replacement thereof, submit and obtain Agency's written approval of a management contract ("Management Contract") entered into between Owner and a Project Manager acceptable to Agency. Subject to any regulatory or licensing requirements of any other applicable governmental agency, the Management Contract may be for a term of up to fifteen (15) years and may be renewed for successive terms in accordance with its terms, but may not be amended or modified without the written consent of Agency. The Management Contract shall also provide that the Project Manager shall be subject to termination for failure to meet project maintenance and operational standards set forth herein or in other agreements between Owner and Agency. Owner shall promptly terminate any Project Manager which commits or allows such failure, unless the failure is cured within a reasonable period in no event exceeding 60 days from Project Manager's receipt of notice of the failure from Owner or Agency. Owner's obligation to retain a Project Manager shall remain in force and effect for the same duration as the use covenants set forth in Section B of this Agreement. Notwithstanding anything to the contrary in this Section, the Project may be self-managed by Owner with the prior approval of the Agency Executive Director. Any change in the Project Manager shall be approved, in writing, by the Executive Director, which approval shall not be unreasonably withheld.

Pursuant to this Section E.1, the Agency or Executive Director shall reasonably approve or disapprove the proposed Project Manager and management contract. Unless the proposed Project Manager or management contract is disapproved within ten (10) business days following receipt of all information reasonably requested regarding such Project Manager, the Project Manager shall be deemed approved.

In addition to the Project Manager, one Resident Manager shall be designated as necessary by Owner or Project Manager, with written notice to Agency of the Resident Manager's name, address and telephone number.

2. Serious Mismanagement. In the event of "Serious Mismanagement" (as that term is defined below) of the Project, Agency shall have the authority to require that such Serious Mismanagement cease immediately, and further to require the immediate replacement of the Project Manager or Resident Manager. For purposes of this Agreement the term "Serious Mismanagement" shall mean management of the Project in a manner which violates the terms and/or intent of this Agreement and/or the Management Contract to operate an affordable housing complex of the highest standard, and shall include, but is not limited to, the following:

a. Knowingly leasing to ineligible tenants or tenants whose income exceeds the prescribed levels;

- b. Knowingly allowing the tenants to exceed the prescribed occupancy levels without taking immediate steps to stop such overcrowding;
- c. Repeatedly failing to timely maintain the Project and the Site in the manner required by this Agreement;
- d. Repeatedly failing to timely submit the reports as required by this Agreement or failing to submit materially complete reports;
- e. Fraud in connection with any document or representation relating to this Agreement or embezzlement of Project monies; and
- f. Failing to fully cooperate with the City's Police Department in maintaining a crime-free environment on the Site.

G. COMPLIANCE WITH LAWS.

- 1. State and Local Laws. Owner shall comply with all ordinances, regulations and standards of the City and Agency applicable to the Site. Owner shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.
- 2. Lease Approval. Agency shall have the right but is not required to approve any lease forms, revisions, amendments or modification made to same, used by the Project Manager or Resident Manager for leasing Units within the Site.

H. INSURANCE.

1. Duty to Procure Insurance. Owner covenants and agrees for itself, and its assigns and successors-in-interest in the Site that from completion of the Project as evidenced by City's issuance of a certificate of occupancy, and continuing thereafter until the expiration of the Term of this Agreement, Owner or such successors and assigns shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Owner and Agency, and shall provide Agency evidence reasonably acceptable to Executive Director, insurance policies meeting the minimum requirements set forth below:

a. Commercial General Liability insurance with respect to the Site and the operations of or on behalf of Owner, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence including products, completed operations, contractual, bodily injury, personal injury, death and property damage liability, subject to such increases in amount as Agency may reasonably require from time to time. The insurance to be provided by Owner may provide for a deductible or self-insured retention of not more than Ten Thousand Dollars (\$10,000), with such maximum amount to increase at the same rate as the periodic increases in the minimum amount of total insurance coverage set forth above.

b. With respect to the improvements and any fixtures and furnishings to be owned by Owner on the Site, All Risk Property insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in Fresno County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance

policy or policies shall not require coverage for earthquake. Agency shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

c. All policies of insurance required to be carried by Owner shall be written by responsible and solvent insurance companies licensed in the State of California and having a policy-holder's rating of A or better, in the most recent edition of "Best's Key Rating Guide -- Property and Casualty." A- copy of each paid-up policy evidencing such insurance (appropriately authenticated by the insurer) or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required herein, and containing the provisions specified herein, shall be delivered to Agency prior to its issuance of the Certificate of Completion for the Project and thereafter, upon renewals, not less than thirty (30) days prior to the expiration of coverage. Agency may, at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Owner hereunder. In no event shall the limits of any policy be considered as limiting the liability of Owner hereunder.

d. Each insurance policy required to be carried by Owner pursuant to this Agreement shall contain the following endorsements, provisions or clauses:

(1) The insurer will not cancel or materially alter the coverage provided by such policy in a manner adverse to the interest of the insured without first giving Agency a minimum of thirty (30) days prior written notice by certified mail, return receipt requested; and

(2) A waiver by the insurer of any right to subrogation against Agency, its agents, employees, or representatives, which arises or might arise by reason of any payment under such policy or policies or by reason of any act or omission of Agency, its agents, officers, members, officials, employees, or representatives.

(3) The City, Agency, their respective agents, officers, members, officials, employees, volunteers, and representatives shall be named insureds on the Commercial General Liability policies.

(4) The City and Agency shall be loss payees on the All Risk Property insurance policies.

(5) Coverage provided by these policies shall be primary and non-contributory to any insurance carried by the City, Agency, their officers, officials, employees, volunteers, agents, or representatives.

(6) Failure to comply with reporting provisions shall not affect coverage provided to City, Agency, their officers, employees, volunteers, agents, or representatives.

2. Failure to Procure Insurance. If Owner fails to procure and maintain the above-required insurance despite its availability, then Agency, in addition to any other remedy which Agency may have hereunder for Owner's failure to procure, maintain, and/or pay for the insurance required herein, may (but without any obligation to do so) at any time or from time to time, after thirty (30) days written notice to Owner, procure such insurance and pay the premiums therefor, in which event Owner shall immediately repay Agency all sums so paid by Agency together with interest thereon at the maximum legal rate.

I. OBLIGATION TO REPAIR.

1. Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to Section I.3 below, if the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Owner, Owner shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as the Project is required to be maintained in pursuant to this Agreement, and Owner shall complete the same as soon as possible thereafter so that the Project can continue to be operated and occupied as an affordable housing project in accordance with this Agreement. Subject to extensions of time for "force majeure" events described in the DDA, in no event shall the repair, replacement, or restoration period exceed one (1) year from the date Owner obtains insurance proceeds unless Agency's Executive Director, in his or her sole and absolute discretion, approves a longer period of time. Agency shall cooperate with Owner, at no expense to Agency, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies or lenders with jurisdiction over the Property do not permit the repair, replacement, or restoration, Owner may elect not to repair, replace, or restore the Project by giving notice to Agency (in which event Owner shall be entitled to all insurance proceeds but Owner shall be required to remove all debris from the Site) or Owner may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the City, Agency, and the other governmental agency or agencies with jurisdiction.

If Owner fails to obtain insurance as required by the DDA or this Agreement (and Agency has not procured such insurance and charged Owner for the cost), Owner shall be obligated to reconstruct and repair any partial or total damage to the Project and improvements located on the Site in accordance with this Section I.1.

2. Continued Operations. During any period of repair, Owner shall continue, or cause the continuation of, the operation of the Project to the extent reasonably practicable from the standpoint of prudent business management.

3. Limitation on Obligation to Repair. If any casualty occurs to the Project during the term of this Regulatory Agreement and the cost of restoration of the Project exceeds One Hundred Thousand dollars (\$100,000) more than the insurance proceeds available to Owner for such restoration (if Owner maintains all insurance required by this Regulatory Agreement and inclusive of any deductible or self-insured retention amounts), then Owner shall not be required to restore the Project, but this Regulatory Agreement shall not be affected.

J. LIMITATION ON TRANSFERS. The Owner covenants that Owner shall not transfer the Site or any of its interests therein except as provided in this Section.

1. Transfer Defined. As used in this Section, the term "Transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) (in the aggregate) of the present ownership and/or control of any person or entity constituting Owner or its general partners, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the

transferor's immediate family, or among the entities constituting Owner or its general partners or their respective shareholders. In the event any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner, is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of such corporation, of beneficial interests of such trust; in the event that any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of such limited or general partnership interest; in the event that any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner is a joint venture, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

2. Agency Approval of Transfer Required. Owner shall not Transfer the Site or any of Owner's rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Agency, and if so purported to be Transferred, the same shall be null and void. In considering whether it will grant approval of any Transfer by Owner of its interest in the Site, Agency shall consider factors such as (i) whether the completion and operation of the Project is jeopardized; (ii) the financial credit, strength, and capability of the proposed transferee to perform Owner's obligations hereunder; and (iii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of specific written agreement by Agency, no transfer by Owner of all or any portion of its interest in the Site (including without limitation a transfer not requiring Agency approval hereunder) shall be deemed to relieve it or any successor party from the obligation to complete the Project or any other obligations under this Agreement. In addition, no attempted transfer of any of Owner's obligations hereunder shall be effective unless and until the successor party executes and delivers to Agency an assumption agreement in a form approved by the Agency assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following:

(a) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing, but Owner shall notify Agency in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site.

(b) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the acquisition of the Site and construction of improvements on the Site, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors.

(c) The conveyance or dedication of any portion of the site (or sites) to the City of Fresno or other governmental agency.

(d) After recordation of the Certificate of Completion, any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing provided that the

principal amount of the loan does not exceed eighty-five percent (85%) of the value of the land and improvements thereon.

(e) The granting of easements to any appropriate governmental agency or utility to facilitate the development of the Site.

(f) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(g) A sale or transfer of forty-nine percent (49%) or more ownership interest to a member of the transferor's immediate family, a trust, testamentary or otherwise, in which immediate family members of the transferor are the sole beneficiaries, or a corporation or partnership in which the immediate family members or shareholders of the transferor have controlling majority interest of more than fifty-one percent (51%).

(h) A change in the respective percentage ownership interests exclusively of the present owners of Owner (as of the date of this Agreement), but this shall not authorize the transfer of any interest to any person or entity who is not a present owner of Owner.

(i) A sale or transfer to a Qualified Tax Credit Investor.

(j) Notwithstanding anything to the contrary contained in this Agreement, Developer shall have the right, at its option, to have the Site granted from Agency to a nonprofit general partner who is subsequently admitted to the Developer.

(k) A sale or transfer of general partner interests to a nonprofit general partner.

(l) Mechanic's liens removed prior to foreclosure or liens for current year property taxes not paid.

K. ENCUMBRANCES PROHIBITED. Prior to issuance of the Certificate of Completion by Agency as provided in the DDA, the Grantee shall not place or suffer to be placed on the Site any lien or encumbrance other than mortgages, deeds of trust, sales and leases back or any other form of conveyance required for financing of the acquisition of the Site, the construction of improvements on the Site, and any other expenditures necessary and appropriate to develop the Site, except as specifically provided in the DDA and attachments thereto.

L. ENFORCEMENT. In the event Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner pursuant to this Agreement, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by Agency, or, in the event said default cannot be cured within said time period, Owner has failed to commence to cure such default within said thirty (30) days and thereafter fails to diligently prosecute said cure to completion, then Agency shall declare an

"Event of Default" to have occurred hereunder, and, at its option, may take one or more of the following steps:

1. By mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of this Agreement; or
2. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Owner hereunder; or
3. Enter the Site and cure the Event of Default as provided in Section E hereof.
4. Impose, through Agency's Executive Director, an administrative fine for each day the violation continues. The amount of the fine shall be Twenty-Five dollars (\$25.00) per day, unless the violation is deemed a major violation, in which case the fine shall be Seventy-Five dollars (\$75.00) per day. A "major" violation shall be one which affects adjacent property or the health and safety of persons. Owner may appeal the assessment of any fine to the City Council who may reverse, modify or uphold the decision of the Executive Director. In making this decision, the City Council shall determine whether the violation exists and whether the amount of the fine is appropriate under the circumstances.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

M. NONDISCRIMINATION. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Owner, 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 of the Site, or any part thereof (except as permitted by this Agreement).

N. FORM OF NONDISCRIMINATION CLAUSES IN AGREEMENTS. Subject to the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA, which may modify the following nondiscrimination clauses, the following shall apply: Owner shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. Deeds: In deeds the following language shall appear: "The grantee 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, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons 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 land herein conveyed. The foregoing covenants shall run with the land."

b. Leases: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee 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, sublessees, subtenants, or vendees in the land herein leased."

c. Contracts: In contracts the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee 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 of the land."

The foregoing nondiscrimination covenants shall remain in effect in perpetuity.

O. COVENANTS TO RUN WITH THE LAND. Owner hereby subjects the Site to the covenants, reservations, and restrictions set forth in this Agreement. Agency and Owner hereby declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Site; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall expire. All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency for the entire term of this Agreement, without regard to whether the Agency is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

Agency and Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that Owner's legal interest in the Site is rendered less valuable thereby. Agency and Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Eligible Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Agency was formed.

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received, or if by overnight courier; of the time of delivery shown.

T. SEVERABILITY/WAIVER/INTEGRATION.

1. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

2. Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

3. Integration. This Agreement contains the entire Agreement between the parties and neither party relies on any warranty or representation not contained in this Agreement.

U. FUTURE ENFORCEMENT. The parties hereby agree that should the Agency cease to exist as an entity at any time during the term of this Agreement, the City of Fresno shall have the right to enforce all of the terms and conditions herein, unless the Agency had previously specified another entity to enforce this Agreement.

V. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California.

W. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Agency and Owner have executed this Regulatory Agreement and Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

"AGENCY"

THE REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO,
a public body, corporate and politic

Date _____

Marlene Murphey
Executive Director

ATTEST:
Yvonne Spence
Ex Officio Clerk,
Fresno Redevelopment Agency

APPROVED AS TO FORM:
JAMES C. SANCHEZ
Ex Officio Attorney,
Fresno Redevelopment Agency

Deputy

Deputy

"OWNER"
EDISON PLAZA PARTNERS, L.P.
a California Limited Partnership

Date: _____

By: _____
Its: _____

[END OF SIGNATURES]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared _____ personally

known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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Notary Public

[SEAL]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

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Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

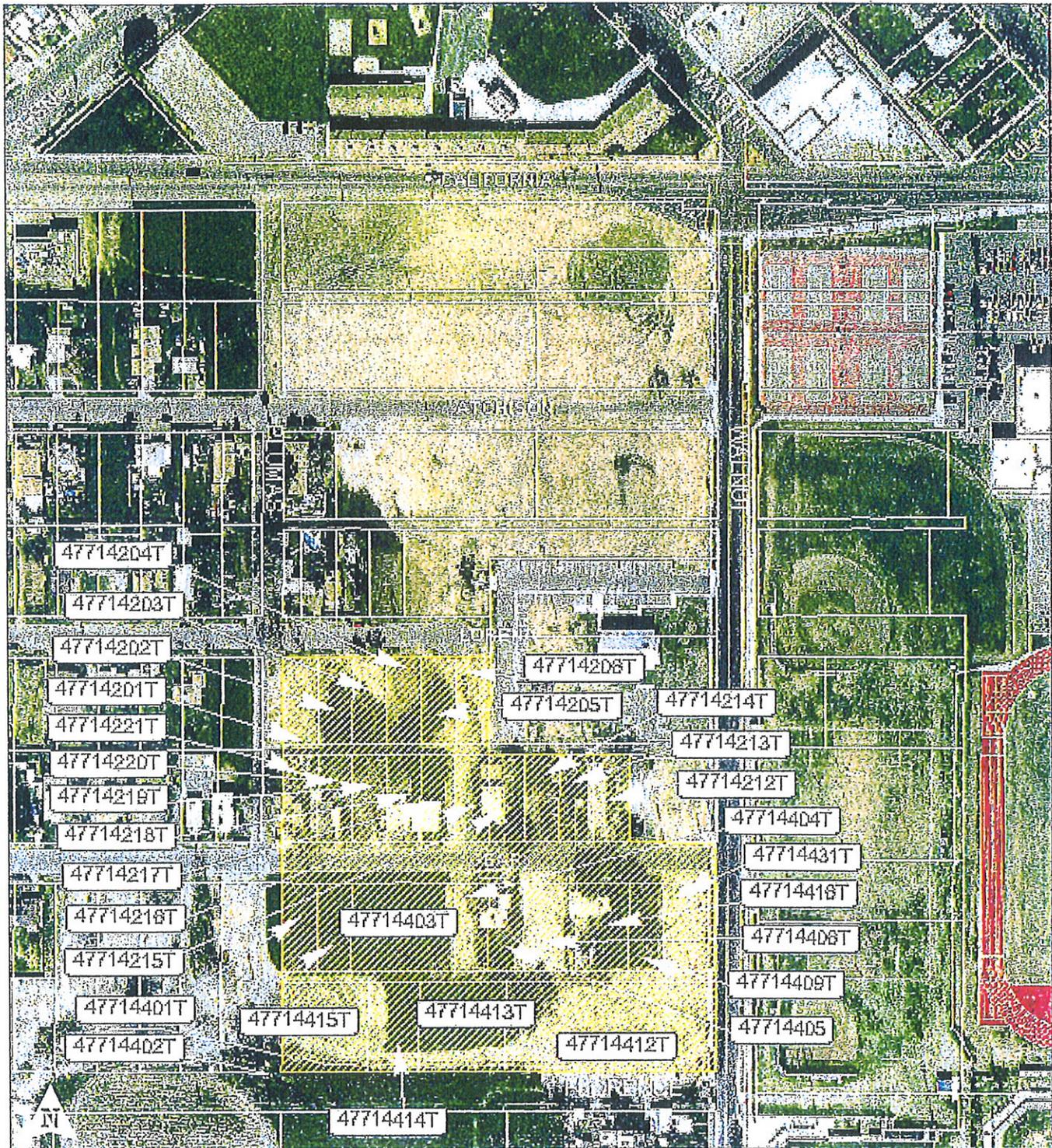
On _____, before me, _____, personally appeared

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

Mixed Income Housing Project - Lorena to Florence, Plumas to Walnut



Handwritten blue scribble or signature.



REPORT TO THE REDEVELOPMENT AGENCY

Agency Item No. 1:30pm "D"
Agency Meeting: 1-26-12

MM
(Executive Director)

DATE: January 26, 2012
FROM: Marlene Murphey, Executive Director
BY: Terry Cox, Project Manager

Presented to City Council RDA:
Date 1/26/12
Disposition Approved

SUBJECT: AGENCY BOARD APPROVE REFORMATION OF DISPOSITION AND DEVELOPMENT AGREEMENT between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO (the "Agency") and EDISON PLAZA PARTNERS, LP, a California limited partnership (the "Developer"), for a mixed income/multi-family housing project, on approximately 6.9 acres located south of Lorena Street and west of Walnut Street, subject to City Attorney approval as to form.

RECOMMENDATION

It is recommended that the Redevelopment Agency Board:
Approve Reformation of Development and Disposition Agreement between the Redevelopment Agency of the City of Fresno and Edison Plaza Partners, LP for a mixed income/multi-family housing project on approximately 6.9 acres south of Lorena Street and west of Walnut Street.

EXECUTIVE SUMMARY

The Agency Board and City Council approved a Disposition and Development Agreement (DDA) between the Redevelopment Agency of the City of Fresno and Edison Plaza Partners, LP for Phase II of a 20-acre mixed-use project that would result in construction of a 200-unit multi-family community complex with community center, play yards, and public green space to be constructed in two phases. Both phases to include construction of required landscaping, onsite parking, and public road improvements.

The Developer has requested modification of the agreement for a total of 128 multi-family units on the project's 10-acre site that includes 88 affordable units ranging from 50-120% AMI (see attached letter).

BACKGROUND

The Agency has worked to implement a Master Plan developed in conjunction with the HOPE VI Project for the area in Southwest Fresno generally between California/Church Avenues and Walnut/West Avenues. The plan includes a mixed-use component, of approximately 20 acres assembled by the Agency.

Following a Request for Proposals, the Redevelopment Agency Board on October 11, 2005, directed the Agency to proceed to negotiate with the selected developer, Edison Plaza Partners for a mixed-use project on the approximate 20 acre site between California, Florence, Walnut and Plumas. Phase I, an approximately 10 acre site (net 6.5 acres) between California, Plumas,

Lorena and Walnut Avenues has moved forward with the completed construction of the West Fresno Regional Center consisting of a 37,617 square foot County "One-Stop" Service Center and Library. Additionally planned for Phase I is construction of a 25,000 square foot professional office complex and a 7,000 square foot retail building. Phase II, on a approximately 10 acre site (net 6.9 acres) will occupy the balance of the 20 acre project between Lorena, Florence, Walnut and Plumas Avenues. Phase II, is planned for residential development, and is within walking distance to the Service Center, Library and planned Professional Commercial and Retail development. The construction of the residential units is essential to the successful completion of Phase I as it relates to the securing of commercial and retail tenants.

The Developer in working through the development process with the City of Fresno and various related agencies will be limited to site plan approval for and construction of a total 128 multi-family units on the project's 10 acre site, not the originally planned 200 units.

The Agency through the Disposition and Development Agreement is providing a grant of \$5,655,000 million for the multi-family development. Funding for this project is provided for in the Agency FY 11/12 budget and has been included in the State Department of Finance Enforceable Payment Obligation Schedule. The combined mixed use construction of \$17 million for (Phase I) and \$27 million for (Phase II) brings a total investment of \$44 million to this previously vacant southwest Fresno site.

The units ranging from one bedroom/one bath to three bedroom/two bath have been designed to blend with the existing community. The design and privacy provided in each unit along with the open community space, play and recreation areas, and accessible parking provide quality of life enhancing amenities. This project provides a mix of market rate (unrestricted) and affordable housing in a well designed community setting and completes a significant transformative mixed use development for West Fresno.

After Agency Board award of a Request for Proposal to Edison Plaza Partners, the developers secured the County of Fresno as an anchor tenant for the 6.5 acre, Phase I commercial component of the mixed use project. The developers through a lease agreement with the County built the West Fresno Regional Center and library representing \$12 million in value. The agency assembled land and constructed the required off-site improvements. The center and library were completed in February 2010.

The residential component will be constructed on the remaining 6.9 acre site at California and Walnut. The site is currently vacant and all existing structures/improvements have been demolished. The property is zoned C-P and is consistent with the proposed land use. The developer has determined that the site will not support the originally proposed 200 units and is limited to the construction of 128 units.

The Disposition and Development Agreement provides that the developer will pay appraised "Market Value" of \$655,000 for the twenty-nine (29) parcel, 6.9 acre site. The developer will construct the public off-site improvements estimated at approximately \$1,600,000 along Lorena, Walnut, Plumas and Florence. The offsite improvements will include curbs, gutters, sidewalks, street lights, and utility relocation/replacement.

The addition of residents in the immediate area is critical to securing stable and long term successful commercial and retail tenants, therefore, it is probable that without the development

of the residential units the commercial and retail portions of Phase I will not be constructed. The property has long been vacant and will likely remain vacant without development of this project. The vacant land will remain a maintenance liability and provide no increased value for the foreseeable future.

The subject reformation agreement allowing the developer to construct the maximum allowable 128 units for this site and the public off-site improvements, will further the planned realignment of Walnut Avenue. This reformation creates no additional obligations or liabilities to the Agency and will preserve assets and minimize liability to the Agency. Due to the dissolution of the Agency and the City of Fresno's already stretched infrastructure budget, construction of the \$1.6 million in public street improvements will not be completed without this project.

The current value of the land is \$655,000, after completion of the residential units, the value of the property will increase to an estimated \$27 million therefore, increasing not only the property values of the project site, but additionally the general community property owners will benefit from their increased property values. Without construction of this project, school districts will not collect the anticipated developer fees associated with the development, additional sales taxes will not be generated and the property will remain vacant further negatively impacting the area's property value.

Attachments:

Developer's Letter

Reformation of Disposition and Development Agreement

Exhibit B-1: Revised Scope of Development

Exhibit C-1: Revised Schedule

Exhibit G-1: Revised Regulatory Agreement

Edison Plaza Partners
855 M. Street, Suite 1110
Fresno, CA 93721
(559) 268-6090 Fax (559) 268-6030

January 20, 2012

To whom it may concern:

Edison Plaza Partners is requesting an amendment to the DDA awarded by the Redevelopment Agency for the City of Fresno for the proposed development of the Edison Plaza Partners II project, located adjacent to the Edison Plaza I project on its southern border. The first phase of this multi-phased development consisted of the facility known as the "West Fresno Regional Center" which currently houses a County of Fresno Library and various administration offices for County services. The first phase also allows for the development of approximately 37,000 square feet of commercial/retail space once suitable tenants have been identified and secured. The amendment being requested is for the second phase of this development, which envisioned initially approximately 200 multi-family units and was subsequently awarded a DDA by the Redevelopment Agency and the City Council of Fresno for development of the proposed project. Unfortunately, in working through the development process with the Planning Department for the City of Fresno and various related agencies, it has become clear that the proposed site will be limited to a total of 128 multi-family apartments.

The Redevelopment Agency has invested millions of dollars in the revitalization of this particular project area, specifically related to the first and second phases of this development. The multi-family housing piece is essential to the success of phase I, as prospective commercial and retail tenants are unwilling to invest in locating in the proposed area without additional housing units and population to support their respective business operations. The multi-family portion of this multi phased development will bring approximately 400 additional residents to the area. These additional residents will be in walking distance to the proposed and approved commercial/retail sites and as initially envisioned will add significant value to the feasibility of leasing these spaces to viable tenants. Additionally, tax dollars which will benefit the City and County (for both property and sales taxes) will be lost on both the multi-family development as well as the commercial/retail project without the completion of the proposed multi-family. Essentially, without an amendment the millions of dollars already invested in this blighted community will have been wasted.

Edison Plaza Partners remains committed to bringing this final phase to completion and believes that it will enhance the previously developed projects as well as the neighborhood and surrounding community adding much needed economic value to the area.

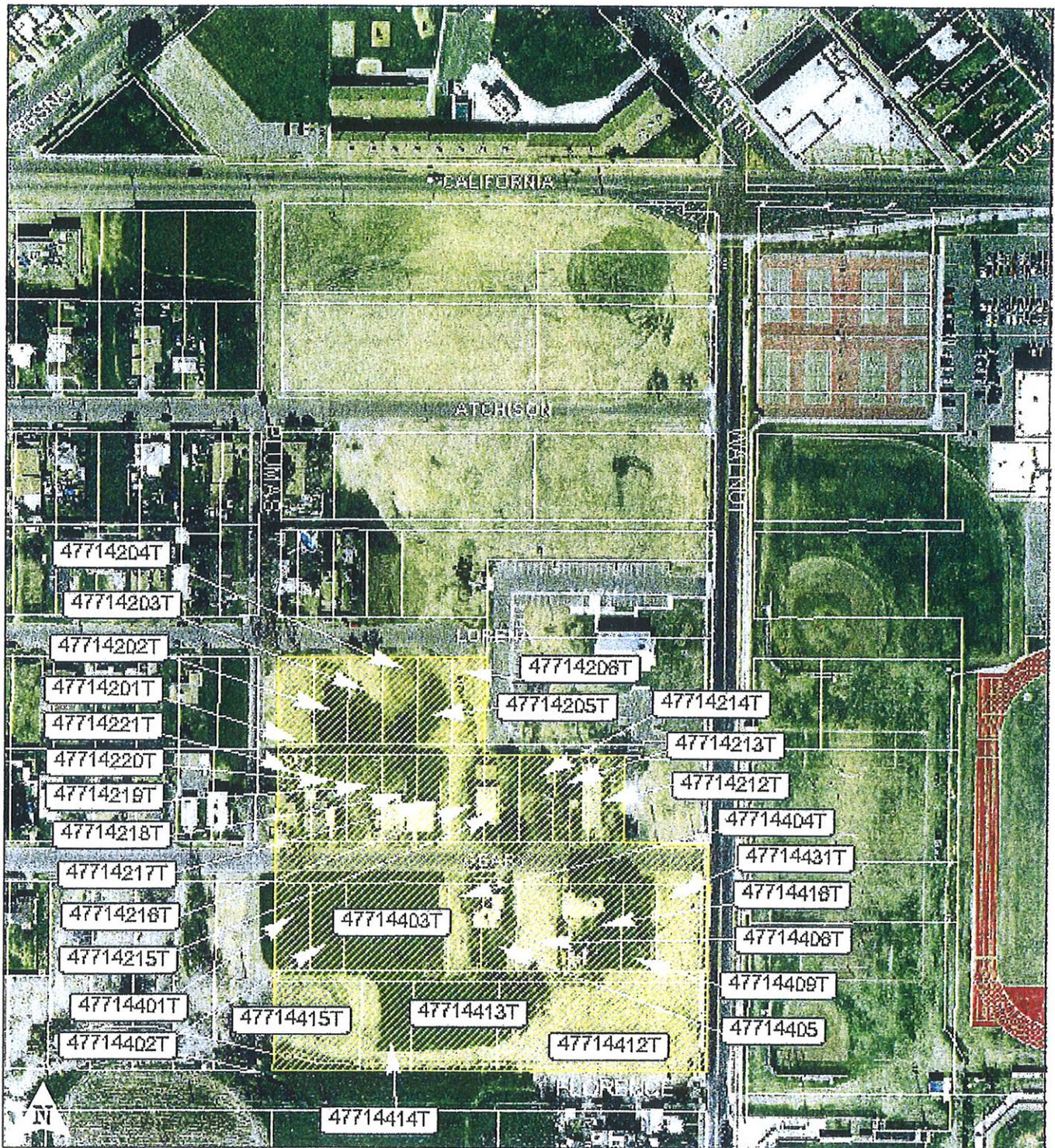
Sincerely,
Edison Plaza Partners



Thomas G. Richards

Mixed Income Housing Project -

Lorena to Florence, Plumas to Walnut



Redevelopment Agency
of the City of Fresno

REFORMATION OF
DISPOSITION AND DEVELOPMENT AGREEMENT
WITH
EDISON PLAZA PARTNERS, L.P.

This Reformation of Disposition and Development Agreement (“Reformation of Agreement”) is entered into this ____ day of January, 2012, between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic (the “Agency”), and EDISON PLAZA PARTNERS, L.P., a California limited partnership (the “Developer”). This Reformation of Agreement is entered into in respect to that certain Disposition and Development Agreement between Agency and Developer, with an effective date of March 9, 2011.

WHEREAS, the Agency and Developer entered into a Disposition and Development Agreement (the “Agreement”) effective March 9, 2011, pursuant to which the Developer proposes to purchase 6.9 acres of property from the Agency at fair market value and develop in two phases a multi-family apartment complex anticipated to include 200 units, 160 of which would be affordable (the “Project”); and

WHEREAS, the current Agreement does not express the original intent of the parties because certain details in the Project description were mistakenly incorrect concerning the calculation of the number of units per acre of available property; and

WHEREAS, California Civil Code section 3399 provides that when, through mutual mistake of the parties, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention; and

WHEREAS, the parties now must reform the Agreement to match the actual agreement as understood by the parties and to express their original intent.

NOW, THEREFORE, with reference to the above recitals, and in consideration of the mutual covenants and agreements contained in the Agreement and this Reformation of Agreement, the Agency and Developer agree as follows:

1. The total number of apartment units in the Project shall be reduced from 200 to 128. Of those 128 units, 88 shall be restricted to occupancy by Low Income Households at an Affordable Rent as defined in the Agreement and Regulatory Agreement attached thereto. The Agency Assistance per affordable unit shall remain the same.
2. Exhibit B to the Agreement (Scope of Development), shall be revised as set forth in the attached Exhibit B-1.
3. Exhibit C to the Agreement (Schedule), shall be revised as set forth in the attached Exhibit C-1.

4. Exhibit G to the Agreement (Regulatory Agreement), shall be revised as set forth in the attached Exhibit G-1.

5. All terms and provisions of the Agreement not expressly reformed hereby shall remain in full force and effect.

6. If, for any reason, this Reformation of Agreement is found to be invalid or unenforceable, then this Reformation shall be stricken and the Agreement shall remain in full force and effect.

7. The Parties may sign this Reformation of Agreement in counterparts. Each counterpart, when executed and delivered, will be one instrument with the other counterparts.

IN WITNESS WHEREOF, Agency and Developer have executed this Reformation of Agreement on the dates set forth below.

REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO

EDISON PLAZA PARTNERS, L.P.,
a California limited partnership

By: _____
Marlene Murphey,
Executive Director

By: _____
Thomas G. Richards
Chief Executive Officer

Dated:

Dated:

By: _____
James Hendricks
General Partner - HAW 56

Dated:

ATTEST:
YVONNE SPENCE, CMC
Ex Officio Clerk
Redevelopment Agency of the
Fresno
City of Fresno

APPROVED AS TO FORM:
JAMES SANCHEZ
Ex Officio Attorney
Redevelopment Agency of the City of

By: _____
Deputy

By: _____
Deputy

Dated: _____

Dated: _____

Exhibit B-1: Reformed Scope of Development
Exhibit C-1: Reformed Schedule
Exhibit G-1: Reformed Regulatory Agreement

Exhibit "B-1"

Phased Scope of Development – Proforma Budget

I. PRIVATE DEVELOPMENT

A. General

The Developer agrees that the Property shall be developed and improved in accordance with the provisions of this Agreement and the Basic Design (Exhibit "F") approved by the Agency pursuant hereto. The Developer and its supervising architect, engineer and contractor shall work with Agency staff to coordinate the overall design, architecture and color of the improvements on the Property.

B. Developer's Improvements

The Developer shall construct, or cause to be constructed, on the Property the following:

A multi-family residential community consisting of 128 units with unit size and specifications consisting of one-bedroom, two-bedroom, and three-bedroom units. The total square footage of the project at completion is estimated to be 142,580 square feet (including common area) which includes four lot lots, a community center, and pool and community gardens. The on-site improvements consisting of parking lots with improvement, lighting, landscaping will be constructed as required by City of Fresno and Redevelopment Agency development standards. The units will have the following rent specifications/restrictions:

- 40 units at 80/120% Median Income
- 45 units at 60% Median Income
- 43 units at 50% Median Income

The project will be constructed in one phase.

C. Architecture and Design

The Developer's improvements shall be of high architectural quality, shall be well landscaped and shall be effectively and aesthetically designed. The shape, scale of volume, exterior design and exterior finish of the building must be consonant with, visually related to, physically related to and an enhancement of adjacent buildings within the Project Area.

D. Landscaping

Landscaping shall embellish all open spaces on the Property. Landscaping includes such materials as paving, trees, shrubs and other plant materials, landscape containers, plaza furniture, top soil preparation, automatic irrigation and landscape and pedestrian lighting. Landscaping

shall carry out the objectives and principles of the Agency's desire to accomplish a high quality aesthetic environment.

- E. Signs
All signs on the exterior of the buildings are of special concern to the Agency and must be approved by the Agency (which approval shall not be unreasonably withheld).

- F. Screening
Trash areas shall be screened on at least three (3) sides and have movable doors or other devices to obscure such areas from view. All fire standpipes and such other fire related mechanical devices shall be screened with plant materials. Rooftop equipment shall be reasonably hidden so as to mitigate views from principal elevations surrounding the development.

- G. Applicable Codes
The Developer's improvements shall be constructed in accordance with the Uniform Building Code (with City modifications) and the Municipal Code.

II. SITE CLEARANCE AND PREPARATION

The Developer shall perform, or cause to be performed, at its sole cost and expense, the following work:

- A. On-Site Clearance.

On the Property, clear and grub. The Property is vacant and unimproved. The Agency, as of the Effective Date is unaware of any subsurface structures, foundations, obstructions, basements, tanks, and the like.

- B. Compaction, Finish Grading and Site Work

The Developer shall compact, finish grade and do such site preparation as is necessary for the construction of the Developer's improvements on the Property.

III. OFF-SITE IMPROVEMENTS

The Developer shall design, construct and install required Off-Site Public Improvements, at its sole cost and on a schedule which coordinates with the development.

**Project Summary
Edison
Rents and Income**

Unit Type	Number of Units	Floor Area	FMR Rent	Restricted Rent Amounts	Actual Rents	Rents PSF	Total Annual Rent
1 bedroom - MKKT/80%/120%	3	720	\$ 711.00	\$ 711.00	\$ 634.00	\$ 0.88	\$ 22,824
2 bedroom - MKKT/90%/120%	15	940	\$ 840.00	\$ 840.00	\$ 760.00	\$ 0.81	\$ 136,800
3 bedroom - MKKT/80%/120%	22	1,160	\$ 1,100.00	\$ 1,100.00	\$ 879.00	\$ 0.76	\$ 232,056
4 bedroom - MKKT/80%/120%	0	1,360	\$ 1,316.00	\$ 1,316.00	\$ 987.00	\$ 0.76	\$ 0
1 bedroom 60%	7	720	\$ 711.00	\$ 634.00	\$ 634.00	\$ 0.88	\$ 53,256
1 bedroom 50%	6	720	\$ 711.00	\$ 528.00	\$ 528.00	\$ 0.73	\$ 38,016
2 bedroom 60%	33	940	\$ 840.00	\$ 760.00	\$ 760.00	\$ 0.81	\$ 300,960
2 bedroom 50%	32	940	\$ 840.00	\$ 633.00	\$ 633.00	\$ 0.67	\$ 243,072
3 bedroom 60%	5	1,160	\$ 1,100.00	\$ 879.00	\$ 879.00	\$ 0.76	\$ 52,740
3 bedroom 50%	5	1,160	\$ 1,100.00	\$ 732.00	\$ 732.00	\$ 0.63	\$ 43,920
4 bedroom 60%	0	1,360	\$ 1,316.00	\$ 987.00	\$ 987.00	\$ 0.76	\$ 0
4 bedroom 50%	0	1,360	\$ 1,316.00	\$ 817.00	\$ 817.00	\$ 0.63	\$ 0
Total	128						\$1,123,644

\$8,778 per unit

123,840 Total Rent Square Feet
19,010 Common Area
142,850 Total Square Feet

PREMIUM INC.	Units	Mb. Prem	Annual
View	0	\$	\$
Pool View	0	\$	\$
Vaulted Ceilings	0	\$	\$
First Floor	0	\$	\$
Second Floor	0	\$	\$
Third Floor	0	\$	\$
TOTAL ANNUAL PREMIUMS			\$

OTHER INCOME	Units/Mo.	Annual	Comments
NNN Recapture	0	\$	
Other	0	\$	See attached projection
TIF	0	\$	
Forfeited Deposits	5	\$ 1,250	
Late Fees	5	\$ 2,100	
NSF Fees	0	\$ -	
Short Lease Premiums	0	\$	
Lease Termination Fees	0	\$	
Utility Reimbursement	128	\$ 76,800	
Clubroom Rental	1	\$ 1,536	
Concierge	0	\$	
Parking	0	\$	
Park and Recreation	0	\$	
TOTAL OTHER INCOME		\$ 81,686	

**Project Summary
Edison
Operating Expenses**

	Units	Proposed 128	
		Total	Per Unit
Administrative Expenses			
Advertising	0	\$32,000	250.0
Office Salaries / Incentive Wages	0	\$80,000	625.0
Office Supplies/Telephone/Screening	0	\$1,920	15.0
Legal Expenses/Accounting	0	\$2,560	20.0
Miscellaneous/Unallocated	0	\$3,200	25.0
Management Fee	0	\$39,328	307.2
Total Administrative Expenses	\$0	\$0	\$159,008 1,242.2
Utility Expenses			
Electricity	0	\$35,000	273.4
Water & Sewer	0	\$35,000	273.4
Fuel	0	\$12,800	100.0
Trash Removal	0	\$12,800	100.0
Total Utility Expenses	\$0	\$0	\$95,600 746.9
Maintenance Expenses			
Repair Materials and Supplies	0	\$41,600	325.0
Elevator	0	\$0	-
Pool	0	\$25,000	195.3
Grounds Supplies/Contracts /Pest	0	\$55,000	429.7
Decorating/Turnover	0	\$6,400	50.0
Miscellaneous/Unallocated	0	\$0	-
Total Maintenance Expenses	\$0	\$0	\$128,000 1,000.0
Taxes & Insurance Expenses			
Real Estate Taxes	0	\$60,707	474.3
Property Insurance	0	\$50,000	390.6
Land Lease	0	\$0	-
Total Taxes & Insurance Expenses	\$0	\$0	\$110,707 864.9
Other Expenses			
Replacement Reserves	0	\$50,000	390.6
	0		
	0		
Total Other Expenses	\$0	\$0	\$50,000 390.6
Total Operating Expenses	\$0	\$0	\$543,315 4,244.6
Office/Retail Space Exp Before NNN			\$0
TOTAL OPERATING EXPENSES & RESERVES	\$0	\$0	\$543,315 4,244.6

Cash Flow Projections: Years 1-7

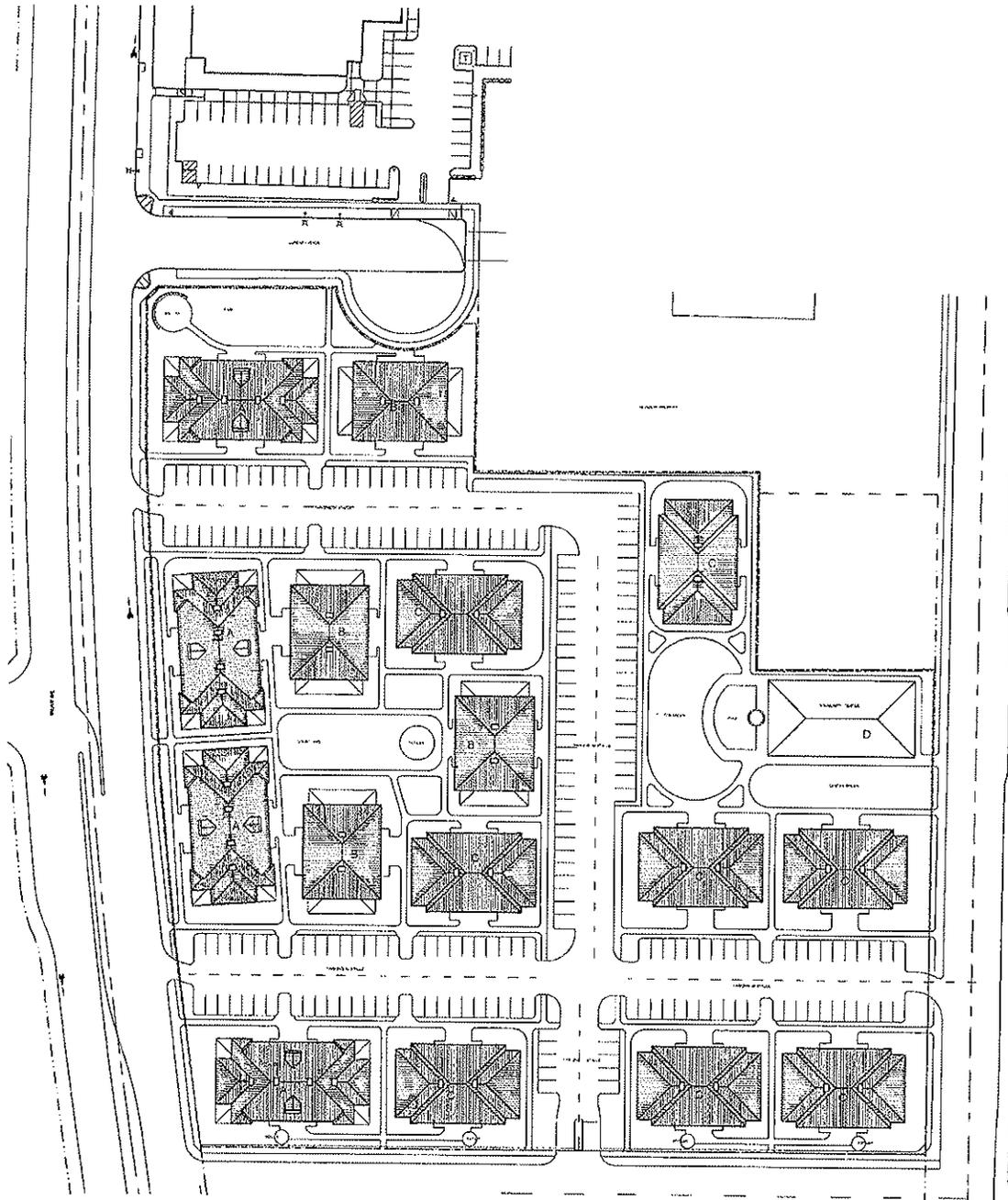
	1	2	3	4	5	6	7
INCOME							
Gross Rent	1,123,644	1,157,353	1,192,074	1,227,836	1,264,671	1,302,611	1,341,690
Base Rent Abatements		0	0	0	0	0	0
Other Income	81,686	84,137	86,661	89,260	91,938	94,696	97,537
Vacancy:	(78,655)	(81,015)	(83,445)	(85,949)	(88,527)	(91,183)	(93,918)
Collections	(22,473)	(23,147)	(23,841)	(24,557)	(25,293)	(26,052)	(26,834)
Total Net Income:	1,104,202	1,137,328	1,171,448	1,206,591	1,242,789	1,280,073	1,318,475
OPERATING EXPENSES & REPLACEMENT RESERVE							
Administrative	159,008	163,778	168,691	173,752	178,964	184,333	189,863
Utility	95,600	98,468	101,422	104,465	107,599	110,827	114,151
Maintenance	128,000	131,840	135,795	139,869	144,065	148,387	152,839
Taxes & Insurance	110,707	114,029	117,450	120,973	124,602	128,340	132,191
Replacement Reserve	50,000	51,500	53,045	54,636	56,275	57,964	59,703
Total Operating Expenses & Replacement Reserve	543,315	559,614	576,403	593,695	611,506	629,851	648,747
Operating Expenses/ SQFoot	\$ 3.45	\$ 3.56	\$ 3.66	\$ 3.77	\$ 3.89	\$ 4.00	\$ 4.12
Total Operating Expenses & Replacement Reserve/Unit	\$ 3.80	\$ 3.92	\$ 4.04	\$ 4.16	\$ 4.28	\$ 4.41	\$ 4.54
Net Operating Income:	560,887	577,714	595,045	612,896	631,283	650,222	669,728
DEBT SERVICE PAYABLE							
Financing	373,860	373,860	373,860	373,860	373,860	373,860	373,860
Debt Service Coverage Ratio	1.50	1.55	1.59	1.64	1.69	1.74	1.79
Cash Flow After 1st Mortgage	187,027	203,854	221,186	239,037	257,424	276,362	295,869
UPB 1st Mortgage	4,815,176	4,752,456	4,685,536	4,614,134	4,537,950	4,456,663	4,369,934
Stabilized Value at 8% CAP	7,011,088	7,221,420	7,438,063	7,661,205	7,891,041	8,127,772	8,371,605
Residual Cash upon Liquidation:	2,073,218	2,342,590	2,622,361	2,913,000	3,214,998	3,528,873	3,855,109
75% of First Year Stabilized Value 8% Cap Requested Loan Amount	7,011,088	4,929,052					

Inflation Factors		Vacancy Factors	
Income:	3.0%	Vacancy:	7%
Expense:	3.0%	Collection:	2%

Development Cost Budget

Total Units	128
Unit Square Feet	142,850
Common Area Square Feet	0
Total Net Square Feet	142,850

	Total Costs	Eligible Basis	Per Unit	Per NSF
Construction Costs (Building & Site)		100%		
New Buildings	\$ 11,428,000	\$ 11,428,000	\$ 89,281	\$ 80.00
Land	\$ 655,000	\$ -	\$ 5,117	\$ 4.59
other	\$ -	\$ -	\$ -	\$ -
other	\$ -	\$ -	\$ -	\$ -
other	\$ -	\$ -	\$ -	\$ -
Site Costs, Contingency & Bonds	\$ 2,750,000	\$ 2,750,000	\$ 21,484	\$ 19.25
TOTAL CONSTRUCTION COSTS	\$ 14,833,000	\$ 14,178,000	\$ 115,883	103.84
Permits and Fees				
Impact Fees (Non-Utility)	\$ 1,732,500	\$ 1,732,500	\$ 13,535	\$ 12.13
TOTAL PERMITS AND FEES	\$ 1,732,500	\$ 1,732,500	\$ 13,535	12.13
Technical Fees				
Architect Fees -- Design	\$ 450,000	\$ 450,000	\$ 3,516	\$ 3.15
Supervision	\$ -	\$ -	\$ -	\$ -
Surveying	\$ -	\$ -	\$ -	\$ -
Engineering/Soil Testing	\$ 50,000	\$ 50,000	\$ 391	\$ 0.35
TOTAL TECHNICAL FEES	\$ 500,000	\$ 500,000	\$ 3,906	3.50
Interest				
Property Insurance	\$ 100,000	\$ 100,000	\$ 781	\$ 0.70
Property Taxes	\$ 25,000	\$ 25,000	\$ 195	\$ 0.18
Construction Interest	\$ 627,622	\$ -	\$ 4,903	\$ 4.39
Lease Up Fee	\$ -	\$ -	\$ -	\$ -
TOTAL INTERIM COSTS	\$ 752,622	\$ 125,000	\$ 5,880	5.27
Financing Costs				
Loan Fee	\$ 100,000	\$ -	\$ 781	\$ 0.70
Construction Inspection Fees	\$ 15,000	\$ -	\$ 117	\$ 0.11
TOTAL FINANCING COSTS	\$ 115,000	\$ -	\$ 898	0.81
Soft Development Costs				
Appraisal	\$ 10,000	\$ -	\$ 78	\$ 0.07
Title/Recording/Doc Stamps	\$ 25,000	\$ -	\$ 195	\$ 0.18
Environmental Report	\$ 25,000	\$ -	\$ 195	\$ 0.18
Legal	\$ 100,000	\$ -	\$ 781	\$ 0.70
Tax Credit Fees	\$ 100,000	\$ -	\$ 781	\$ 0.70
TOTAL SOFT COSTS	\$ 260,000	\$ -	\$ 2,031	1.82
Franchise Partnership & Developer Fee				
Franchise Partnership	\$ -	\$ -	\$ -	\$ -
Developer Fee	\$ 1,800,000	\$ 1,800,000	\$ 14,063	\$ 12.60
Deferred Developer Fee	\$ (1,800,000)	\$ -	\$ (14,063)	\$ (12.60)
TOTAL FRANCHISE PARTNERSHIP & DEVELOP	\$ -	\$ 1,800,000	\$ -	\$ -
Project Reserves				
Initial Marketing Costs	\$ 75,000	\$ -	\$ 586	\$ 0.53
Operating Reserves	\$ 50,000	\$ -	\$ 391	\$ 0.35
TOTAL PROJECT RESERVES	\$ 125,000	\$ -	\$ 977	0.88
TOTAL DEVELOPMENT COSTS	\$ 18,318,122	\$ 18,335,500	\$ 143,110	128.23



RESIDENTIAL UNIT C
 8 BUILDINGS AT 7,800 SF EA
 62,400 SF TOTAL
 8 UNITS BLDG = 64 UNITS
 64 TWO-BEDROOM UNITS

COMMUNITY CENTER D
 2,500 SF COMMUNITY CENTER
 TOTAL BUILDING AREA: 129,000 SF

RESIDENTIAL UNIT A
 4 BUILDINGS AT 9,200 SF EA
 36,800 SF TOTAL
 8 UNITS BLDG = 32 UNITS
 32 THREE-BEDROOM UNITS

RESIDENTIAL UNIT B
 8 BUILDINGS AT 6,500 SF EA
 52,000 SF TOTAL
 8 UNITS BLDG = 32 UNITS
 16 ONE-BEDROOM UNITS
 16 TWO-BEDROOM UNITS

APPROX. SITE AREA = APP. 264,855 SF (6.00 AC)
 128 UNITS / 21.1 UNITS/ACRE

EDISON PLAZA II
 FRESNO CA

SITE PLAN - R3
 04-25-2011 1" = 30'-0"



SCOTT BECK ARCHITECT
 10135 WASHINGTON BOULEVARD SUITE 100
 CULVER CITY, CA 90237 (310) 415-4125

CALIFORNIA/WALNUT HOUSING PROJECT																											
Activity ID	Activity Name	Original Duration	Start	Finish	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	
A1000	DESIGN DEVELOPMENT	23d	Jan-30-12	Feb-29...																							
A1010	PROJECT APPROVAL	43d	Mar-01-12	Apr-30...																							
A1020	COMPLETE WORKING DRAWINGS	67d	Apr-30-12	Jul-31...																							
A1030	CITY PERMIT PROCESS	22d	Aug-01-12	Aug-30...																							
A1040	PROJECT BIDDING	22d	Aug-01-12	Aug-30...																							
A1050	SITE DEVELOPMENT	21d	Sep-03-12	Oct-01...																							
A1055	FOUNDATION / U.G.	43d	Oct-01-12	Nov-28...																							
A1060	FRAMING / STRUCTURAL	65d	Nov-01-12	Jan-30...																							
A1070	EXTERIOR SKIN	65d	Jan-21-13	Apr-19...																							
A1080	INTERIOR FINISHES	70d	Apr-01-13	Jul-05...																							
A1090	FURNITURE	15d	Jul-08-13	Jul-26...																							
A1100	PROJECT COMPLETION	18d	Jul-08-13	Jul-31...																							

PRELIMINARY MASTER SCHEDULE
 EDISON PLAZA PARTNERS
 EDISON PLAZA 2
 CALIFORNIA/WALNUT HOUSING PROJECT
 ~ JOHNSTON CONTRACTING, INC. ~

Version 1 - Created 1/18/12

Remaining Work
 Critical Remaining Work
 Milestone
 Summary

EXHIBIT G-1

EDISON PLAZA PARTNERS, L.P., DDA

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

REDEVELOPMENT AGENCY
OF THE CITY OF FRESNO
2344 Tulare Street
Fresno, CA 93721
Attn: Executive Director

(Space Above This Line for Recorder's Office Use Only)

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this ____ day of _____, _____, by and between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic ("Agency"), and EDISON PLAZA PARTNERS, L.P., a California limited partnership ("Owner").

R E C I T A L S :

A. Pursuant to Disposition and Development Agreement by and between Agency and Owner dated March 9, 2011 and Reformation dated _____, 2012 (the "DDA"), Agency has provided to Owner real property and financial assistance in the amount of approximately Five Million Six Hundred Sixty Five Thousand Dollars (\$5,665,000.00) (collectively, the "Agency Assistance"), all for the purpose of assisting Owner in the acquisition of real property and the development of a residential apartment complex thereon wherein the units shall be rented to very low and lower income households, on that certain real property located in the City of Fresno, County of Fresno, State of California, more particularly described in Attachment "1" attached hereto and incorporated herein by reference (the "Site").

B. Pursuant to the DDA, Owner has agreed to develop, construct, and maintain a rental apartment housing project consisting of one hundred twenty-eight (128) total residential units (hereinafter referred to collectively as the "Project") on the Site. The Project is also referred to in the DDA as the "Project," and is further described in the Scope of Development attached to the DDA.

C. Agency and Owner now desire to place restrictions upon the use and operation of the Project, in order to ensure that the Project shall be operated continuously as a rental apartment housing project available for rental by very low and lower income persons for the term of this Agreement.

D. It is the intent of the parties that the title vested in Owner by the Grant Deed for the Site dated _____ ("Grant Deed"), recorded concurrently herewith in Office of the County Recorder for the County of Fresno be subject to this Regulatory Agreement, and that the

terms hereof shall be binding on the Owner and its successors in interest in the Site for so long as the Regulatory Agreement shall remain in effect.

A G R E E M E N T :

NOW, THEREFORE, the Owner and Agency declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of the Agency, the residents of the City of Fresno, and every person renting a dwelling unit on the Site.

A. DEFINITIONS.

1. Affordable Lower Income Rent. As used in this Agreement, the term "Affordable Lower Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of sixty percent (60%) of the Fresno County Median Income adjusted for the family size appropriate for the Unit.

2. Affordable Rent. As used in this Agreement, the term "Affordable Rent" shall refer to Affordable Low Income Rent.

3. Affordable Very Low Income Rent. As used in this Agreement, the term "Affordable Very Low Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of fifty percent (50%) of the Fresno County Median Income adjusted for the family size appropriate for the Unit.

4. Eligible Tenant. As used in this Agreement, the term "Eligible Tenant" shall refer to a Lower Income Tenant.

5. Fresno County Median Income. For purposes of this Agreement, the "Fresno County Median Income" shall be determined by reference to the regulations published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093, or its successor.

6. Lower Income Tenant. As used in this Agreement, the term "Lower Income Tenant" shall mean those tenants whose household income does not exceed eighty percent (80%) of the Fresno County Median Income.

7. Project Manager. As used in this Agreement, the term "Project Manager" shall refer to that entity, to be designated by Owner and approved by Agency, who shall be responsible for operating and maintaining the Project in accordance with the terms of this Agreement. Prior to Agency's approval, Owner shall act as Project Manager.

8. Resident Manager. As used in this Agreement, the term "Resident Manager" shall refer to that individual (or those individuals) who may reside in the Project and who are responsible for day-to-day management of the Project.

9. Unit. As used in this Agreement, the term "Unit" shall refer to any of the two hundred (200) residential units reserved for Eligible Tenants or the Resident Manager.

10. Very Low Income Tenant. As used in this Agreement, the term "Very Low Income Tenant" shall mean those tenants whose income does not exceed fifty percent (50%) of the Fresno County Median Income.

B. RESIDENTIAL RENTAL PROPERTY. The Owner hereby agrees that the Project is to be owned, managed, and operated as a project for lower income residential rental purposes for a term equal to fifty-five (55) years, commencing upon the date of the recordation of the Certificate of Completion for the Site in accordance with the DDA (the "Term"). To that end, and for the term of this Agreement, the Owner hereby represents, covenants, warrants and agrees as follows:

1. Purpose. The Site is being acquired and the Project constructed for the purpose of providing very low and lower income rental housing and the Owner shall own, manage, and operate the Project as a project to provide very low and lower income rental housing comprised of several interrelated buildings or structures, together with any functionally related and subordinate facilities.

2. Residential Use. None of the Units in the Project will at any time be utilized on a transient basis or used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park without the Agency's prior consent which consent may be given or withheld in its sole and absolute discretion.

3. Conversion of Project. No part of the Project will at any time be owned by a cooperative housing corporation, nor shall the Owner take any steps in connection with the conversion to such ownership or uses to condominiums, or to any other form of ownership, without the prior written approval of Agency which approval may be given or withheld in its sole and absolute discretion.

4. Preference to Eligible Tenants. All of the Units will be available for rental in accordance with the terms of this Agreement, and the Owner shall not give preference to any particular class or group in renting the Units in the Project, except to the extent that the Units are required to be leased or rented to Eligible Tenants and except as provided in Section C.6 below.

5. Resident Manager. One, and only one, Unit in the Project may be occupied by a Resident Manager.

6. Liability of Owner. Owner and Resident Manager shall not incur any liability under this Agreement as a result of fraud or intentional misrepresentation by a tenant.

C. OCCUPANCY OF PROJECT BY ELIGIBLE TENANTS. Owner hereby represents, warrants, and covenants as follows:

1. Occupancy. Except as expressly provided herein, throughout the term of this Agreement the occupancy of the 88 Restricted Units in the Project (excluding the Resident Manager Unit) shall be restricted to Eligible Tenants and qualified members of the Eligible Tenant's household.

2. Expiration of Occupancy and Rent Restrictions. The Units shall be subject to the restrictions contained in this Section C for the Term of this Agreement. All tenants residing in the Units during the final two (2) years of the Term shall be given notice of the expiration of the Term at least once every six (6) months during the final two years. After the expiration of the Term, the rents payable on the Units may be raised to market rates.

3. Rental Rates. Owner hereby agrees to rent those Restricted Units occupied by Lower Income Tenants at no greater than Affordable Lower Income Rent, and to rent those Units occupied by Very Low Income Tenants at no greater than Affordable Very Low Income Rent.

4. Occupancy By Eligible Tenant. A Unit occupied by an Eligible Tenant shall be treated as occupied by an Eligible Tenant until a recertification of such tenant's income in accordance with Section C.8 below demonstrates that such tenant no longer qualifies as an Eligible Tenant.

5. Income Computation Certificate. Immediately prior to an Eligible Tenant's occupancy of a Unit, Owner shall obtain and maintain on file an Income Computation and Certification form (which form shall be approved in advance by the Agency) from each such Eligible Tenant dated immediately prior to the date of initial occupancy in the Project by such Eligible Tenant. In addition, the Owner will provide such further information as may be reasonably required in the future by the Agency. Owner shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income as is satisfactory to the Agency; or (v) such other information as may be requested by the Agency. A copy of each such Income Computation and Certification shall be filed with the Agency prior to the occupancy of a Unit by an Eligible Tenant whenever possible, but in no event more than thirty (30) days after initial occupancy by said tenant.

6. Rental Priority. During the term of this Agreement, and subject to compliance with state and federal fair housing laws, Owner shall use its best efforts to lease vacant Units reserved for Eligible Tenants in the following order of priority: (i) displaced persons entitled to a preference pursuant to California Health and Safety Code Section 33411.3 or successor statute, with highest priority in this category to residents of Fresno; (ii) residents of the City of Fresno; and (iii) other persons meeting the eligibility requirements of this Agreement. Owner shall and Agency may maintain a list (the "Housing List") of persons who have notified Owner and/or Agency of their desire to rent a Unit in the Project and who have incomes which would qualify them as an Eligible Tenant, and Owner shall offer to rent Units on the above-referenced priority basis. Should multiple tenants be equally eligible and qualified to rent a Unit, Owner shall rent available Units to Eligible Tenants on a first-come, first-served basis.

7. Renting Vacant Units. When a Unit becomes available as a result of a tenant vacation, Owner shall rent the Unit to an Eligible Tenant in accordance with the order of priority set forth in Section C.6.

8. Income Recertification. Immediately prior to the first anniversary date of the occupancy of a Unit by an Eligible Tenant and on each anniversary date thereafter, Owner

shall recertify the income of such Eligible Tenant by obtaining a completed Income Computation and Certification based upon the current income of each occupant of the Unit. Owner shall provide the Agency with a copy of each such recertification with the next submission of Certificate of Continuing Program Compliance pursuant to Section C.10.

9. Terminating Ineligible Tenant. The tenant may be evicted for good cause as defined by Section 42 of the Internal Revenue Service regulations.

10. Certificate of Continuing Program Compliance. Upon the issuance of the Certificate of Completion and annually by March 15 of each year, or at any time upon the written request of Agency, Owner shall advise the Agency of the occupancy of the Project by delivering a Certificate of Continuing Program Compliance in the form attached hereto as Attachment "2" certifying: (i) the number of Units of the Project which were occupied or deemed occupied pursuant to Section C.1 by an Eligible Tenant during such period, and (ii) to the knowledge of Owner either (a) no unremedied default has occurred under this Agreement, (b) a default has occurred, in which event the Certificate shall describe the nature of the default and set forth the measures being taken by the Owner to remedy such default.

11. Maintenance of Records. Owner shall maintain complete and accurate records pertaining to the Units, and shall permit any duly authorized representative of the Agency to inspect the books and records of Owner pertaining to the Project including, but not limited to, those records pertaining to the occupancy of the Units.

12. Reliance on Tenant Representations. Each lease shall contain a provision to the effect that Owner has relied on the income certification and supporting information supplied by the tenant in determining qualification for occupancy of the Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

13. Conflicts. The leasing preference provision set forth in Section C.6 and termination or non-renewal provisions set forth in Sections C.8 and C.9 shall apply only in the event, and to the extent, such provisions are not in conflict with Internal Revenue Code provisions or IRS regulations.

14. Agency Remedy For Excessive Rent Charge.

a. It shall constitute a default for Owner to charge or accept for a Unit rent amounts in excess of the amount provided for in Section C.3 of this Agreement. In the event that Owner charges or receives such higher rental amounts, in addition to any other remedy Agency shall have for such default, Owner shall be required to pay to Agency the entire amount of rent received in excess of the amount permitted pursuant to this Agreement.

b. It shall constitute a default for Owner to rent any Unit to a tenant who is not an Eligible Tenant for the particular Unit pursuant to the rental rate requirements set forth in Section C.3 of this Agreement. In the event Owner rents a Unit to an ineligible tenant, in addition to any other equitable remedy Agency shall have for such default, Owner, for each separate violation shall be required to pay to Agency an amount equal to (i) two times the greater of (A) the total rent Owner received from such ineligible tenant, or (B) the total rent Owner was entitled to receive for renting that Unit, plus (ii) any relocation expenses incurred by Agency or City as a result of Owner having rented to such ineligible person.

c. It shall constitute a default for Owner to rent any of the Units in violation of the leasing preference requirements of Sections C.6 of this Agreement so long as such leasing preference requirements are not in violation of any state or federal fair housing laws. In the event Owner rents a Unit in violation of the leasing preference requirements, in addition to any other equitable remedy Agency shall have for such default, Owner, for each separate violation shall be required to pay Agency an amount equal to two (2) months of rental charges for the Unit with the highest rent. The terms of this Section C.14 shall not apply if Owner rents to an ineligible person as a result of such person's fraud or misrepresentation.

THE PARTIES HERETO AGREE THAT THE AMOUNTS SET FORTH IN SUBPARAGRAPHS (a) THROUGH (c) OF THIS SECTION C.14 (THE "DAMAGE AMOUNTS") CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT AGENCY WOULD SUFFER DUE TO THE DEFAULTS BY OWNER SET FORTH IN SUBPARAGRAPHS (a) THROUGH (c), CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO AGENCY AND ACCOMPLISHMENT OF AGENCY'S PURPOSE OF ASSISTING IN THE PROVISION OF AFFORDABLE HOUSING TO ELIGIBLE TENANTS THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE AMOUNTS SET FORTH IN THIS SECTION C.14 SHALL BE THE SOLE MONETARY DAMAGES REMEDY FOR THE DEFAULTS SET FORTH IN THIS SECTION C.14, BUT NOTHING IN THIS SECTION C.14 SHALL BE INTERPRETED TO LIMIT AGENCY'S REMEDY FOR SUCH DEFAULT TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIAL AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO HAS EXPLAINED THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

OWNER'S INITIALS: _____

AGENCY'S INITIALS: _____

15. Section 8 Tenants. Owner shall accept as tenants on the same basis as all other Eligible Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor. Owner shall not apply selection criteria to Section 8 certificate holders that are more burdensome than criteria applied to all other Eligible Tenants.

D. MAINTENANCE.

1. Maintenance Obligation. Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such pavings at all times be kept in a level and smooth condition. In addition, Owner shall be required to maintain the Property in such a

manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

2. Parking and Driveways. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times. No vehicles or other obstruction shall project into any of such driveways or traffic aisles. Vehicles associated with the operation of the Site, including delivery vehicles, vehicles of employees and vehicles of persons with business on the Site shall park solely on the Site.

3. Tenant Compliance. Owner shall provide any proposed tenants of any portion of the Site with a copy of this Agreement and shall, prior to entering into any lease agreement, have the proposed tenant execute an affidavit agreeing to comply with the provisions of this Agreement. All lease agreements shall be in writing and shall contain provisions which make compliance with the conditions of this Agreement express covenants of the lease.

4. Right of Entry. In the event Owner fails to maintain the Site in the above-mentioned condition, and satisfactory progress is not made in correcting the condition within thirty (30) days from the date of written notice from Agency, City or Agency may, at their option, and without further notice to Owner, declare the unperformed maintenance to constitute a public nuisance. Thereafter, either Agency or City, their employees, contractors or agents, may cure Owner's default by entering upon the Site and performing the necessary landscaping and/or maintenance. The Agency or City shall give Owner, its representative or the residential manager reasonable notice of the time and manner of entry, and entry shall only be at such times and in such manner as is reasonably necessary to carry out this Regulatory Agreement. Owner shall pay such costs as are reasonably incurred by Agency or City for such maintenance, including attorneys' fees and costs.

5. Lien. If such costs are not reimbursed within thirty (30) days after Owner's receipt of notice thereof, the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate of the lower of ten percent (10%) per annum or the legal maximum until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney's fees, shall be an obligation of Owner as well as a lien and charge, with power of sale, upon the property interests of Owner, and the rents, issues and profits of such property. City and/or Agency may bring an action at law against Owner obligated to pay any such sums or foreclose the lien against Owner's property interests. Any such lien may be enforced by sale by the City or Agency following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, et seq., of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership interest or leasehold or subleasehold estate in and to any Site approved by Agency pursuant to the DDA, and any purchaser at any foreclosure or trustee's sale (as well as any deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such monetary lien, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such

mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure, assessed hereunder to the purchaser at the foreclosure sale, as owner of the subject Site after the date of such foreclosure sale, shall become a lien upon such Site upon recordation of a Notice of Assessment or Notice of Claim of Lien as herein provided.

E. MANAGEMENT.

1. Approval of Project Manager; Designation of Resident Manager. Subject to the terms and conditions contained hereinbelow, Owner shall at all times during the operation of the Project pursuant to this Agreement retain an entity to perform the management and/or supervisory functions ("Project Manager") with respect to the operation of the Project including day-to-day administration, maintenance and repair. Owner shall, before execution or any subsequent amendment or replacement thereof, submit and obtain Agency's written approval of a management contract ("Management Contract") entered into between Owner and a Project Manager acceptable to Agency. Subject to any regulatory or licensing requirements of any other applicable governmental agency, the Management Contract may be for a term of up to fifteen (15) years and may be renewed for successive terms in accordance with its terms, but may not be amended or modified without the written consent of Agency. The Management Contract shall also provide that the Project Manager shall be subject to termination for failure to meet project maintenance and operational standards set forth herein or in other agreements between Owner and Agency. Owner shall promptly terminate any Project Manager which commits or allows such failure, unless the failure is cured within a reasonable period in no event exceeding 60 days from Project Manager's receipt of notice of the failure from Owner or Agency. Owner's obligation to retain a Project Manager shall remain in force and effect for the same duration as the use covenants set forth in Section B of this Agreement. Notwithstanding anything to the contrary in this Section, the Project may be self-managed by Owner with the prior approval of the Agency Executive Director. Any change in the Project Manager shall be approved, in writing, by the Executive Director, which approval shall not be unreasonably withheld.

Pursuant to this Section E.1, the Agency or Executive Director shall reasonably approve or disapprove the proposed Project Manager and management contract. Unless the proposed Project Manager or management contract is disapproved within ten (10) business days following receipt of all information reasonably requested regarding such Project Manager, the Project Manager shall be deemed approved.

In addition to the Project Manager, one Resident Manager shall be designated as necessary by Owner or Project Manager, with written notice to Agency of the Resident Manager's name, address and telephone number.

2. Serious Mismanagement. In the event of "Serious Mismanagement" (as that term is defined below) of the Project, Agency shall have the authority to require that such Serious Mismanagement cease immediately, and further to require the immediate replacement of the Project Manager or Resident Manager. For purposes of this Agreement the term "Serious Mismanagement" shall mean management of the Project in a manner which violates the terms and/or intent of this Agreement and/or the Management Contract to operate an affordable housing complex of the highest standard, and shall include, but is not limited to, the following:

a. Knowingly leasing to ineligible tenants or tenants whose income exceeds the prescribed levels;

- b. Knowingly allowing the tenants to exceed the prescribed occupancy levels without taking immediate steps to stop such overcrowding;
- c. Repeatedly failing to timely maintain the Project and the Site in the manner required by this Agreement;
- d. Repeatedly failing to timely submit the reports as required by this Agreement or failing to submit materially complete reports;
- e. Fraud in connection with any document or representation relating to this Agreement or embezzlement of Project monies; and
- f. Failing to fully cooperate with the City's Police Department in maintaining a crime-free environment on the Site.

G. COMPLIANCE WITH LAWS.

- 1. State and Local Laws. Owner shall comply with all ordinances, regulations and standards of the City and Agency applicable to the Site. Owner shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.
- 2. Lease Approval. Agency shall have the right but is not required to approve any lease forms, revisions, amendments or modification made to same, used by the Project Manager or Resident Manager for leasing Units within the Site.

H. INSURANCE.

- 1. Duty to Procure Insurance. Owner covenants and agrees for itself, and its assigns and successors-in-interest in the Site that from completion of the Project as evidenced by City's issuance of a certificate of occupancy, and continuing thereafter until the expiration of the Term of this Agreement, Owner or such successors and assigns shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Owner and Agency, and shall provide Agency evidence reasonably acceptable to Executive Director, insurance policies meeting the minimum requirements set forth below:
 - a. Commercial General Liability insurance with respect to the Site and the operations of or on behalf of Owner, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence including products, completed operations, contractual, bodily injury, personal injury, death and property damage liability, subject to such increases in amount as Agency may reasonably require from time to time. The insurance to be provided by Owner may provide for a deductible or self-insured retention of not more than Ten Thousand Dollars (\$10,000), with such maximum amount to increase at the same rate as the periodic increases in the minimum amount of total insurance coverage set forth above.
 - b. With respect to the improvements and any fixtures and furnishings to be owned by Owner on the Site, All Risk Property insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in Fresno County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance

policy or policies shall not require coverage for earthquake. Agency shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

c. All policies of insurance required to be carried by Owner shall be written by responsible and solvent insurance companies licensed in the State of California and having a policy-holder's rating of A or better, in the most recent edition of "Best's Key Rating Guide -- Property and Casualty." A- copy of each paid-up policy evidencing such insurance (appropriately authenticated by the insurer) or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required herein, and containing the provisions specified herein, shall be delivered to Agency prior to its issuance of the Certificate of Completion for the Project and thereafter, upon renewals, not less than thirty (30) days prior to the expiration of coverage. Agency may, at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Owner hereunder. In no event shall the limits of any policy be considered as limiting the liability of Owner hereunder.

d. Each insurance policy required to be carried by Owner pursuant to this Agreement shall contain the following endorsements, provisions or clauses:

(1) The insurer will not cancel or materially alter the coverage provided by such policy in a manner adverse to the interest of the insured without first giving Agency a minimum of thirty (30) days prior written notice by certified mail, return receipt requested; and

(2) A waiver by the insurer of any right to subrogation against Agency, its agents, employees, or representatives, which arises or might arise by reason of any payment under such policy or policies or by reason of any act or omission of Agency, its agents, officers, members, officials, employees, or representatives.

(3) The City, Agency, their respective agents, officers, members, officials, employees, volunteers, and representatives shall be named insureds on the Commercial General Liability policies.

(4) The City and Agency shall be loss payees on the All Risk Property insurance policies.

(5) Coverage provided by these policies shall be primary and non-contributory to any insurance carried by the City, Agency, their officers, officials, employees, volunteers, agents, or representatives.

(6) Failure to comply with reporting provisions shall not affect coverage provided to City, Agency, their officers, employees, volunteers, agents, or representatives.

2. Failure to Procure Insurance. If Owner fails to procure and maintain the above-required insurance despite its availability, then Agency, in addition to any other remedy which Agency may have hereunder for Owner's failure to procure, maintain, and/or pay for the insurance required herein, may (but without any obligation to do so) at any time or from time to time, after thirty (30) days written notice to Owner, procure such insurance and pay the premiums therefor, in which event Owner shall immediately repay Agency all sums so paid by Agency together with interest thereon at the maximum legal rate.

I. OBLIGATION TO REPAIR.

1. Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to Section I.3 below, if the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Owner, Owner shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as the Project is required to be maintained in pursuant to this Agreement, and Owner shall complete the same as soon as possible thereafter so that the Project can continue to be operated and occupied as an affordable housing project in accordance with this Agreement. Subject to extensions of time for "force majeure" events described in the DDA, in no event shall the repair, replacement, or restoration period exceed one (1) year from the date Owner obtains insurance proceeds unless Agency's Executive Director, in his or her sole and absolute discretion, approves a longer period of time. Agency shall cooperate with Owner, at no expense to Agency, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies or lenders with jurisdiction over the Property do not permit the repair, replacement, or restoration, Owner may elect not to repair, replace, or restore the Project by giving notice to Agency (in which event Owner shall be entitled to all insurance proceeds but Owner shall be required to remove all debris from the Site) or Owner may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the City, Agency, and the other governmental agency or agencies with jurisdiction.

If Owner fails to obtain insurance as required by the DDA or this Agreement (and Agency has not procured such insurance and charged Owner for the cost), Owner shall be obligated to reconstruct and repair any partial or total damage to the Project and improvements located on the Site in accordance with this Section I.1.

2. Continued Operations. During any period of repair, Owner shall continue, or cause the continuation of, the operation of the Project to the extent reasonably practicable from the standpoint of prudent business management.

3. Limitation on Obligation to Repair. If any casualty occurs to the Project during the term of this Regulatory Agreement and the cost of restoration of the Project exceeds One Hundred Thousand dollars (\$100,000) more than the insurance proceeds available to Owner for such restoration (if Owner maintains all insurance required by this Regulatory Agreement and inclusive of any deductible or self-insured retention amounts), then Owner shall not be required to restore the Project, but this Regulatory Agreement shall not be affected.

J. LIMITATION ON TRANSFERS. The Owner covenants that Owner shall not transfer the Site or any of its interests therein except as provided in this Section.

1. Transfer Defined. As used in this Section, the term "Transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) (in the aggregate) of the present ownership and/or control of any person or entity constituting Owner or its general partners, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the

transferor's immediate family, or among the entities constituting Owner or its general partners or their respective shareholders. In the event any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner, is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of such corporation, of beneficial interests of such trust; in the event that any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of such limited or general partnership interest; in the event that any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner is a joint venture, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

2. Agency Approval of Transfer Required. Owner shall not Transfer the Site or any of Owner's rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Agency, and if so purported to be Transferred, the same shall be null and void. In considering whether it will grant approval of any Transfer by Owner of its interest in the Site, Agency shall consider factors such as (i) whether the completion and operation of the Project is jeopardized; (ii) the financial credit, strength, and capability of the proposed transferee to perform Owner's obligations hereunder; and (iii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of specific written agreement by Agency, no transfer by Owner of all or any portion of its interest in the Site (including without limitation a transfer not requiring Agency approval hereunder) shall be deemed to relieve it or any successor party from the obligation to complete the Project or any other obligations under this Agreement. In addition, no attempted transfer of any of Owner's obligations hereunder shall be effective unless and until the successor party executes and delivers to Agency an assumption agreement in a form approved by the Agency assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following:

(a) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing, but Owner shall notify Agency in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site.

(b) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the acquisition of the Site and construction of improvements on the Site, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors.

(c) The conveyance or dedication of any portion of the site (or sites) to the City of Fresno or other governmental agency.

(d) After recordation of the Certificate of Completion, any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing provided that the

principal amount of the loan does not exceed eighty-five percent (85%) of the value of the land and improvements thereon.

(e) The granting of easements to any appropriate governmental agency or utility to facilitate the development of the Site.

(f) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(g) A sale or transfer of forty-nine percent (49%) or more ownership interest to a member of the transferor's immediate family, a trust, testamentary or otherwise, in which immediate family members of the transferor are the sole beneficiaries, or a corporation or partnership in which the immediate family members or shareholders of the transferor have controlling majority interest of more than fifty-one percent (51%).

(h) A change in the respective percentage ownership interests exclusively of the present owners of Owner (as of the date of this Agreement), but this shall not authorize the transfer of any interest to any person or entity who is not a present owner of Owner.

(i) A sale or transfer to a Qualified Tax Credit Investor.

(j) Notwithstanding anything to the contrary contained in this Agreement, Developer shall have the right, at its option, to have the Site granted from Agency to a nonprofit general partner who is subsequently admitted to the Developer.

(k) A sale or transfer of general partner interests to a nonprofit general partner.

(l) Mechanic's liens removed prior to foreclosure or liens for current year property taxes not paid.

K. ENCUMBRANCES PROHIBITED. Prior to issuance of the Certificate of Completion by Agency as provided in the DDA, the Grantee shall not place or suffer to be placed on the Site any lien or encumbrance other than mortgages, deeds of trust, sales and leases back or any other form of conveyance required for financing of the acquisition of the Site, the construction of improvements on the Site, and any other expenditures necessary and appropriate to develop the Site, except as specifically provided in the DDA and attachments thereto.

L. ENFORCEMENT. In the event Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner pursuant to this Agreement, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by Agency, or, in the event said default cannot be cured within said time period, Owner has failed to commence to cure such default within said thirty (30) days and thereafter fails to diligently prosecute said cure to completion, then Agency shall declare an

"Event of Default" to have occurred hereunder, and, at its option, may take one or more of the following steps:

1. By mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of this Agreement; or
2. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Owner hereunder; or
3. Enter the Site and cure the Event of Default as provided in Section E hereof.
4. Impose, through Agency's Executive Director, an administrative fine for each day the violation continues. The amount of the fine shall be Twenty-Five dollars (\$25.00) per day, unless the violation is deemed a major violation, in which case the fine shall be Seventy-Five dollars (\$75.00) per day. A "major" violation shall be one which affects adjacent property or the health and safety of persons. Owner may appeal the assessment of any fine to the City Council who may reverse, modify or uphold the decision of the Executive Director. In making this decision, the City Council shall determine whether the violation exists and whether the amount of the fine is appropriate under the circumstances.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

M. NONDISCRIMINATION. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Owner, 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 of the Site, or any part thereof (except as permitted by this Agreement).

N. FORM OF NONDISCRIMINATION CLAUSES IN AGREEMENTS. Subject to the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA, which may modify the following nondiscrimination clauses, the following shall apply: Owner shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. Deeds: In deeds the following language shall appear: "The grantee 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, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons 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 land herein conveyed. The foregoing covenants shall run with the land."

b. Leases: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee 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, sublessees, subtenants, or vendees in the land herein leased."

c. Contracts: In contracts the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee 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 of the land."

The foregoing nondiscrimination covenants shall remain in effect in perpetuity.

O. COVENANTS TO RUN WITH THE LAND. Owner hereby subjects the Site to the covenants, reservations, and restrictions set forth in this Agreement. Agency and Owner hereby declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Site; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall expire. All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency for the entire term of this Agreement, without regard to whether the Agency is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

Agency and Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that Owner's legal interest in the Site is rendered less valuable thereby. Agency and Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Eligible Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Agency was formed.

Owner, in exchange for the Agency entering into the DDA, hereby agrees to hold, sell, and convey the Site subject to the terms of this Agreement. Owner also grants to the Agency and the City the right and power to enforce the terms of this Agreement against the Owner and all persons having any right, title or interest in the Site or any part thereof, their heirs, successive owners and assigns.

P. INDEMNIFICATION. Owner agrees for itself and its successors and assigns to indemnify, defend, and hold harmless Agency, City, and their respective officers, members, officials, employees, agents, volunteers, and representatives from and against any loss, liability, claim, or judgment relating in any manner to the Project excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of Agency, City, or their respective officers, officials, employees, members, agents, volunteers, or representatives. Owner, while in possession of the Site, and each successor or assign of Owner while in possession of the Site, shall remain fully obligated for the payment of property taxes and assessments in connection with the Site. The foregoing indemnification, defense, and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

Q. ATTORNEYS' FEES. In the event that a party to this Agreement brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

R. AMENDMENTS. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Fresno.

S. NOTICE. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Fed-Ex, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

Agency:	Redevelopment Agency of the City of Fresno 2344 Tulare Street, Suite 200 Fresno, CA 93721 Attn: Executive Director
Copy to:	Agency Counsel 2600 Fresno Street Fresno, CA 92612 Attn:
Owner:	EDISON PLAZA PARTNERS, L.P. 855 M Street, Suite 1110 Fresno, CA 93721 Attn: Tom Richards Facsimile No. (559) 268-6030

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received, or if by overnight courier; of the time of delivery shown.

T. SEVERABILITY/WAIVER/INTEGRATION.

1. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

2. Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

3. Integration. This Agreement contains the entire Agreement between the parties and neither party relies on any warranty or representation not contained in this Agreement.

U. FUTURE ENFORCEMENT. The parties hereby agree that should the Agency cease to exist as an entity at any time during the term of this Agreement, the City of Fresno shall have the right to enforce all of the terms and conditions herein, unless the Agency had previously specified another entity to enforce this Agreement.

V. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California.

W. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Agency and Owner have executed this Regulatory Agreement and Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

"AGENCY"

THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO,
a public body, corporate and politic

Date _____

Marlene Murphey
Executive Director

ATTEST:
Yvonne Spence
Ex Officio Clerk,
Fresno Redevelopment Agency

APPROVED AS TO FORM:
JAMES C. SANCHEZ
Ex Officio Attorney,
Fresno Redevelopment Agency

Deputy

Deputy

"OWNER"
EDISON PLAZA PARTNERS, L.P.
a California Limited Partnership

Date: _____

By: _____
Its: _____

[END OF SIGNATURES]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

