

76

CITY OF FRESNO
City Clerk's Office (Original)

Recorded at the Request of and
When Recorded Return to:

City of Fresno
City Clerk's Office
2600 Fresno Street, Room 2133
Fresno, CA 93721-3603



FRESNO County Recorder
Robert C. Werner

DOC- 2010-0147749

Wednesday, NOV 03, 2010 13:17:21

Ttl Pd \$0.00

Nbr-0003321653

JZG/R3/1-76

City of Fresno Disposition and Development and HOME Investment Partnerships
(HOME) Agreement

DISPOSITION AND DEVELOPMENT
AND
HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT

by and between

CITY OF FRESNO,
a municipal corporation

and

FFDA, Properties, LLC

regarding

MERGED

"APNs: 459-141-35T/36T/37T/38T/39T/40T/41T/42T/43T/44T"
Mixed-Income Housing Development
Van Ness Single-Family Residential

TABLE OF CONTENTS

	<u>Page</u>
RECITALS.....	3
ARTICLE 1. DEFINITIONS	5
ARTICLE 2. TRANSFER OF AFFORDABLE PROPERTY	8
ARTICLE 3. TERMS.....	10
ARTICLE 4. GENERAL REPRESENTATIONS/WARRANTIES	11
ARTICLE 5. HOME PROGRAM REPRESENTATION/WARRANTIES.....	12
ARTICLE 6. PROPERTY MAINTENANCE.....	17
ARTICLE 7. HOME PROGRAM FUNDS	22
ARTICLE 8. DEVELOPMENT AND CONSTRUCTION OF PROJECT.....	23
ARTICLE 9. PROJECT OPERATIONS.....	28
ARTICLE 10. INDEMNIFICATION	31
ARTICLE 11. DEFAULT AND REMEDIES.....	32
ARTICLE 12. GENERAL PROVISIONS.....	34
<u>EXHIBITS</u>	
EXHIBIT A: PROPERTY DESCRIPTION	
EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE	
EXHIBIT C: DECLARATION OF RESTRICTIONS	
EXHIBIT D: BUDGET	
EXHIBIT E: CERTIFICATE OF COMPLETION	
EXHIBIT F: PROMMISSORY NOTE	
EXHIBIT G: INSURANCE PROVISIONS	
EXHIBIT H: BOND PROVISIONS	

**DEVELOPMENT AND DISPOSITION
AND
HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT**

This Development and Disposition and HOME Investment Partnerships Program Agreement (hereinafter referred to as the "Agreement") is entered into Nov. 3, 2010, by and between the CITY OF FRESNO, a municipal corporation, acting through its Downtown and Community Revitalization Department – Housing and Community Development Division (hereinafter referred to as the "CITY"), and FFDA Properties, LLC, a California Limited Liability Company (hereinafter referred to as "DEVELOPER").

RECITALS

WHEREAS, the CITY has received a HOME Investment Partnerships Program (hereinafter referred to as the "HOME Program") grant from the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD"), under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (hereinafter referred to as the "Act"); and

WHEREAS, to advance the supply of Affordable Housing within the City of Fresno, the CITY desires, among other things, to encourage private investment in the affordable housing market; and

WHEREAS, the DEVELOPER desires to construct a mixed-income development consisting of twenty (20) single-family rental units upon the Property with three (3) units to be rented as Affordable Housing and seventeen (17) units to be rented as market rate housing units and related on-site and off-site improvements, hereinafter collectively referred to as the "Project", as more particularly described in the Project Description and Schedule attached hereto as EXHIBIT "B", incorporated herein; and

WHEREAS, the Project will be constructed upon "HOME assisted property" referred to herein as the ("Property") located within the boundaries of the City of Fresno, all owned by the CITY, as more particularly described in the attached EXHIBIT "A", incorporated herein; and

WHEREAS, the Property will be transferred to the DEVELOPER in fee at an agreed upon fair market price through an escrow as provided hereunder; and

WHEREAS, to advance the supply of Affordable Housing within the City of Fresno, the CITY desires to provide HOME eligible assistance to the Project upon the terms and conditions of this Agreement in the total amount not to exceed Two Hundred Forty-Five Thousand Dollars and 00/100 (\$245,000.00) in HOME Funding as a market-rate interest, 30-year Property Acquisition Loan, as further identified in Exhibit "D" (Budget), to be secured by the underlying HOME Assisted Property and the Affordable Housing covenants, see attached EXHIBIT "F" (Note) and the attached Exhibit "C" (Declaration of Restrictions), respectively; and

WHEREAS, the CITY will transfer fee title to the Property "as is" to the DEVELOPER through Escrow with the First American Title Company located at 7625 N. Palm Avenue, Suite 101, Fresno, CA 93711 (Attention: Donna Brown at (559) 221-1968). The parties acknowledge and agree that the total fair market purchase price for the Property is the amount of Two Hundred Forty-Five Thousand Dollars and 00/100 (\$245,000.00). This Agreement, when signed by both parties and deposited with the Escrow Holder will be the parties' joint escrow instructions. The DEVELOPER and the CITY will sign any other form instructions required by Escrow Holder. Parties may submit supplemental escrow instructions. DEVELOPER will deposit all instruments, documents, money, and other items with the Escrow Holder that are: (i) identified in this Agreement; or (ii) required by the Escrow Holder to effect the closing. The Escrow will be considered closed on the date that the Escrow Holder is prepared to issue a standard CLTA/ALTA owner's title insurance policy to DEVELOPER insuring fee title and records the grant deed. It is agreed and confirmed by DEVELOPER and CITY that notwithstanding other provisions in this Agreement, the right of possession and use of the Property by DEVELOPER shall commence only upon close of Escrow; and

WHEREAS, the CITY has conducted an environmental review of the Project pursuant to the National Environmental Policy Act ("NEPA"), resulting in a *Finding of No Significant Impact* according to the provisions of the NEPA (Environmental Assessment No. 014-06219) and the California Environmental Quality Act ("CEQA"), resulting in an *Exempt Status* according to the provisions of CEQA (Environmental Assessment No. 014-06219) and CITY has received federal approval for release of HOME Program funds pursuant to 24 CFR Part 58 on September 15, 2010; and

WHEREAS, the CITY has determined that this Agreement is in the best interests of, and will materially contribute to, the Housing Element of the General Plan. Further, the CITY has found that the Project (i) will have a positive influence in the neighborhood and surrounding environs, (ii) is in the vital and best interests of the CITY, and the health, safety, and welfare of CITY residents, (iii) complies with applicable federal, state, and local laws and requirements, (iv) will increase, improve, and preserve the community's supply of housing available to persons and families of Low-Income, as defined hereunder, (v) planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of Low-Income Housing, and (vi) will comply with any and all owner participation rules and criteria applicable thereto; and

WHEREAS, The CITY and DEVELOPER have determined that the Project is not a low rent housing project and constitutes programmatic/grantee lender activities utilizing available and allocated program/grantee funding, outside the reach of California Constitution Article XXXIV and enabling legislation; and .

WHEREAS, on October 13, 2010, the Housing and Community Development Commission of the City of Fresno reviewed this Agreement and recommended approval.

NOW, THEREFORE, IN CONSIDERATION of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledge, the parties agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meaning and content set forth in this Article wherever used in this Agreement, attached exhibits or attachments that are incorporated into this Agreement by reference.

- 1.1. Acquisition means vesting of the Property in fee title to the Developer.
- 1.2. ADA means the Americans with Disabilities Act of 1990, as most recently amended.
- 1.3. Affirmative Marketing means a good faith effort to attract eligible persons of all racial, ethnic and gender groups, in the housing market area, to lease the Affordable Unit(s) that are proposed for construction on the Property, as hereinafter defined.
- 1.4. Affordable Housing means the three (3) single-family residential housing units held for rent to Low-Income Families, and meeting the affordability requirements of this Agreement and 24 CFR 92.252 which affordability requirements shall run with the land for the Affordability Period subject to release as provided in this Agreement.
- 1.5. Affordability Period means the period for which the three (3) Affordable Units will be held as Affordable Housing, which shall be the period that is the earlier of (a) a period of fifty-five (55) years commencing from the Project Completion Date as set forth in the Certificate of Completion, as more fully described in the Declaration of Restrictions, attached hereto as EXHIBIT "C" incorporated herein; or (b) a period commencing from the Project Completion Date as set forth in the Certificate of Completion and terminating on the date DEVELOPER may lawfully sell or transfer individual Units to a third-party(ies). Notwithstanding the foregoing, if the Loan is not pre-paid in full prior to Commencement of Construction then the Affordability Period shall not be less than the affordability requirements of 24 CFR 92.252.
- 1.6. Affordable Unit(s) means the three (3) single-family residential housing units serving as Affordable Housing for the Affordability Period.
- 1.7. Budget means the pro forma Budget, and any changes thereto, approved by the CITY's Housing and Community Development Division Manager provided the total amount of HOME Funding allocated to the Project shall not be increased without City Council approval, attached hereto as EXHIBIT "D".
- 1.8. Certificate of Completion means that certificate issued, in the form attached as EXHIBIT "E" ("Certificate of Completion"), to DEVELOPER by the CITY evidencing completion of each Project Unit constructed on the Property for purposes of this Agreement.
- 1.9. CFR means the Code of Federal Regulations.
- 1.10. Commencement of Construction means the time DEVELOPER's construction contractor begins substantial physical work of the Project/each Project Unit on the Property, including, without limitation, delivery of materials and any work, beyond maintenance of the

Property in its status quo condition, and not later than December 15, 2010.

1.11. Declaration of Restrictions means the Declaration of Restrictions in the form attached hereto as EXHIBIT "C", which shall be recorded against the Property no later than the close of escrow hereunder, setting out the Affordable Housing covenants and requirements of this Agreement which shall run with the land.

1.12. Deed of Trust means that deed of trust (including security agreement) given by DEVELOPER as Trustor, to the CITY as beneficiary, through an escrow established by DEVELOPER at its sole cost and expense with Escrow Holder, and recorded against each of the parcels constituting the Property to ensure the Note, attached as EXHIBIT "F" to the Note and acceptable to the City Attorney, as well as any amendments to, modifications of and restatements of said Deed of Trust, which Deed of Trust shall be subordinated to Project lenders per the Budget attached as EXHIBIT "D". The terms of any such Deed of Trust are hereby incorporated into this Agreement by this reference.

1.13. Eligible Costs means the HOME Program eligible property acquisition costs funded by the Loan, consistent with the Budget attached as EXHIBIT "D", allowable under 24 CFR Part 92, as specified in 24 CFR 92.205 and 92.206, and not prohibited by 24 CFR 92.214, provided, however, that costs incurred in connection with any activity that is determined to be ineligible under the Program by HUD or the CITY shall not constitute Eligible Costs.

1.14. Escrow Holder means First American Title Company located at 7625 N. Palm Avenue, Suite 101, Fresno, California 93711 (Attention: Donna Brown (559) 221-1968).

1.15. Event of Default shall have the meaning assigned to such term under Section 11.1 hereunder.

1.16. Family has the same meaning given that term in 24 CFR 5.403.

1.17. Hazardous Materials means any hazardous or toxic substances, materials, wastes, pollutants or contaminants which are defined, regulated or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants" or "toxic substances" under federal or state environmental and health safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating or occupying a housing project, to the extent and degree that such substances are stored, used and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.18. HOME Funds (also referred to in this Agreement as HOME Program Funds) means the HOME Program monies constituting the Loan, in an amount not to exceed the sum of Two Hundred Forty-Five Thousand Dollars and 00/100 (\$245,000.00) used for HOME Program eligible costs.

1.19. Household means one or more persons occupying any of the three (3)

Affordable Units in the proposed mixed-income single-family residential Project.

1.20. HUD means the United States Department of Housing and Urban Development.

1.21. Loan means the loan of HOME Funds, in the total amount not to exceed the lesser of the sum of Two Hundred Forty-Five Thousand Dollars and 00/100 (\$245,000.00) and the aggregate HOME Program per unit cap (24 C.F.R. 92.250) for the Affordable Units as determined by the CITY made available by the CITY to the Project pursuant to this Agreement, as more specifically described in the Budget attached hereto as EXHIBIT "C" and in the Note attached hereto as EXHIBIT "F". The Loan shall be payable in accordance with the terms of the Note, and shall be secured by the Deed of Trust.

1.22. Loan Documents are collectively this Agreement, the Note, Deed of Trust, Declaration of Restrictions and all related documents/instruments as they may be amended, modified or restated from time to time along with all exhibits and attachments thereto, relative to the Loan.

1.23. Low-Income means an annual income does not exceed eighty percent (80%) of the median income for the Fresno County area as determined by HUD, except as HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD findings that such variations are necessary.

1.24. Low-Income Families means families whose annual income does not exceed eighty percent (80%) of the median income for the Fresno County area as determined by HUD, except as HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD findings that such variations are necessary.

1.25. Note means the assumable (upon City approval) Promissory Note in the principal amount of the Loan, given by DEVELOPER as borrower, in favor of the CITY as lender, evidencing the Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement, secured by the Deed of Trust and subordinated to Project lenders per the Budget attached as EXHIBIT "D".

1.26. Program Income has the meaning provided in the HOME program including 24 CFR 92.503.

1.27. Project means the construction of twenty (20) single-family residential rental units (including the three Affordable Units) and related on-site and off-site improvements to be constructed on the Property marketed as described in the Project Description and Schedule, attached hereto and incorporated herein as EXHIBIT "B".

1.28. Project Completion Date means the date the CITY shall have determined that the Project has reached completion in accordance with this Agreement. The Project Completion Date for this project is identified in EXHIBIT "B".

1.29. Project Schedule means the schedule for completion of the Project included within the Project Description and Schedule referred herein as EXHIBIT "B", consistent with

the above Project Completion Date.

1.30 Property means the vacant, unimproved City-owned property Assessor Parcel Numbers: 459-141-35T/36T/37T/38T/39T/40T/41T/42T/43T/44T, Fresno, California, more specifically described in the attached EXHIBIT "A", subject to re-deed or merger by the CITY consistent with any mutual supplemental escrow instruction, to be transferred in fee to the DEVELOPER from the CITY prior to commencement of Project construction through escrow and developed as provided herein.

1.31 Unit(s) means the (20) single-family residential rental units constituting the Project and to be constructed upon the Property in accordance with the terms and conditions of this Agreement.

ARTICLE 2. TRANSFER OF PROPERTY

2.1 Purchase and Sale. The CITY agrees to convey the Property to DEVELOPER, and DEVELOPER agrees to accept conveyance of the Property from the CITY, upon the terms and conditions set forth in this Agreement.

2.2 Purchase Price. The purchase price for the Property shall be Two Hundred Forty-Five Thousand Dollars and 00/100 (\$245,000.00), the agreed upon fair market purchase price based upon the November 30, 2006 appraised value of the Property. The Purchase Price shall be paid as follows:

A. Within thirty (30) days after the effective date of this Agreement the parties shall open an escrow (the "Escrow") with Escrow Holder. At the close of escrow, the DEVELOPER shall deliver the Note to the City in the full amount of the Purchase Price as payment for the Property.

B. DEVELOPER shall pay all escrow fees and closing costs, including document preparation fees and recording fees, and the premium for the buyer's policy of title insurance.

2.3 Closing. Closing means the exchange of documents as described in this Article 2, and will be deemed to have occurred when the CITY's Deed to DEVELOPER has been recorded, the Escrow Holder holds and can record the remaining documents described in this Article 2, the Title Company is irrevocably and unconditionally committed to issue the Title Policy, and the DEVELOPER has delivered the duly executed Note and Deed of Trust to Escrow Holder.

2.4 Condition of Title. Upon the Closing, CITY shall convey to DEVELOPER marketable and insurable fee simple title to the Property by duly executed and acknowledged standard Title Company form grant deed(s) ("Deed"). Evidence of delivery of marketable and insurable fee simple title shall be the issuance by First American Title Company (the "Title Company") to DEVELOPER of CLTA/ALTA Owner's Policy of Title Insurance in the amount of the Purchase Price, insuring fee simple title to the Property, the DEVELOPER will accept title subject only to exceptions 1 through 3, 5, and 9 through 16

shown on those certain Preliminary Title Reports prepared by the Title Company under Order No. 1004-3636077, dated October 8, 2010 (the "Title Policy").

2.5 Conditions Precedent to Closing. The following are conditions precedent to DEVELOPER's obligation to purchase the Property, accept the Loan and perform its obligation under this Agreement (the "Project Conditions Precedent"). The Project Conditions Precedent are intended solely for the benefit of DEVELOPER and may be waived only by DEVELOPER in writing. In the event of the failure of the satisfaction of any of the Project Conditions Precedent, DEVELOPER shall have the right, but not the obligation, to terminate the Agreement with respect to the Project.

A. DEVELOPER shall have received the unconditional commitment of Title Company to issue the Title Policy upon the Closing in the form approved by DEVELOPER as buyer.

B. DEVELOPER shall have approved the amount of the construction financing required for the development of the Housing Project.

C. DEVELOPER shall have given written notice to the CITY within thirty (30) days after the effective date of this Agreement that it has inspected the Property and shall accept the Property in AS IS condition. If DEVELOPER, after its inspection of the Property and review of an environmental reports disapproves of the Property's environmental or other conditions or aspect of the Property or Project in its sole and absolute discretion, then DEVELOPER may terminate the Agreement by written notice to the CITY and without liability for breach or otherwise.

D. DEVELOPER shall confirm that the CITY has received all necessary approvals from HUD, received the HOME funds and be irrevocably committed to fund the Loan at Closing.

E. DEVELOPER has submitted the Project Finance Plan to the CITY and the CITY has approved the Project Finance Plan.

2.6 Access to the Property. DEVELOPER shall be permitted to enter the Property during reasonable daylight hours, upon DEVELOPER's satisfaction of liability insurance requirements of this Agreement. DEVELOPER will give the CITY 24 hours' written notice of its intent to enter onto the Property.

2.7 Joint Escrow Instructions. This Agreement, when signed by both parties and deposited with the Escrow Holder will be the parties' joint escrow instructions. DEVELOPER and the CITY will sign any other form instructions required by Escrow Holder. CITY and DEVELOPER will deposit all instruments, documents, money, and other items with the Escrow holder that are: (i) identified in this Agreement; or (ii) required by the Escrow holder to effect the closing. Either party may tender supplemental escrow instructions consistent with this Agreement.

2.8 Escrow Closing. The parties intend for the Closing to take place on a date selected by the DEVELOPER but in no event later than November 5, 2010 (the "Closing Date").

A. At or before the Closing, CITY shall deliver to Escrow Holder or DEVELOPER the following:

- (i) a duly executed and acknowledged Deed(s); and
- (ii) any other instruments, records or correspondence called for hereunder which have not previously been delivered.

B. At or before Closing, DEVELOPER shall deliver to Escrow Holder or CITY the following:

- (i) Duly executed (and acknowledged, where required) Loan Documents; and
- (ii) Any other instrument, records or correspondence called for hereunder which have not previously been delivered.

C. As a further condition to close, DEVELOPER shall have received the unconditional commitment of Title Company to issue the Title Policy upon the Closing in the form approved by DEVELOPER as buyer.

2.9 Possession. Possession of the Property shall be delivered to DEVELOPER on the Closing Date free of any and all other tenancies and/or occupancy rights. The parties acknowledge and agree that each has inspected the Property and determined it is vacant and unoccupied.

ARTICLE 3. TERMS

3.1 Loan of HOME funds. The CITY agrees convey the Property to the DEVELOPER, and to accept the Note from the DEVELOPER in the full amount of the Purchase Price therefor, all under the terms and conditions provided in this Agreement. The Loan shall be assignable as provided in this Agreement and the Note.

3.2 Loan Documents. The DEVELOPER shall execute and deliver to the CITY the Loan Documents including the Promissory Note, and deliver to the Escrow Holder the Deed of Trust for recordation against the Property.

3.3 Term of Agreement. This Agreement is effective upon the date of execution and shall remain in force for the duration of the Affordability Period and the Loan unless earlier terminated as provided herein. It is understood and agreed upon, however, that if for any reason this Agreement should be terminated in whole or in part as provided hereunder, without default, by DEVELOPER prior to the Closing hereunder, the CITY agrees to record a Notice of Cancellation regarding this Agreement, upon the written request of DEVELOPER.

3.4 Loan Repayment and Maturity. The Loan will be due and payable in accordance with the Note and not later than the maturity date provided in the Note.

3.5 Incorporation of Documents. The DEVELOPER proposal date October 9, 2008, and the CITY Council approved Minutes of October 21, 2010, approving this Agreement, the Loan Documents, the Act and HUD regulations at 24 CRF Part 92, and all exhibits, attachments, documents and instruments referenced herein, as now in effect and as may be amended from time to time, constitute part of this Agreement and are incorporated herein by reference. All such documents have been provided to the parties herewith or have been otherwise provided to/procured by the parties and reviewed by each of them prior to execution hereof.

3.6 Covenants of DEVELOPER. The DEVELOPER for itself and its agents/assigns covenants and agrees to comply with all the terms and conditions of this Agreement and the requirements of 24 CFR Part 92.

ARTICLE 4. GENERAL REPRESENTATIONS AND WARRANTIES OF DEVELOPER

4.1 Existence and Qualification. The DEVELOPER represents and warrants as of the date hereof, that DEVELOPER is a duly organized California limited liability company. DEVELOPER has the requisite power, right, and legal authority to execute, deliver and perform its obligations under this Agreement and has taken all actions necessary to authorize the execution, delivery, performance, and observance of its obligations under this Agreement. This Agreement, when executed and delivered, shall constitute the legal, valid and binding obligations of the DEVELOPER enforceable against the DEVELOPER in accordance with its respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, fraudulent, conveyance, reorganization, moratorium, or other similar laws of general applicability affecting the enforcement of creditors' rights generally, and (b) the application of general principles of equity without the joinder of any other party.

4.2 No Litigation Material to Financial Condition. The DEVELOPER represents and warrants as of the date hereof that, except as disclosed to and approved by CITY in writing, no litigation or administrative proceeding before any court or governmental body or agency is now pending, nor, to the best of DEVELOPER's knowledge, is any such litigation or proceeding now threatened, or anticipated against DEVELOPER that, if adversely determined, would have a material adverse effect on the financial condition, business, or assets of DEVELOPER or on the operation of the Project.

4.3 No Conflict of Interest. The DEVELOPER represents and warrants to the CITY as of the date hereof that no official, officer, agent, or employee of the CITY directly or indirectly owns or controls any interest in DEVELOPER, and no person, directly or indirectly owning or controlling any interest in DEVELOPER, is an official, officer, agent, or employee of the CITY.

4.4 No Legal Bar. The DEVELOPER represents and warrants as of the date hereof that the execution, delivery, performance, or observance by DEVELOPER of this Agreement will not, to the best of DEVELOPER's knowledge, materially violate or contravene any provisions of: (a) any existing law or regulation, or any order of decree of

any court, governmental authority, bureau, or agency; (b) governing documents and instruments of DEVELOPER; or (c) any mortgage, indenture, security agreement, contract, undertaking, or other agreement or instrument to which DEVELOPER is a party or that is binding on any of its properties or assets, the result of which would materially or substantially impair DEVELOPER's ability to perform and discharge its obligations or its ability to complete the Project under this Agreement.

4.5 No Violation of Law. The DEVELOPER represents and warrants as of the date hereof that, to the best of the DEVELOPER's knowledge, this Agreement and the operation of the Project as contemplated by DEVELOPER, do not violate any existing federal, state, or local laws or regulations.

4.6 No Litigation Material to Project. The DEVELOPER represents and warrants as of the date hereof that, except as disclosed to, and approved by the CITY in writing, there is no action, proceeding, or investigation now pending, or any basis therefor known or believed to exist by DEVELOPER that questions the validity of this Agreement, or of any action to be taken under this Agreement, that would, if adversely determined, materially or substantially impair DEVELOPER's ability to perform and observe its obligations under this Agreement, or that would either directly or indirectly have an adverse effect on or impair the completion of the Project.

4.7 Assurance of Governmental Approvals and Licenses. DEVELOPER represents and warrants, as of the date hereof, that DEVELOPER has obtained and, to the best of DEVELOPER's knowledge, is in compliance with all federal, state, and local governmental reviews, consents, authorizations, approvals, and licenses presently required by law to be obtained by DEVELOPER for the Project as of the date hereof.

ARTICLE 5. HOME PROGRAM REPRESENTATION AND WARRANTIES BY DEVELOPER

5.1 Accessibility. If the Loan is not re-paid in full prior to Commencement of Construction, then the DEVELOPER warrants, covenants and agrees that it shall comply with 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), including, without limitation, the construction of the Project so that it meets the applicable accessibility requirements, including, but not limited to, the following:

A. At least five percent (5%) of the dwelling units must be constructed to be accessible for persons with mobility disabilities. An additional two percent (2%) of the dwelling units must be accessible for persons with hearing or visual disabilities. These units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) or a standard that is equivalent or stricter. These mandates can be found in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

B. The design and construction requirements of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended), including the following seven (7) requirements of the Fair Housing Accessibility Guidelines:

- i. Provide at least one accessible building entrance on an

- accessible route.
- ii. Construct accessible and usable public and common use areas.
- iii. Construct all doors to be accessible and usable by persons in wheelchairs.
- iv. Provide an accessible route into and through the covered dwelling unit.
- v. Provide light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- vi. Construct reinforced bathroom walls for later installation of grab bars around toilets, tubs, shower stalls and shower seats, where such facilities are provided.
- vii. Provide usable kitchens and bathrooms such that an individual who uses a wheelchair can maneuver about the space.

The DEVELOPER warrants, covenants and agrees that it shall comply with the design and construction requirements of the CITY's Universal Design Ordinance No. 2008-53 including as follows:

- i. "No step" accessible entryway with the door going into the no step entry at least thirty-six (36) inches wide.
- ii. All interior doorways shall be at least thirty-two (32) inches wide and hallways shall be at least forty-two (42) inches wide.
- iii. Where the Project's design includes a residential dwelling unit with a ground floor of 750 square feet or more, excluding garage space, one downstairs "flex room" and accessible bathroom with reinforcements for grab bars.
- iv. Six square feet of kitchen counter space.

5.2 Affirmative Marketing. The DEVELOPER warrants, covenants and agrees that it shall comply with all affirmative marketing requirements, including without limitation, those set out at 24 CFR 92.350, 24 CFR 92.351, in order to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market. DEVELOPER shall be responsible for complying with the CITY's "Affirmative Marketing Policy" document, incorporated herein, as amended from time to time. DEVELOPER shall maintain records of actions taken to affirmatively market units constructed in the future, and to assess the results of these actions.

5.3 Availability of HOME Funds. The DEVELOPER understands and agrees that the availability of HOME Funds is subject to the control of HUD, or other federal agencies, and should the HOME Funds be encumbered, withdrawn or otherwise made unavailable to the CITY, the CITY shall not be required to provide the HOME Funds unless and until they are made available for payment to the CITY by HUD and the CITY receives and allocates said Funds. No other funds owned or controlled by the CITY shall be obligated under this Agreement to the Project.

5.4 Compliance with Agreement. The DEVELOPER warrants, covenants and agrees that, in accordance with the requirements of 24 CFR 92.254 and 24 CFR Part 85, upon any uncured default by DEVELOPER within the meaning of Article 11 of this

Agreement, the CITY may suspend or terminate this Agreement and all other agreements with DEVELOPER without waiver or limitation of rights/remedies otherwise available to the CITY.

5.5 Conflict of Interest. The DEVELOPER warrants, covenants and agrees that it shall comply with the conflict of interest requirements of 24 CFR 92.356 including, without limitation, that no officer, employee, agent or consultant of DEVELOPER may occupy an Affordable Unit. DEVELOPER understands and acknowledges that no employee, agent, consultant, officer or elected official or appointed official of the CITY, who exercises or has exercised any functions or responsibilities with respect to the Project, or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for anyone with which that person has family or business ties, during his or her tenure or for one year thereafter. To the extent provided at 24 CFR 92.356(f), no owner, developer or sponsor of the Project, or officer, employee, agent or consultant thereof, may occupy an Affordable Unit within the Project.

5.6 Construction Standards. DEVELOPER shall construct the proposed housing units assisted under this Agreement in compliance with all applicable local codes, ordinances and zoning requirements applicable to the Project at the time of issuance of Certification of Completion. In the absence of a local code for construction, DEVELOPER agrees to comply with the applicable standards identified in 24 CFR 92.251.

5.7 Covenants and Restrictions to Run with the Land. The CITY and DEVELOPER expressly warrant, covenant and agree to ensure that the covenants and restrictions set forth in this Agreement are recorded and will run with the land, provided, however, that, on expiration of this Agreement and Affordable Housing requirements therein, said covenants and restrictions shall expire. The DEVELOPER further warrant, covenant and agree that the covenants and restrictions herein shall run in favor of the CITY. The CITY agrees that this Agreement, the Note, the Deed of Trust and the Declaration of Restrictions shall be made junior and subordinate to liens given in connection with the Project financing, including any refinancing thereof established and obtained pursuant to and in compliance with the provisions of the Agreement, and to any other regulatory agreement. The City Manager of the CITY is hereby authorized and directed to execute such subordination agreement, inter-creditor agreements, standstill agreements, and/or other documents as may be reasonably requested by the Lender to evidence subordination to the Project financing, without further authorization from the CITY, provided that such agreements contain written provisions that are no more onerous and which are consistent with the customary standard requirements imposed by financing source(s), on subordinate cash flow obligations under their then existing senior financing policies, and further provided that CITY Attorney reasonably approves of such document as to form.

A. The CITY and DEVELOPER hereby declare their understanding and intent that the covenants and restrictions set forth herein directly benefit the land (a) by enhancing and increasing the enjoyment and ownership of the proposed Project by certain Low-Income Families, and (b) by making possible the obtaining of advantageous financing for construction of the Project.

B. The DEVELOPER covenants and agrees that after issuance of a recorded Certificate of Completion for the Project until expiration of the Affordability Period, it shall cause the three (3) Affordable Units to be used for Affordable Housing to Low-Income Families.

C. Without waiver or limitation, the CITY shall be entitled to injunctive or other equitable relief against any violation or attempted violation of any covenants and restrictions, and shall, in addition, be entitled to damages available under law or contract for any injuries or losses resulting from any violations thereof.

D. All present and future owners of the Project and other persons claiming by, through, or under them shall be subject to and shall comply with the covenants and restrictions. The acceptance of a deed of conveyance to the Project shall constitute an agreement that the covenants and restrictions, as may be amended or supplemented from time to time, are accepted and ratified by such future owners, tenants or occupants, and all such covenants and restrictions shall be covenants running with the land and shall bind any person having at any time any interest or estate in the Project, all as though such covenants and restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

E. The failure or delay at any time of the CITY or any other person entitled to enforce any such covenants or restrictions shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

5.8 Displacement of Persons. The DEVELOPER warrants, covenants and agrees that pursuant to 24 CFR 92.353, it will take all reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations and farms.) The CITY and DEVELOPER acknowledge and agree that the Property is currently vacant and unimproved.

5.9 Initial Income Certification. The DEVELOPER warrants, covenants and agrees that it shall comply with the procedures for income determinations at 24 CFR 92.203. DEVELOPER shall obtain, complete and maintain on file, immediately prior to initial occupancy, income certifications from each of the tenant Household renting any of the three (3) Affordable Units. DEVELOPER shall make a good faith effort to verify that the income provided by an applicant or occupying Household in an income certification is accurate by taking one or more of the following steps as part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income verification form from the applicant's current employer; (3) obtain an income verification form from the Social Security Administration and California Department of Social Services if the applicant receives assistance from either of such agencies; (4) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of household income certification and verification must be available for review and approval by the CITY. DEVELOPER further warrants, covenants and agrees that it shall cooperate with the CITY in the CITY'S income certification/affordability monitoring activities.

5.10 Lead-Based Paint. The DEVELOPER warrants, covenants and agrees that it shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 CFR Part 35 including the HUD 1012 Rule, and 24 CFR 982.401(j), and any amendment thereto, and EPA Section 402(c)(3) of the Toxic Substance Control Act (TSCA) to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities. Contractors performing renovations in lead-based paint units must be EPA-certified renovators. These requirements apply to all Units and common areas of the Project. The DEVELOPER shall incorporate or cause incorporation of this provision in all contracts and subcontracts for work performed on the Project, which involve the application of paint. The DEVELOPER shall be responsible for all disclosure, inspection, testing, evaluation, control and abatement activities.

5.11 Minority Outreach Activities. The DEVELOPER warrants, covenants and agrees that it shall comply with all federal laws and regulations described in Subpart H of 24 CFR Part 92, including, without limitation, any requirement that DEVELOPER comply with the CITY'S minority outreach program.

5.12 Other Laws and Regulations. The DEVELOPER warrants, covenants and agrees with the CITY that, in addition to complying with the federal laws and regulations already cited in this Agreement, the DEVELOPER has reviewed, and shall comply with, all other federal laws and regulations that apply to the HOME Program and this Project, including, without limitation, requirements of 24 CFR 58.6 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128) and the following:

A. The DEVELOPER does not intend to use any financing that is secured by a mortgage insured by HUD in connection with the Project as part of its acquisition and/or construction of this Project.

B. The Project is not located in a tract identified by the Federal Emergency Management Agency as having special flood requirements.

C. The Project requirements, Subpart F of 24 CFR Part 92, as applicable and in accordance with the type of Project assisted, including, but not limited to, the limit on the HOME per-unit subsidy amount at 24 CFR 92.250.

D. The property standards at 24 CFR 92.251.

E. The Project "Labor" requirements, as applicable, of 24 CFR 92.354 including Davis Bacon prevailing wage requirements (40 U.S.C. 276a - 276a-7), as supplemented by Department of Labor regulations (29 CFR Part 5).

F. The provisions of Section 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor Regulations (29 CFR Part 5), in regards to the construction and management of the proposed Project.

G. The DEVELOPER and its contractors, subcontractors and service

providers for the Project, shall comply with all applicable local, state and federal requirements concerning equal employment opportunity, including compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

H. The provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

I. The provisions of the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

J. The provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

K. The provision of E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24.

L. The provisions of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

M. Title 8 of the Civil Rights Act of 1968 PL. 90-284.

N. Executive Order 11063 on Equal Opportunity and Housing.

O. Section 3 of the Housing and Urban Development Act of 1968.

P. The Housing and Community Development Act of 1974.

Q. Clean Water Requirements 33 U.S.C. 1251.

R. Civil Rights Requirements, 29 U.S.C. Section 623, 42 U.S.C Section 2000, 42 U.S.C Section 6102, 42 U.S.C. Section 12112, 42 U.S.C Section 12132, 49 U.S.C. Section 5332, 29 CRF Part 1630, 41 CFR Parts 60 et. seq.

5.13 Religious Organizations. The DEVELOPER warrants, covenants and agrees with the CITY that it shall not engage in any inherently religious activities, such as worship, religious, or proselytization, as part of the assistance funded by this Agreement as described in 24 CFR 92.257. Subject to the foregoing, the DEVELOPER does not intend to utilize HOME Funds to construct housing owned primarily by religious organizations or to assist primarily religious organizations in acquiring housing.

5.14 Reporting Requirements. The DEVELOPER warrants, covenants and agrees with the CITY that it shall submit performance reports to the CITY as detailed in Section 8.16. Furthermore, the DEVELOPER agrees to provide, at the sole cost of the

DEVELOPER to account for the expenditure of HOME Funds using generally accepted accounting principles, which financial documentation shall be made available to the CITY and HUD upon their respective written request(s).

5.15 Housing Affordability. The DEVELOPER warrants, covenants and agrees that the three (3) Affordable Units in the Project will meet, (as and when applicable) the Affordable Housing, income targeting and other requirements of 24 CFR 92.252 during the Affordability Period. The three (3) Affordable Units in the Project shall, be rented to and occupied by, or, if vacant, available for rental and occupancy by household(s) whose annual household income at the time of initial occupancy is not greater than eighty percent (80%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable rent consistent with HOME Program regulations, for the Affordability Period except upon foreclosure by a lender or transfer in lieu of foreclosure following default under a Deed of Trust. However, if at any time following transfer by foreclosure or transfer in lieu of foreclosure, but still during the Affordability Period, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes such owner of record or those whom such owner of record has or had family or business ties, obtains an ownership interest in the Project or Property, the Affordability Period shall be revived according to its original terms. In the event DEVELOPER fails to comply with this Section or the Affordability Period is not revived following transfer by foreclosure or transfer in lieu of foreclosure, the DEVELOPER shall return to CITY all HOME Funds disbursed to the DEVELOPER by the CITY for this Project.

5.16 Terminated Projects(s). The DEVELOPER understands and agrees that, if the Project is terminated before completion, either voluntarily or otherwise, such constitutes an ineligible activity and the City will not be required to provide any further HOME Program assistance funding to the Project Units.

ARTICLE 6. PROPERTY MAINTENANCE

The DEVELOPER covenants and agrees to the following, for the entire term of the Agreement.

6.1 Adequate Repair and Maintenance. After completion of the Project, the DEVELOPER shall maintain Project and Property in compliance with all applicable codes, laws, and ordinances.

6.2 Affordable Rental Housing. The Project shall constitute twenty (20) residential units of which three (3) shall be preserved as Low-Income rental housing (as provided in this Agreement as a matter of contract, and as and when applicable, per 24 CFR 92.252) during the entire Affordability Period. This covenant shall remain in effect and run with and restrict the land during the entirety of the Affordability Period. In the event that DEVELOPER fails to comply with the time period in which the Project must constitute Affordable Housing, CITY shall without waiver or limitation be entitled to injunctive relief, as DEVELOPER acknowledges that damages are not an adequate remedy at law for such breach.

6.3 Compliance With Environmental Laws. The DEVELOPER shall cause the Project to be in compliance with, and not to cause or permit the Project to be in violation of, any environmental law, rule, regulation, ordinance, or statute. Although the CITY will utilize its employees and agents for regular inspection and testing of the Property, the DEVELOPER agrees that, if the CITY has reasonable grounds to suspect any such violation, the DEVELOPER shall be entitled to thirty (30) days' notice and opportunity to cure such violation. If the suspected violation is not cured, the CITY shall have the right to retain an independent consultant to inspect and test the eligible Property for such violation. If a violation is discovered, the DEVELOPER shall pay for the reasonable cost of the independent consultant.

Additionally, the DEVELOPER agrees:

A. That the CITY shall not be directly or indirectly responsible, or obligated or liable for the inspection, testing, removal or abatement of asbestos or other hazardous or toxic chemicals, materials, substances, or wastes and that all cost, expense and liability for such work shall be and remain solely with the DEVELOPER;

B. Not to transport to or from the proposed Project site(s), or use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, or about the Property, or surrounding real estate, or transport to or from the project site(s), or surrounding real estate, any hazardous or toxic chemicals, materials, substance, or wastes or allow any person or entity to do so except in such amounts and under such terms and conditions permitted by applicable laws, rules, regulations, ordinances, and statutes;

C. To give prompt written notice to the CITY of the following:

(i) Any proceeding or inquiry by any governmental authority with respect to the presence of any hazardous or toxic chemicals, materials, substance, or waste in or on the eligible Property or the surrounding real estate or the migration thereof from or to other property;

(ii) All claims made or threatened by any third party against the DEVELOPER or such properties relating to any loss or injury resulting from any hazardous or toxic chemicals, materials, substance, or waste; and

(iii) The DEVELOPER's discovery of any occurrence or condition on any real property adjoining or in the vicinity of such properties that would cause such properties or underlying or surrounding real estate or part thereof to be subject to any restrictions on the ownership, occupancy, transferability, or use of the property under any environmental law, rule, regulation, ordinance or statute; and

D. To indemnify, defend, and hold the CITY harmless from any and all claims, actions, causes of action, demands, judgments, damages, injuries, administrative orders, consent agreements, orders, liabilities, penalties, costs, expenses (including attorney's fees and expenses), and disputes of any kind whatsoever arising out of or relating to the DEVELOPER or any other party's use or release during the period in which DEVELOPER owns the Property of any hazardous or toxic chemicals, materials, substance,

or wastes on the eligible Property regardless of cause or origin, including any and all liability arising out of or relating to any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind.

6.4 Compliance With Laws. The DEVELOPER shall be responsible for and promptly and faithfully comply with, conform to and obey all present and future federal, state and local statutes, regulations, rules, ordinances and other legal requirements applicable by reason of this Agreement or otherwise to the Project including without limitation as to prevailing wage requirements. The DEVELOPER acknowledges that the use of HOME Funds subjects the Project to extensive federal regulation and covenants and agrees that it shall comply with, conform to and obey (and take such steps as are required of the DEVELOPER to enable the CITY to comply with, conform to and obey (and take such steps as are required of the DEVELOPER to enable the CITY to comply with, conform to and obey) all federal statutes, regulations, rules and policies applicable to the HOME Program and the Project. The CITY and DEVELOPER acknowledge that (i) pursuant to 24 CFR 92.354 a contract for the construction (new construction) of housing that includes fewer than 12 units assisted with HOME funds need not contain a provision requiring the payment of the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing, or the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), and (ii) pursuant to Cal. Labor Code 1720, any public participation in the Project that would otherwise meet the criteria of a public work for which State prevailing is required under Cal. Lab. Code 1720 et seq. is exempt as provided therein, and to the extent of charter city authority over municipal affairs and projects. Nonetheless DEVELOPER shall be solely responsible for determining and effectuating compliance. Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall be construed as imposing any independent prevailing wage requirements that are different from those imposed by applicable federal or state law.

6.5 Existence, Qualification, and Authority. The DEVELOPER shall provide to the CITY any evidence required or requested by the CITY to demonstrate the continuing existence, qualification, and authority of the DEVELOPER to execute this Agreement and to perform the acts necessary to carry out the Project.

6.6 Financial Statements and Audits. The DEVELOPER, as a recipient of federal financial assistance, is required to comply with the provisions of the Single Audit Act of 1984 (31 U.S.C. Sections 7501 et seq.), as amended, if Five Hundred Thousand Dollars and 00/100 (\$500,000.00) or more in federal funds are expended. If applicable, audited financial statements are due annually, within one hundred and eighty (180) days following: 1) the end of fiscal year(s) in which the HOME Funds are disbursed hereunder, and 2) the end of fiscal year(s) in which this contract shall terminate, and otherwise upon the CITY's written request during the term of this Agreement, DEVELOPER, at its sole cost and expense shall submit to the CITY:

A. Audited annual financial statements that are current, signed, and prepared according to generally accepted accounting principles consistently applied (except as otherwise disclosed therein); and

B. Audited Financial Statements covering the income and expenses, and the financial transactions for the Project during the prior fiscal year.

6.7 Inspection and Audit of Books, Records and Documents. The DEVELOPER shall be accountable to the CITY for all HOME Funds disbursed for the Project pursuant to this Agreement. Any duly authorized representative of the CITY, the State, or HUD shall, at all reasonable times, have access to and the right to inspect, copy, make excerpts or transcripts, audit, and examine all books of accounts, records, files and other papers or property, and other documents of the DEVELOPER pertaining to the Affordable Units or all matters covered in this Agreement and for up to six (6) years after the expiration or termination of this Agreement.

A. The DEVELOPER will maintain books and records for the Project using generally accepted accounting principles. The DEVELOPER agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with HOME Funds and to keep all invoices, receipts and other documents related to expenditures financed with HOME Funds for not less than six (6) years after the expiration or termination of the Agreement. Books and records must be kept accurate and current. For purposes of this section, "books, records and documents" include, without limitation; plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, funding applications, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda, and electronically stored versions of the foregoing. This section shall survive the termination of this Agreement.

B. The CITY may audit any conditions relating to this Agreement at the CITY's expense, unless, unless such audit shows a significant discrepancy in information reported by the DEVELOPER in which case the DEVELOPER shall bear the cost of such audit. The DEVELOPER shall also comply with any applicable audit requirements of 24 CFR 92.506. This section shall survive the termination of this Agreement.

C. The DEVELOPER will cooperate fully with the CITY, the State, and HUD in connection with any interim or final audit relating to the Programs and the Project that may be performed relative to the performance of this Agreement.

6.8 Inspection of Property. Any duly authorized representative of the CITY, the State, or HUD shall, at all reasonable times, have access and the right to inspect the Property until completion of the Project and expiration of the Project within 72 hours written notice, subject to the rights of the tenants.

6.9 No Other Liens. Prior to re-payment of the Loan in full, the DEVELOPER shall not create or incur, or suffer to be created or incurred, or to exist, any additional mortgage, pledge, encumbrance, lien, charge, or other security interest of any kind on the eligible Property, other than those related to construction or pre-development loans in relation to the Project consistent with the attached EXHIBIT "D" Project Budget, without the prior written consent of the CITY.

6.10 Nondiscrimination. The DEVELOPER shall comply with and cause any and

all contractors and subcontractors to comply with any and all federal, state, and local laws with regard to illegal discrimination, and the DEVELOPER shall not illegally discriminate against any persons on account of race, religion, sex, family status, age, handicap, or place of national origin in its performance of this Agreement and the completion of the Project.

6.11 Ownership. Except as required in pursuit hereof, the DEVELOPER shall not sell, lease, transfer, assign or otherwise dispose of ("Transfer") all or any material part of any interest it might hold in the Property or the Project without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed.

6.12 Payment of Liabilities. The DEVELOPER shall pay and discharge in the ordinary course of its business all material obligations and liabilities, the nonpayment of which could have a material or adverse impact on its financial condition, business, or assets or on the operation of the Project(s), except such obligations and liabilities that have been disclosed to the CITY in writing and are being contested in good faith.

6.13 Report of Events of Default. The DEVELOPER shall promptly give written notice to the CITY upon becoming aware of any Event of Default under this Agreement.

ARTICLE 7. HOME PROGRAM FUNDS

Without waiver of limitation, the parties agree as follows, regarding HOME Funds:

7.1 Use of HOME Program Funds. The DEVELOPER warrants, covenants and agrees that HOME Program Loan Funds shall be use only for HOME eligible Project costs as identified in the attached Budget, attached hereto as EXHIBIT "C", including costs allowable under 24 CFR 92.206, aggregating not more than the Loan amount. The CITY's obligations shall in no event exceed the HOME Funds amount specified in this Agreement.

7.2 Conditions Precedent to Property Sale. The CITY shall not be obligated to convey the Property to DEVELOPER or take any other action under this Agreement unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 11, nor any act, failure, omission or condition that with the passage of time or the giving of notice or both would constitute an Event of Default.

B. The DEVELOPER has submitted evidence that the combined monies from non-CITY Project funding sources and HOME funds are not less than Four Million Three Hundred Thousand Dollars and 00/100 (\$4,300,000.00) per the Budget attached hereto in EXHIBIT "C", the amount necessary to complete the Project.

C. The CITY has approved the requested eligible Property costs.

D. The DEVELOPER has acquired insurance coverage and delivered to the CITY evidence of insurance as required in Article 10.

E. The DEVELOPER is current with its compliance of all reporting

requirements set forth in this Agreement.

F. The DEVELOPER has delivered a Unit construction schedule satisfactory to the CITY.

G. The City has received the Certification required by this Section 7.4 of this Agreement.

7.3 Request for Credit of HOME Program Funds through Escrow. The DEVELOPER shall request that the CITY convey the Property through escrow as a form of disbursement of HOME funds. The DEVELOPER shall only request a maximum of Two Hundred and Forty Five Thousand Dollars and 00/100 (\$245,000.00) in HOME Program assistance to finance acquisition of the Property, or as otherwise agreed to by CITY. All requests for HOME funds shall be accompanied with the Certification required by this Article 7 of this Agreement.

7.4 DEVELOPER Certification. The DEVELOPER shall submit to the CITY a written certification that, as of the date of the written request for disbursement ("Certification"):

A. The representations and warranties contained in or incorporated by reference in this Agreement continue to be true, complete and accurate in all material respects; and

B. The DEVELOPER has carried out all of its obligations and is in compliance with all the obligations or covenants specified in this Agreement, to the extent that such obligations or covenants are required to have been carried out or are applicable at the time of the request for the Disbursement; and

C. The DEVELOPER has not committed or suffered an act, event, occurrence, or circumstance that constitutes an Event of Default or that with the passage of time or giving of notice or both would constitute an Event of Default; and

D. Loan disbursement requested will be used solely for HOME eligible Property acquisition costs that have been properly incurred and are properly chargeable in connection with the Project.

ARTICLE 8. DEVELOPMENT AND CONSTRUCTION OF PROJECT

Without waiver of limitation, the parties agree as follows:

8.1 Pre-construction Meeting Regarding HOME Program Processes and Procedures. The CITY will schedule, and the DEVELOPER shall attend a meeting prior to construction with the CITY's Housing and Community Development Division for the purpose of outlining HOME Program processes and procedures.

8.2 Commencement and Completion of Project. The DEVELOPER shall commence and complete construction and record a Notice of Completion, upon completion

of the Project, in accordance with the Project Schedule.

8.3 Contracts and Subcontracts. Consistent with Article 6, all demolition, hazardous waste abatement, construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise legally authorized to perform the applicable work or service in the State of California and the City of Fresno. Upon the written request from the CITY, the DEVELOPER shall provide the CITY with copies of all agreements with any and all contractors or subcontractors for this Project. The DEVELOPER shall require that each contractor and subcontractor agreement contain a provision whereby the party(ies) to the agreement other than the DEVELOPER agree to (i) notify the CITY immediately of any event of default by the DEVELOPER thereunder; (ii) notify the CITY immediately of the filing of a mechanic's lien, (iii) notify the CITY immediately of termination or cancellation of the agreement; and (iv) provide the CITY, upon the CITY's request, an Estoppel Certificate certifying that the agreement is in full force and effect and the DEVELOPER is not in default thereunder. The DEVELOPER agrees to notify the CITY immediately of termination or cancellation of any such agreement(s), notice of filing of a mechanic's lien, or breach or default by other party (ies) thereto.

8.4 Damage to Property. To the extent consistent with the requirements of any permitted encumbrance, or as otherwise approved by the CITY, and subject to Article 10 of this Agreement, if any building or improvement constructed on the Property is damaged or destroyed by an insurable cause, the DEVELOPER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications of the Affordable Unit. Such work or repair shall commence within ninety (90) days after the insurance proceeds are made available to the DEVELOPER and shall be complete within two (2) years thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, the DEVELOPER shall make up the deficiency.

8.5 Fees, Taxes and Other Levies. The DEVELOPER shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, the DEVELOPER shall not be required to pay and discharge any such charge so long as: (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the CITY, the DEVELOPER deposits with the CITY any funds or other forms of assurances that the CITY, in good faith, may determine from time to time are appropriate to protect the CITY from the consequences of the contest being unsuccessful.

8.6 Financing. The DEVELOPER shall promptly inform the CITY of any new or additional financing or funding not included in the budget for the project, and the DEVELOPER shall provide the CITY copies of all agreements with any and all Funding Sources for this Project. The DEVELOPER shall require each agreement with any and all funding sources not included in the Budget to contain a provision whereby the party(ies) to the agreement other than the DEVELOPER, if permitted by the parties' applicable rules and regulations, agree to (i) notify the CITY immediately of any event of default by the DEVELOPER thereunder; (ii) notify the CITY immediately of termination or cancellation of

the agreement; and (iii) provide the CITY, upon CITY's request, an Estoppel Certificate certifying that the agreement is in full force and effect and the DEVELOPER is not in default thereunder. The DEVELOPER agrees to notify the CITY immediately of termination or cancellation of any such agreement(s) or receipt of notice of default thereunder. The DEVELOPER shall comply with all obligations of any such agreement(s) with any and all funding sources until the respective expiration of such agreement(s).

8.7 Identification Signage. Before the start of construction, the DEVELOPER shall place a poster or sign, with a minimum four feet by four feet in size, identifying the City of Fresno as a Project participant. The sign shall also include the CITY's Housing logo, as well as HUD's Equal Housing Opportunity logo, as mandated by HUD. Font size shall be a minimum of 4 inches. The poster/sign shall be appropriately placed, and shall be in place throughout the Project construction.

8.8 Inspections. The DEVELOPER shall permit, facilitate, and require its contractors and consultants to permit and facilitate observation and inspection at the job site by the CITY and other public authorities during reasonable business hours, for determining compliance with this Agreement, including without limitation those on-site inspections.

8.9 Insurance and Bonds. The DEVELOPER shall submit for CITY approval bonds, policies, certificates and/or applicable endorsements for all insurance and bonds required by this Agreement in accordance with Article 10.

8.10 Mechanic's Liens and Stop Notices. If any claim of lien is filed against the Property or a stop notice affecting any financing, HOME Program Funds or funding sources for the Project is served on the CITY or any other third party in connection with the Project, the DEVELOPER shall, within twenty (20) days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the CITY a surety bond in sufficient form and amount, or provide the CITY with other assurance satisfactory to the CITY that the claim of lien or stop notice will be paid or discharged. If the DEVELOPER fails to discharge, bond or otherwise satisfy the CITY with respect to any lien, encumbrance, charge or claim referred to in this Section, then, in addition to any other right or remedy, the CITY may, but shall not be obligated to, discharge such lien, encumbrance, charge, or claim at the DEVELOPER expense. Alternatively, the CITY may require the DEVELOPER to immediately deposit with the CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The CITY may use such deposit to satisfy any claim or lien that is adversely determined against the DEVELOPER. The DEVELOPER hereby agrees to indemnify and hold the CITY harmless from liability for such liens, encumbrances, charges or claims together with all related costs and expenses.

8.11 Permits and Licenses. Upon CITY's reasonable request, the DEVELOPER shall submit, for CITY approval, all the necessary permits and licenses required for Commencement of Construction of the Project. As the CITY may reasonably request, the DEVELOPER, at its sole cost and expense, shall provide to the CITY copies of any and all permit approvals and authorizations including plot plan, plat, zoning variances, sewer, building, and other permits required by governmental authorities other than the CITY in

pursuit of the Project, and for its stated purposes in accordance with all applicable building, environmental, ecological, landmark, subdivision, zoning codes, laws, and regulations.

8.12 Plans and Specifications.

A. The DEVELOPER has submitted to the CITY preliminary plans and specifications for the Project under Conditional Use Permit C-10-157 ("Preliminary Plan"). The DEVELOPER will construct the Project in full conformance with the CITY-approved Conditional Use Permit and plans and specifications and modifications thereto approved by the CITY. The DEVELOPER shall obtain written approval for any modifications to the plans and specifications.

B. The HOME Agreement shall contain by reference the design and site plan of the Project; such design must be approved by the City Council with the HOME Agreement.

8.13 Project Responsibilities. The DEVELOPER shall be solely responsible for all aspects of the DEVELOPER's conduct in connection with the Project, the quality and suitability of the work completed, the supervision of all contracted work, qualifications and financial conditions of and performance of all contractors, subcontractors, consultants and suppliers. Any review or inspection undertaken by the CITY with reference to the Project is solely for the purpose of determining whether the DEVELOPER is properly discharging its obligation to the CITY, and shall not be relied upon by the DEVELOPER or by any third parties as a warranty or representation by the CITY as to the quality of the work completed for the Project.

8.14 Quality of Work. The DEVELOPER shall ensure that construction of the proposed Project, employs building materials of a quality suitable for the requirements of the Project. The DEVELOPER shall cause completion of construction of the proposed Project on the Property in full conformance with applicable local, state and federal laws, statutes, regulations, and building and housing codes.

8.15 Relocation. If and to the extent that construction of the proposed Project results in the permanent or temporary displacement of residential tenants, homeowners or businesses, the DEVELOPER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. The DEVELOPER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

8.16 Reporting Requirements. The DEVELOPER shall submit to the CITY the following Project reports:

A. From the date of the Commence of the Project, until issuance of the final Certificate of Completion, evidencing the construction of the last Project Unit, the DEVELOPER shall submit a Quarterly Report, in a form approved by the CITY, which will include, at a minimum, the following information: progress of the Project and affirmative marketing efforts (as applicable). The Quarterly Reports are due on each March 31st, June

30th, September 30th, and December 31st, during said period.

B. Annually, beginning on the first day of the month following the CITY's issuance of the final Certificate of Completion, evidencing the construction of the last Project Unit, and continuing until the termination of the Agreement, the DEVELOPER shall submit an annual report (the "Annual Report") to the CITY, in a form approved by the CITY and containing the following information: the date the occupancy of the Affordable Housing commenced, certification from an officer of the DEVELOPER that the Project is in compliance with the Affordable Housing requirements, and such other information the CITY may be required by law to obtain. The DEVELOPER shall provide any additional information reasonably requested by the CITY.

C. Annually, beginning on the first day of the month following the CITY's issuance of the final Certificate of Completion, evidencing the construction of the last Unit, and continuing until the expiration of the Agreement, DEVELOPER shall submit proof of insurance as may be required in Article 10.

8.17 Scheduling and Extension of Time; Unavoidable Delay in Performance. It shall be the responsibility of the DEVELOPER to coordinate and schedule the work to be performed so that the Commencement of Construction and issuance of the Certificate of Completion(s) will take place in accordance with the provisions of the Agreement and Project Schedule. The time for performance contained the Project Schedule shall be automatically extended upon the following:

A. The time for performance of provisions of the Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by: war, insurrection, strike or other labor disputes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by third parties concerning or arising out of this Agreement, or unseasonable weather conditions. An extension of time for any of the above specified causes will be granted only if written notice by the party claiming such extension is sent to the other party within thirty (30) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is accepted by the other party in writing. In any event, the Project must be completed no later than one hundred eighty (180) calendar days after the scheduled completion date specified in this Agreement, notwithstanding any delay caused by that included in this section.

B. Any and all extensions hereunder shall be by mutual written agreement of the CITY's Housing and Community Development Division Manager and the DEVELOPER and shall not cumulatively exceed one hundred eighty (180) days.

8.18 Certificate(s) of Completion. Upon completion of construction of the Project, the DEVELOPER shall: 1) certify in writing to the CITY that construction of the Project has been completed in accordance with the Final Plans; 2) submit to the CITY a cost-certifying final budget for the Project where the DEVELOPER shall identify the actual costs of construction of the Project; 3) submit to the CITY a certificate of Occupancy for the Project; 4) submit to the CITY a Notice of Completion for the Project; and 5) submit to the CITY an

Architect's certification in a form reasonably acceptable to the CITY. Upon a determination by the CITY that the DEVELOPER is in compliance with all of the DEVELOPER's construction obligations, as specified in this Agreement, for the Project, the CITY shall furnish, within thirty (30) calendar days of a written request by the DEVELOPER, a recordable Certificate of Completion for the Project in the form attached hereto as EXHIBIT "E". The CITY will not unreasonably withhold or delay furnishing the Certificate of Completion. If the CITY fails to provide the Certificate of Completion within the specified time, it shall provide the DEVELOPER with a written statement indicating in what respects the DEVELOPER has failed to complete the Project in conformance with this Agreement or has otherwise failed to comply with the terms of this Agreement, and what measures the DEVELOPER will need to take or what standards it will need to meet in order to obtain the Certificate of Completion. Upon the DEVELOPER taking the specified measures and meeting the specified standards, the DEVELOPER will certify to the CITY in writing of such compliance and the CITY shall deliver the recordable Certificate of Completion to the DEVELOPER in accordance with the provisions of this section.

ARTICLE 9. PROJECT OPERATIONS

9.1 Occupancy Requirements. Of the twenty (20) housing units, three (3) shall be Affordable Housing and shall be occupied by, or if vacant, available for rental occupancy by households as Affordable Housing for the Affordability Period, for the term of this Agreement. DEVELOPER, in this regard shall comply with the income targeting requirements of 24 CFR 92.216.

9.2 Leasing the Project. Before leasing any Units constituting affordable housing, the DEVELOPER shall submit its proposed form of lease (the "Lease") for CITY's review and approval. DEVELOPER covenants and agrees to utilize only Leases that have been approved in advance by the CITY. The CITY shall respond to DEVELOPER'S submission of a sample Lease within thirty (30) days. Should the CITY not respond within thirty (30) days of Lease submittal, DEVELOPER shall be authorized to use the submitted sample lease agreement. Additionally, the DEVELOPER agrees not to terminate the tenancy or to refuse to renew a Lease with a tenant in the Affordable Units assisted with HOME Funds except for serious or repeated violation of the terms and conditions of the Lease, for violation of applicable federal, state, or local law, or for other good cause. Any such termination or refusal to renew must be preceded by not less than thirty (30) days written notice served by the DEVELOPER or its authorized management entity upon the tenant specifying the grounds for such action. DEVELOPER agrees it shall annually report to CITY the number of Leases that were not renewed or terminated and the reason for such non-renewal or termination.

9.3 Lease Provision. In addition to the requirements of 24 CFR 92.253, the Leases are subject to the following:

A. DEVELOPER shall include in Leases for the Affordable Units, provisions which authorize DEVELOPER to immediately terminate the tenancy of any Household of which one or more members misrepresent any fact material to the Household's qualification as a Household meeting the income requirements for Low-Income Families. Each such Lease shall also provide that the Household is subject to annual

certification, and that, if the Household's annual income increase above the applicable limits for Low-Income Families such Household's rent may be subject to increase to the lesser of (1) the amount payable by tenant under state or local law; or (2) thirty percent (30%) of the Household's actual adjusted monthly income.

9.4 Fair Marketing Plan. Before leasing the Affordable Housing Unit and at least sixty (60) calendar days prior to the Project Completion date, the DEVELOPER shall submit to the CITY, for review and approval, a plan, for marketing and managing the Affordable Housing Unit(s) ("Fair Marketing Plan"). The final Fair Marketing Plan shall address in detail how the DEVELOPER or its designated management entity plans to market the availability of the Affordable Units to prospective Low-Income tenants and how the DEVELOPER plans to certify the eligibility of potential tenants. The final Fair Marketing Plan shall also address how the DEVELOPER and/or the management entity plan to manage and maintain the Affordable Housing Units in accordance the HOME Program at Section 92.251 Property Standards, and shall include appropriate financial information and documentation. The final Fair Marketing Plan shall contain detailed descriptions of policies and procedures with respect to tenant selections and evictions. Topics to be covered in these procedures shall include at a minimum the following:

- Interviewing procedures for prospective tenants;
- Previous rental history of tenants with references;
- Credit reports;
- Criminal background checks;
- Deposit amounts, purpose, use and refund policy;
- Employment/Income verification;
- Occupancy restrictions;
- Income limits;
- Equal Housing Opportunity Statement;
- Restrictions on use of the premises;
- Tenant/Landlord dispute resolution procedures.

The Final Marketing Plan shall contain copies of all standardized forms associated with the above listed topics. The final Fair Marketing Plan shall include a form lease agreement that the DEVELOPER proposes to enter into with Project tenants. The DEVELOPER shall abide by the terms of this final Fair Marketing Plan, approved by the CITY, in marketing, managing and maintaining the Affordable Units.

At least ninety (90) calendars days prior to the Project Completion Date, the DEVELOPER shall also submit any proposed management contract to the CITY for prior review. The CITY shall have the right to review any proposed amendments, other than renewals to the management contract, and any new management contracts during the term of this Agreement. Such management contract(s) shall contain a provision expressing this right.

9.5 Property Management. The DEVELOPER shall comply with the following:

A. Management Responsibilities. The DEVELOPER is directly and/or through its designated management entity, is specifically responsible for all management

functions with respect to the Project including, without limitation, with respect to the Affordable Units, the selection of Low-Income tenants, certification and re-certification of Household size and income, evictions, collection of rents and deposits, construction management, affirmative marketing, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. The CITY shall have no responsibility for such management of the Project.

9.6 Maintenance and Security. The DEVELOPER shall at its own expense maintain the Project in good condition, in good repair and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of the Unit occupants. The DEVELOPER shall not commit or permit any waste on or to the Project, and shall prevent and/or rectify any physical deterioration of the Project. The DEVELOPER shall maintain the housing in conformance with all applicable federal, state and local laws, ordinances, codes and regulations, the final Fair Marketing Plan, and this Agreement.

9.7 Nondiscrimination. All of the twenty (20) Units shall be available for initial rental to members of the general public who are income eligible. The DEVELOPER shall not illegally discriminate or segregate in the development, construction, use, enjoyment, occupancy or conveyance of any part of the Project or Property on the basis of race, color, ancestry, national origin, religion, sex, age, marital status, family status, source of income/rental assistance subsidy, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), sexual orientation, or any other arbitrary basis. The DEVELOPER shall otherwise comply with all applicable local, state and federal laws concerning nondiscrimination in housing. Neither the DEVELOPER nor any person claiming under or through the DEVELOPER, shall establish or permit any such practice or practices of illegal discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants or vendees of any Unit or in connection with employment of persons for the construction of any Unit. All deeds or contracts made or entered into by the DEVELOPER as to the Units or the housing project or portion thereof, shall contain covenants concerning nondiscrimination consistent with this section. The DEVELOPER shall include a statement in all advertisements, notices and signs for availability of Units to the effect that the DEVELOPER is an Equal Housing Opportunity Provider.

A. Nothing in this section is intended to require the DEVELOPER to change the character, design, use or operation of the Project; or to require the DEVELOPER to obtain licenses or permits other than those required for the Project.

9.8 Rent Schedule and Utility Allowances. DEVELOPER covenants and agrees not to charge rent to tenants for the Affordable Housing Units in an amount which exceeds those rents prescribed to Affordable Housing Units as they associate with particular income and rent limitations levels as established by HUD, consistent with the HOME Program Regulations applicable to the Affordable Housing Units in the Fresno, California area, as established by HUD, and further covenants not to impose a monthly allowance for utility services to tenants of such Units excess of an amount approved by HUD in accordance with 24 CFR 92.252. DEVELOPER agrees to furnish to the CITY a certificate setting forth the maximum monthly rentals for the Affordable Units and the monthly allowances for utilities and services to be charged during any annual period until the expiration of the

Affordability Period. The DEVELOPER shall re-examine the income of each tenant Household living in the Affordable Units on an annual basis.

ARTICLE 10. INDEMNIFICATION

Without waiver of limitation, the parties agree as follows regarding the DEVELOPER's Insurance and Indemnity Obligations:

10.1 Indemnification. The DEVELOPER shall indemnify, hold harmless and defend the CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the CITY, the DEVELOPER or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. The DEVELOPER's obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or authorized volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of CITY or any of its officers, officials, employees, agents or authorized volunteers.

A. If the DEVELOPER should contract all or any portion of the work to be performed under this Agreement, the DEVELOPER shall require each contractor and subcontractor to indemnify, hold harmless and defend the CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

B. This section shall survive termination or expiration of this Agreement.

10.2 Insurance. If the Loan is not re-paid in full prior to the Commencement of Construction, then the DEVELOPER warrants, covenants, and agrees that it shall, throughout the life of this Agreement, pay for and maintain in full force and effect all policy(ies) of insurance required in Exhibit "G" hereunder and incorporated herein, with (an) insurance company(ies) either (1) admitted by the California Insurance commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (2) authorized by the CITY's Risk Manager.

10.3 Bonds. If the Loan is not re-paid in full prior to the Commencement of Construction, then the DEVELOPER warrants, covenants, and agrees that it shall pay for and maintain good and sufficient surety bonds required in Exhibit "H" hereunder and incorporated herein, from a corporate surety, admitted by the California Insurance commissioner to do business in the State of California and Treasury-listed, in a form satisfactory to the CITY and naming the CITY as Co-Obligee.

ARTICLE 11. DEFAULT AND REMEDIES

11.1 Events of Default. Each of the following shall constitute an "Event of Default" for purposes of this Agreement after the cure period in Section 10.02 has expired without a cure:

A. The DEVELOPER's use of HOME Funds for costs other than Eligible Costs or for uses not permitted by the terms of this Agreement;

B. The DEVELOPER's failure to obtain and maintain the insurance coverage required under this Agreement;

C. Except as otherwise provided in this Agreement, the failure of the DEVELOPER to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) the DEVELOPER's substantial deviation in the Project work specified in the Project Description as identified in this Agreement, without the CITY's prior written consent; (2) the DEVELOPER's use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) the DEVELOPER's failure to commence or complete the Project, as specified in this Agreement, unless delay is permitted under Section 8.17 of this Agreement; (4) the cessation of the Project for a period of more than fifteen (15) consecutive days (other than as provided at Section 8.17 of this Agreement) prior to submitting to the CITY, pursuant to Section 8.18 certification that the Project is complete; (5) any material adverse change in the condition of the DEVELOPER or the Project that gives the CITY reasonable cause to believe that the Project cannot be completed by the scheduled completion date according to the terms of this Agreement; (6) the DEVELOPER's failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY's request; (7) the DEVELOPER's failure to substantially comply with any federal, state or local laws or applicable CITY restrictions governing the Project, including but not limited to provisions of this Agreement pertaining to equal employment opportunity, nondiscrimination and lead-based paint;

D. Any representation, warranty, or certificate given or furnished by or on behalf of the DEVELOPER shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that the DEVELOPER concealed or failed to disclose a material fact to the CITY, provided, however, that if any representation, warranty, or certification that proves to be materially false is due merely to the DEVELOPER's inadvertence, the DEVELOPER shall have a thirty (30) day opportunity after written notice thereof to cause such representation, warranty, or certification to be true and complete in every respect;

E. The DEVELOPER shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within ninety (90) days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within ninety (90) days;

F. The DEVELOPER's failure, inability or admission in writing of its inability to pay its debts as they become due or the DEVELOPER assignment for the benefit of creditors;

G. A receiver, trustee, or liquidator shall be appointed for the DEVELOPER or any substantial part of the DEVELOPER's assets or properties, and not be removed within ten (10) days;

H. The DEVELOPER's breach of any other material condition, covenant, warranty, promise or representation contained in this Agreement not otherwise identified within this Section;

I. Any substantial or continuous breach by the DEVELOPER of any material obligation owed by the DEVELOPER imposed by any other agreement with respect to the financing, of the Project, whether or not the CITY is a party to such agreement after expiration of all notice and cure periods contained within such document.

11.2 Notice of Default and Opportunity to Cure. The CITY shall give written notice to the DEVELOPER of any Event of Default by specifying (1) the nature of the event or deficiency giving rise to the default, (2) the action required to cure the deficiency, if any action to cure is possible, and (3) a date, which shall not be less than the lesser of any time period provided in this Agreement, any time period provided for in the notice, or thirty (30) calendar days from the date of the notice, by which such deficiency must be cured, provided that if the specified deficiency or default cannot reasonably be cured within the specified time, with the CITY's written consent, the DEVELOPER shall have an additional reasonable period to cure so long as it commences cure within the specified time and thereafter diligently pursues the cure in good faith. The CITY acknowledges and agrees that the DEVELOPER shall have the right to cure any default hereunder and that notice and cure rights hereunder shall extend to any and all partners of the DEVELOPER that are previously identified in writing delivered to the CITY in the manner provided in this Agreement.

11.3 Remedies Upon an Event of Default. Upon the happening of an Event of Default by the DEVELOPER and a failure to cure said Event of Default within the time specified, the CITY's obligation to transfer the Property shall terminate. The CITY may also at its option and without notice institute any action, suit, or other proceeding in law, in equity or otherwise, which it shall deem necessary or proper for the protection of its interests and may without limitation proceed with any or all of the following remedies in any order or combination that the CITY may choose in its sole discretion:

A. Terminate this Agreement immediately upon written notice to the DEVELOPER;

B. Bring an action in equitable relief (1) seeking specific performance by the DEVELOPER of the terms and conditions of this Agreement, and/or (2) enjoining, abating or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief; and

C. Pursue any other remedy allowed by law or in equity or under this Agreement.

ARTICLE 12. GENERAL PROVISIONS

Without waiver of limitation, the parties agree that the following general provisions shall apply in the performance hereof:

12.1 Amendments. No modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by the parties hereto.

12.2 Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party will be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

12.3 Binding on All Successors and Assigns. Unless otherwise expressly provided in this Agreement, all the terms and provisions of this Agreement shall be binding on and inure to the benefit of the parties hereto, and their respective nominees, heirs, successors, assigns, and legal representatives.

12.4 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. The execution of this Agreement by any party hereto will not become effective until counterparts hereof have been executed by all parties hereto.

12.5 Disclaimer of Relationship. Nothing contained in this Agreement, nor any act of the CITY or of the DEVELOPER, or of any other person, shall in and by itself be deemed or construed by any person to create any relationship of third party beneficiary, or of principal and agent, of limited or general partnership, or of joint venture.

12.6 Discretionary Governmental Actions. Certain planning, land use, zoning and other permits and public actions required in connection with the Project including, without limitation, the approval of this Agreement, the environmental review and analysis under NEPA, CEQA or any other statute, and other transactions contemplated by this Agreement are discretionary government actions. Nothing in this Agreement obligates the CITY or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. The CITY cannot take action with respect to such matters before completing the environmental assessment of the Project under NEPA, CEQA and any other applicable statutes. The CITY cannot and does not commit in advance that it will give final approval to any matter. The CITY shall not be liable, in contract, law or equity, to the DEVELOPER or any of its executors, administrators, transferees, successors-in-interest or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

12.7 Effective Date. This Agreement shall be effective upon the date first above written, upon the parties' complete execution following City Council approval.

12.8 Entire Agreement. This Agreement represents the entire and integrated agreement of the parties with respect to the subject matter hereof. This Agreement supersedes all prior negotiations, representations or agreements, either written or oral.

12.9 Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

12.10 Expenses Incurred Upon Event of Default. The DEVELOPER shall reimburse the CITY for all reasonable expenses and costs of collection and enforcement, including reasonable attorney's fees, incurred by the CITY as a result of one or more Events of Default by the DEVELOPER under this Agreement.

12.11 Governing Law and Venue. Except to the extent preempted by applicable federal law, the laws of the State of California shall govern all aspects of this Agreement, including execution, interpretation, performance, and enforcement. Venue for filing any action to enforce or interpret this Agreement will be Fresno, California.

12.12 Headings. The headings of the articles, sections, and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

12.13 Interpretation. This Agreement in its final form is the result of the combined efforts of the parties. Any ambiguity will not be construed in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

12.14 No Assignment or Succession. The DEVELOPER shall not sell, lease, transfer, assign or otherwise dispose of all or any material part of any interest it might hold in the Project without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, upon prior written notice to the approved by the CITY, the DEVELOPER shall be permitted to assign its rights and obligations under this Agreement with respect to the Project.

12.15 No Third-Party Beneficiary. No contractor, subcontractor, mechanic, materialman, laborer, vendor, or other person hired or retained by the DEVELOPER shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, but each such person shall be deemed to have agreed (a) that they shall look to the DEVELOPER as their sole source of recovery if not paid, and (b) except as otherwise agreed to by the CITY and any such person in writing, they may not enter any claim or bring any such action against the CITY under any circumstances. Except as provided by law, or as otherwise agreed to in writing between the CITY and such person, each such person shall be deemed to have waived in writing all right to seek redress from the CITY under any circumstances whatsoever.

12.16 No Waiver. Neither failure nor delay on the part of the CITY in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by the DEVELOPER therefrom shall be effective unless the same shall be in writing, signed

on behalf of the CITY by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the DEVELOPER in any case shall entitle the DEVELOPER to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the CITY's right to take other or further action in any circumstances without notice or demand.

12.17 Nonreliance. The DEVELOPER hereby acknowledges having obtained such independent legal or other advice as it has deemed necessary and declares that in no manner has it relied on the CITY, its agents, employees or attorneys in entering into this Agreement.

12.18 Notice. Any notice to be given to either party under the terms of this Agreement shall be given by certified United States mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties.

If to the CITY: City of Fresno
Downtown and Community Revitalization Department
Housing and Community Development Division
2600 Fresno Street, Room 3071
Fresno, CA 93721-3605
(559) 621-8506

If to DEVELOPER: FFDA Properties, LLC
Attn: Amber Martinez
1396 West Herndon Avenue, Suite 101
Fresno, CA 93711
(559) 436-0900

12.19 Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement will control.

12.20 Recording of Documents. The DEVELOPER agrees to cooperate with the CITY and execute any documents required, promptly upon the CITY'S request, the Deed(s) of Trust, and any other documents/instruments that the CITY requires to be recorded, in the Official Records of Fresno County, California, consistent with this Agreement.

12.21 Remedies Cumulative. All powers and remedies given by this Agreement shall be cumulative and in addition to those otherwise provided by law.

12.22 Severability. The invalidity, illegality, or un-enforceability of any one or more of the provisions of this Agreement shall not affect the validity, legality, or enforceability of the remaining provisions hereof or thereof.

///
///
///

IN WITNESS WHEREOF, the parties have executed this Agreement in Fresno, California, the day and year first above written.

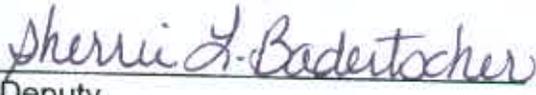
CITY OF FRESNO, a Municipal Corporation

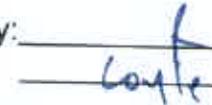
By: 
Bruce Rudd, Assistant City Manager
(Attach notary certificate of acknowledgment)

Date: 11/3/10

ATTEST:
REBECCA E. KLISCH
City Clerk

APPROVED AS TO FORM:
JAMES SANCHEZ
City Attorney

By: 
Deputy
Attorney

By: , Deputy City

Date: NOV 3, 2010

Date: 11-02-10

DEVELOPER

FFDA Properties, LLC
a California limited liability company

By: 
Darius Assemi, Vice-President
(Attach notary certificate of acknowledgment)

Date: November 2, 2010

Attachments:

- EXHIBIT A: PROPERTY DESCRIPTION
- EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE
- EXHIBIT C: DECLARATION OF RESTRICTIONS
- EXHIBIT D: BUDGET
- EXHIBIT E: CERTIFICATE OF COMPLETION
- EXHIBIT F: PROMISSORY NOTE
- EXHIBIT G: INSURANCE PROVISIONS
- EXHIBIT H: BOND PROVISIONS

ACKNOWLEDGMENT

State of California

County of Fresno

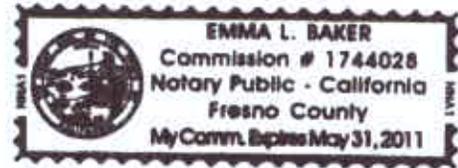
On 11-3-10 before me, Emma L. Baker Notary Public
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Emma L. Baker (Seal)



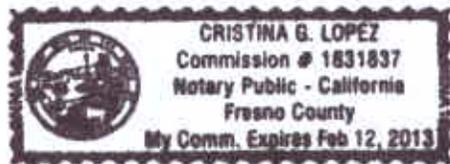
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On November 2, 2010 before me, Cristina G. Lopez, Notary Public

personally appeared Darius Assemi



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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Cristina G. Lopez
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

EXHIBIT A: PROPERTY DESCRIPTION

PARCEL 1: (APN: 459-141-35T)

That real property being a portion of Lots 84 and 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records, more particularly described as follows;

BEGINNING at the southwest corner of said Lot 85; thence N 0°13'58" E, along the west line of said Lots 85 and 84, a distance of 36.88 feet to a point that lies S 0°13'58" W, a distance of 275.62 feet from the northwest corner of Lot 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records; thence N 89°56'46" E, a distance of 150.28 feet to a point on the east line of said Lot 84, said point lies S 0°18'12" W, a distance of 274.57 feet from the northeast corner of said Lot 30; thence S 0°18'12" W, along the east line of said Lots 84 and 85, a distance of 36.76 feet to the southeast corner of said Lot 85; thence S 89°54'05" W, along the south line of said Lot 85, a distance of 150.24 feet to the POINT OF BEGINNING.

SUBJECT TO an easement for public street purposes over the south 6.25 feet thereof as granted to the City of Fresno by that Deed of Easement recorded September 24, 1981 in Book 7791 at Page 527, Official Records of Fresno County.

Contains a gross area of 5,532 square feet, more or less, and a net area of 4,593 square feet, more or less.

PARCEL 2: (APN: 459-141-36T)

That real property being a portion of Lots 83 and 84 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records, more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of said North Park; thence N 0°13'58" E, along the west line of Lots 85 and 84 of said North Park, a distance of 36.88 feet to a point that lies S 0°13'58" W, a distance of 275.62 feet from the northwest corner of Lot 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, said point being the TRUE POINT OF BEGINNING of this description; thence continuing N 0°13'58" E, along the west line of said Lots 84 and 83, a distance of 30.62 feet; thence N 89°59'27" E, a distance of 150.32 feet to a point on the east line of said Lot 83, said point lies S 0°18'12" W, a distance of 244.06 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 67.27 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 83 and 84, a distance of 30.51 feet; thence S 89°56'46" W, a distance of 150.28 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,594 square feet, more or less.

PARCEL 3: (APN: 459-141-37T)

That real property being a portion of Lots 82 and 83 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records, more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of said North Park; thence N 0°13'58" E, along the west line of Lots 85, 84, and 83 of said North Park, a distance of 67.50 feet to a point that lies S 0°13'58" W, a distance of 245.00 feet from the northwest corner of Lot 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, said point being the TRUE POINT OF BEGINNING of this description; thence continuing N 0°13'58" E, along the west line of said Lots 83 and 82, a distance of 30.63 feet; thence S 89°57'51" E, a distance of 150.36 feet to a point on the east line of said Lot 82, said point lies S 0°18'12" W, a distance of 213.56 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 97.77 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 82 and 83, a distance of 30.50 feet; thence S 89°59'27" W, a distance of 150.32 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,595 square feet, more or less.

PARCEL 4: (APN: 459-141-38T)

That real property being a portion of Lots 81 and 82 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records, more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of said North Park; thence N 0°13'58" E, along the west line of Lots 85, 84, 83, and 82 of said North Park, a distance of 98.13 feet to a point that lies S 0°13'58" W, a distance of 214.37 feet from the northwest corner of Lot 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, said point being the TRUE POINT OF BEGINNING of this description; thence continuing N 0°13'58" E, along the west line of said Lots 82 and 81, a distance of 30.62 feet; thence S 89°55'10" E, a distance of 150.40 feet to a point on the east line of said Lot 81, said point lies S 0°18'12" W, a distance of 183.05 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 128.28 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 81 and 82, a distance of 30.51 feet; thence N 89°57'51" W, a distance of 150.36 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,596 square feet, more or less.

PARCEL 5: (APN: 459-141-39T)

That real property being a portion of Lot 81 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records, together with a portion of Lot 24 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, said real property being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of said North Park; thence N 0°13'58" E, along the west line of Lots 85, 84, 83, 82 and 81 of said North Park, a distance of 128.75 feet to a point that lies S 0°13'58" W, a distance of 183.75 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition, said point being the TRUE POINT OF BEGINNING of this description; thence continuing N 0°13'58" E, along the west line of said Lots 81 and 24, a distance of 30.63 feet; thence S 89°52'29" E, a distance of 150.43 feet to a point on the east line of said Lot 24, said point lies S 0°18'12" W, a distance of 152.54 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 158.79 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 24 and 81, a distance of 30.51 feet; thence N 89°55'10" W, a distance of 150.40 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,598 square feet, more or less.

PARCEL 6: (APN: 459-141-40T)

That real property being a portion of Lots 24, 25 and 26 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records; thence N 0°13'58" E, along the west line of Lots 85 through 81, inclusive, of said North Park and along the west line of said Lot 24, a distance of 159.38 feet to a point that lies S 0°13'58" W, a distance of 153.12 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition, said point being the TRUE POINT OF BEGINNING of this description; thence continuing N 0°13'58" E, along the west line of said Lots 24 and 25, a distance of 25.75 feet to an angle point in the westerly boundary of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County; thence leaving said west line of said Lot 25, N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 4.89 feet; thence S 89°49'49" E, a distance of 150.00 feet to a point on the east line of said Lot 26, said point lies S 0°18'12" W, a distance of 122.03 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 189.30 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 26, 25 and 24, a distance of 30.51 feet; thence N 89°52'29" W, a distance of 150.43 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,598 square feet, more or less.

PARCEL 7: (APN: 459-141-41T)

That real property being a portion of Lots 26 and 27 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records; thence N 0°13'58" E, along the west line of Lots 85 through 81, inclusive, of said North Park and along the west line of Lots 24, 25 and 26 of said Block 2 of Muller and Northcraft Addition, a distance of 190.00 feet to a point that lies S 0°13'58" W, a distance of 122.50 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition; thence S 89°49'49" E, a distance of 0.47 feet to a point on the westerly boundary of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County, said point being the TRUE POINT OF BEGINNING of this description; thence N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 30.77 feet; thence S 89°47'08" E, a distance of 147.06 feet to a point on the east line of said Lot 27, said point lies S 0°18'12" W, a distance of 91.53 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 219.80 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 27 and 26, a distance of 30.51 feet; thence N 89°49'49" W, a distance of 150.00 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,540 square feet, more or less.

PARCEL 8: (APN: 459-141-42T)

That real property being a portion of Lots 27 and 28 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records; thence N 0°13'58" E, along the west line of Lots 85 through 81, inclusive, of said North Park and along the west line of Lots 24, 25, 26 and 27 of said Block 2 of Muller and Northcraft Addition, a distance of 220.63 feet to a point that lies S 0°13'58" W, a distance of 91.87 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition; thence S 89°47'08" E, a distance of 3.44 feet to a point on the westerly boundary of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County, said point being the TRUE POINT OF BEGINNING of this description; thence N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 30.77 feet; thence S 89°44'27" E, a distance of 144.13 feet to a point on the east line of said Lot 28, said point lies S 0°18'12" W, a distance of 61.02 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 250.31 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 28 and 27, a distance

of 30.50 feet; thence N 89°47'08" W, a distance of 147.06 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,450 square feet, more or less.

PARCEL 9: (APN: 459-141-43T)

That real property being a portion of Lots 28 and 29 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records; thence N 0°13'58" E, along the west line of Lots 85 through 81, inclusive, of said North Park and along the west line of Lots 24 through 28, inclusive, of said Block 2 of Muller and Northcraft Addition, a distance of 251.25 feet to a point that lies S 0°13'58" W, a distance of 61.25 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition; thence S 89°44'27" E, a distance of 6.42 feet to a point on the westerly boundary of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County, said point being the TRUE POINT OF BEGINNING of this description; thence N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 30.76 feet; thence S 89°41'46" E, a distance of 141.20 feet to a point on the east line of said Lot 29, said point lies S 0°18'12" W, a distance of 30.51 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 280.82 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 29 and 28, a distance of 30.51 feet; thence N 89°44'27" W, a distance of 144.13 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,360 square feet, more or less.

PARCEL 10: (APN: 459-141-44T)

That real property being a portion of Lots 29 and 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records; thence N 0°13'58" E, along the west line of Lots 85 through 81, inclusive, of said North Park and along the west line of Lots 24 through 29, inclusive, of said Block 2 of Muller and Northcraft Addition, a distance of 281.88 feet to a point that lies S 0°13'58" W, a distance of 30.62 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition; thence S 89°41'46" E, a distance of 9.39 feet to a point on the westerly boundary of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County, said point being the TRUE POINT OF BEGINNING of this description; thence N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 30.76

feet to the north line of said Lot 30; thence S 89°39'06" E, along said north line, a distance of 138.26 feet to the northeast corner of said Lot 30; thence S 0°18'12" W, along the east line of said Lots 30 and 29, a distance of 30.51 feet to a point that lies N 0°18'12" E, a distance of 280.82 feet from the southeast corner of said Lot 85; thence N 89°41'46" W, a distance of 141.20 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,271 square feet, more or less.

MERGED

[DRAFT PENDING SUPPLEMENTAL ESCROW INSTRUCTION]

340 North Van Ness, Fresno, CA 93701

APN: 459-141-33

Lots 81 through 85 inclusive of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records.

TOGETHER WITH that portion of Lots 24 through 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, more particularly described as follows;

BEGINNING at the southwest corner of said Lot 24 said corner also being the southwest corner of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County; thence N 0°13'58" E, along the west line of said Lots 24 and 25 and along the westerly boundary of said quitclaimed parcel, a distance of 47.63 feet to an angle point in the westerly boundary of said quitclaimed parcel; thence N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 127.95 feet to a point on the north line of said Lot 30; said point lying 12.36 feet easterly from the northwest corner of said Lot 30, said point also being the northeast corner of said quitclaimed parcel; thence easterly, along said north line of said Lot 30 to the northeast corner of said Lot 30; thence southerly, along the east line of said Lots 30 through 24 to the southeast corner of said Lot 24; thence westerly, along the south line of said Lot 24 to the POINT OF BEGINNING.

SUBJECT to an easement for public street purposes over the south 6.25 feet of said Lot 85 of North Park as granted to the City of Fresno by that Deed of Easement recorded September 24, 1981 in Book 7791 at Page 527, Official Records of Fresno County.

EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE

I. PROJECT DESCRIPTION:

The Project will include the construction of twenty (20) mixed-income single-family residential Housing Units of which three (3) will be Affordable Units occupied by Low-income families, seventeen (17) will be market rate rental units, upon Property to be sold by the CITY to the DEVELOPER in fee at an agreed upon fair market price of Two Hundred Forty-Five Thousand Dollars and 00/100 (\$245,000.00). The DEVELOPER shall work with the CITY's Historic Preservation Project Manager and with the Fulton/Lowell Committee in the development of the Project. The DEVELOPER shall pay for on-site and off-site improvements, construction, marketing, and rental of the units. Consistent with the Budget attached to the Agreement as Exhibit "D", the DEVELOPER will fund all pre-construction and construction costs with non-HOME Program Funds. The DEVELOPER will qualify all Affordable Housing households. Upon CITY approval and consistent with the Agreement to which this Exhibit "B" is an attachment, the three (3) Affordable Units shall be rented to the Low-Income Households.

A maximum HOME Program funding for the Project is Two Hundred Forty-Five Thousand Dollars and 00/100 (\$245,000.00), for HOME eligible costs including acquisition of the HOME Assisted Property to be made through the sales escrow to the DEVELOPER or as otherwise directed by the CITY. The three (3) Affordable Units will be three-bedroom two-bathroom Units and have Universal Design features consistent with Fresno Municipal Code Section 11-109.

II. PROJECT SCHEDULE:

- A. Commencement of Construction: Not later than 12/15/10
- B. Completion of Construction: Not later than 7/1/11
- C. Completion of Leasing: Not later than 3/1/12

EXHIBIT "C"

DECLARATION OF RESTRICTIONS

Recorded at the Request of and
When Recorded Return to:

City of Fresno

City Clerk's Office

2600 Fresno Street, Room 2133

Fresno, CA 93721-3603

City of Fresno Declarations of Restrictions

DECLARATION OF RESTRICTIONS

APN: 459-141-35T/36T/37T/38T/39T/40T/41T/42T/43T/44T

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this _____, by FFDA Properties, LLC, a California limited liability company, ("Declarant") in favor of the City of Fresno, acting by and through its Downtown and Community Revitalization Department, Housing and Community Development Division ("CITY").

WHEREAS, Declarant is the owner of the real estate in the county of Fresno, state of California, consisting of APN: 459-141-35T/459-141-36T/459-141-37T/459-141-38T/459-141-39T/459-141-40T/459-141-41T/459-141-42T/459-141-43T/459-141-44T, which is more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, Pursuant to a certain Disposition and Development Agreement and HOME Investment Partnerships Agreement dated _____, 2010 incorporated herein, ("HOME Agreement") and instruments referenced therein, Declarant agrees to utilize and CITY agrees to provide certain HOME Program Funds from the United States Department of Housing and Urban Development ("HUD"), to Declarant for three (3) Affordable Units upon the Property to be maintained as affordable to Low-Income households, subject to the terms and conditions set forth in the HOME Agreement; and

WHEREAS, the HOME Program regulations promulgated by HUD, including without limitation 24 CFR Section 92.252, and the HOME Agreement impose certain affordability requirements upon the three (3) affordable properties benefited thereby, which affordability restrictions shall be enforceable for the Affordability Period; and

WHEREAS, these restrictions are intended to bind all purchasers and their successors.

NOW THEREFORE, Declarant declares that the Project upon the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the plan for the construction, occupancy of the three (3) Affordable Units upon the Property. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Project upon the Property or any part thereof, will inure to the benefit of the future owners of the Project or any part thereof, the United States and the City, and will be enforceable by any of them. Any purchaser under a contract of sale covering any right, title or interest in any part of the Project upon the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration for the period constituting the Affordability Period, which

shall be the earlier of: (a) a period commencing on the Project Completion Date set forth in the Certificate of Completion and ending on the fifty-fifth (55th) anniversary thereof; and (b) a period commencing on the date of the Project's completion set forth in the Certificate of Completion and ending on the date that Declarant is able to lawfully sell or transfer individual Units within the Project to unrelated third-parties. Notwithstanding the foregoing, if the Loan is not pre-paid in full prior to Commencement of Construction then the Affordability Period shall not be less than the affordability requirements of 24 CFR 92.252.

1. Declarations. Declarant hereby declares that the Property is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Project and the HOME Agreement, and are established and agreed upon for the purpose of enhancing and protecting the value of the Project and the Property and in consideration for CITY entering into the HOME Agreement with Declarant. All terms not otherwise defined herein shall have the meaning ascribed to such term in the HOME Agreement.

2. Restrictions. The following covenants and restrictions on the use and enjoyment of the Project upon the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of CITY, and shall run with the Property and be binding on any future owner's of the Property and inure to the benefit of and be enforceable by CITY. These covenants and restrictions are as follows:

a. Declarant for itself and its successor(s) on title covenants and agrees that it shall cause the three (3) Affordable Units on the Property to be used as Affordable Housing for the duration of the Affordability Period. Declarant further agrees to file a recordable document setting forth the Project Completion Date and the Affordability Period when determined by the CITY. Unless otherwise provided in the HOME Agreement, the term Affordable Housing shall include, without limitation, compliance with the following requirements:

(i) Nondiscrimination. There shall be no discrimination against nor segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or handicap in the sale, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall Declarant or any person claiming under the Declarant, establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Property.

(ii) Principal Residence. The three (3) Affordable Units shall be rented to Low-Income Households, who shall occupy the Affordable Units as their principal residence. The foregoing requirement the three (3) Property tenants occupy the Units as their principal residence does not apply to persons, other than natural persons, (i) who acquire the Property or portion thereof by foreclosure or deed in lieu of foreclosure; or (ii) HUD qualified entities that acquire the Property or portion thereof, with the

consent of the CITY.

(iii) Income Requirements. A total of three (3) Units constituting Affordable rental housing upon the Property may be leased only to Households whose annual household income at the time of initial occupancy is not greater than eighty percent (80%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent with HOME Program regulations.

3. Enforcement of Restrictions. Without waiver or limitation, the CITY shall be entitled to injunctive or other equitable relief against any violation or attempted violation of any Covenant and Restriction, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof.

4. Acceptance and Ratification. All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the Covenant and Restrictions. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Covenant and Restrictions, as may be amended or supplemented from time to time, are accepted and ratified by such future owners, tenant or occupant, and such Covenant and Restriction shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Covenant and Restriction was recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

Notwithstanding the foregoing, upon foreclosure by a lender or other transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD, the Affordability Period shall be terminated if the foreclosure or other transfer in lieu of foreclosure or assignment recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid the termination of low-income affordability. However, the requirements with respect to Affordable Housing shall be revived according to their original terms, if during the original Affordability Period, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner or those with whom the former owner has or had formerly, family or business ties, obtains an ownership interest in the Project or the Property, and the Affordability Period shall be revived according to its original terms. The City shall be possessed of a first right of refusal to purchase the Property before foreclosure to preserve affordability.

5. Benefit. This Declaration shall run with and bind the three (3) Affordable Units on the Property for a term commencing on the date this Declaration is recorded in the Office of the Recorder of the county Fresno, state of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of CITY or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

6. Costs and Attorney's Fees. In any proceeding arising because of failure of Declarant or any future owner of the Property to comply with the Covenant and Restrictions required by this Declaration, as may be amended from time to time, CITY shall be entitled to recover its costs and reasonable attorney's fees incurred in connection with such default or failure.

7. Waiver. Neither Declarant nor any future owner of the Property may exempt itself from liability for failure to comply with the Covenant and Restrictions required in this Declaration.

8. Severability. The invalidity of the Covenant and Restrictions or any other covenant, restriction, condition, limitation, or other provision of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration and each shall be enforceable to the greatest extent permitted by law.

9. Pronouns. Any reference to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

10. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

11. Amendment. No amendment or modification of this Declaration shall be permitted without the prior written consent of CITY.

12. Recordation. Declarant acknowledges that this Declaration will be filed of record in the Office of the Recorder of county of Fresno, State of California.

13. Capitalized Terms. All capitalized terms used in this Declaration, unless otherwise defined herein, shall have the meanings assigned to such terms in that certain HOME Agreement by and between Declarant and CITY, of even date.

14. Headings. The headings of the articles, sections, and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

///

///

//

IN WITNESS WHEREOF, Declarant has executed this Declaration of Restrictions on the date first written above.

DECLARANT:

FFDA Property, LLC
A California Limited Liability Company

By: _____
Darius Assemi, Vice-President
(Attach notary certificate of acknowledgment)

Date: _____

DECLARATION OF RESTRICTIONS

EXHIBIT A

PARCEL 1: (APN: 459-141-35T)

That real property being a portion of Lots 84 and 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records, more particularly described as follows;

BEGINNING at the southwest corner of said Lot 85; thence N 0°13'58" E, along the west line of said Lots 85 and 84, a distance of 36.88 feet to a point that lies S 0°13'58" W, a distance of 275.62 feet from the northwest corner of Lot 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records; thence N 89°56'46" E, a distance of 150.28 feet to a point on the east line of said Lot 84, said point lies S 0°18'12" W, a distance of 274.57 feet from the northeast corner of said Lot 30; thence S 0°18'12" W, along the east line of said Lots 84 and 85, a distance of 36.76 feet to the southeast corner of said Lot 85; thence S 89°54'05" W, along the south line of said Lot 85, a distance of 150.24 feet to the POINT OF BEGINNING.

SUBJECT TO an easement for public street purposes over the south 6.25 feet thereof as granted to the City of Fresno by that Deed of Easement recorded September 24, 1981 in Book 7791 at Page 527, Official Records of Fresno County.

Contains a gross area of 5,532 square feet, more or less, and a net area of 4,593 square feet, more or less.

PARCEL 2: (APN: 459-141-36T)

That real property being a portion of Lots 83 and 84 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records, more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of said North Park; thence N 0°13'58" E, along the west line of Lots 85 and 84 of said North Park, a distance of 36.88 feet to a point that lies S 0°13'58" W, a distance of 275.62 feet from the northwest corner of Lot 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, said point being the TRUE POINT OF BEGINNING of this description; thence continuing N 0°13'58" E, along the west line of said Lots 84 and 83, a distance of 30.62 feet; thence N 89°59'27" E, a distance of 150.32 feet to a point on the east line of said Lot 83, said point lies S 0°18'12" W, a distance of 244.06 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 67.27 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 83 and 84, a distance of 30.51 feet; thence S 89°56'46" W, a distance of 150.28 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,594 square feet, more or less.

PARCEL 3: (APN: 459-141-37T)

That real property being a portion of Lots 82 and 83 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records, more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of said North Park; thence N 0°13'58" E, along the west line of Lots 85, 84, and 83 of said North Park, a distance of 67.50 feet to a point that lies S 0°13'58" W, a distance of 245.00 feet from the northwest corner of Lot 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, said point being the TRUE POINT OF BEGINNING of this description; thence continuing N 0°13'58" E, along the west line of said Lots 83 and 82, a distance of 30.63 feet; thence S 89°57'51" E, a distance of 150.36 feet to a point on the east line of said Lot 82, said point lies S 0°18'12" W, a distance of 213.56 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 97.77 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 82 and 83, a distance of 30.50 feet; thence S 89°59'27" W, a distance of 150.32 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,595 square feet, more or less.

PARCEL 4: (APN: 459-141-38T)

That real property being a portion of Lots 81 and 82 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records, more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of said North Park; thence N 0°13'58" E, along the west line of Lots 85, 84, 83, and 82 of said North Park, a distance of 98.13 feet to a point that lies S 0°13'58" W, a distance of 214.37 feet from the northwest corner of Lot 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, said point being the TRUE POINT OF BEGINNING of this description; thence continuing N 0°13'58" E, along the west line of said Lots 82 and 81, a distance of 30.62 feet; thence S 89°55'10" E, a distance of 150.40 feet to a point on the east line of said Lot 81, said point lies S 0°18'12" W, a distance of 183.05 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 128.28 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 81 and 82, a distance of 30.51 feet; thence N 89°57'51" W, a distance of 150.36 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,596 square feet, more or less.

PARCEL 5: (APN: 459-141-39T)

That real property being a portion of Lot 81 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records, together with a portion of Lot 24 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, said real property being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of said North Park; thence N 0°13'58" E, along the west line of Lots 85, 84, 83, 82 and 81 of said North Park, a distance of 128.75 feet to a point that lies S 0°13'58" W, a distance of 183.75 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition, said point being the TRUE POINT OF BEGINNING of this description; thence continuing N 0°13'58" E, along the west line of said Lots 81 and 24, a distance of 30.63 feet; thence S 89°52'29" E, a distance of 150.43 feet to a point on the east line of said Lot 24, said point lies S 0°18'12" W, a distance of 152.54 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 158.79 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 24 and 81, a distance of 30.51 feet; thence N 89°55'10" W, a distance of 150.40 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,598 square feet, more or less.

PARCEL 6: (APN: 459-141-40T)

That real property being a portion of Lots 24, 25 and 26 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records; thence N 0°13'58" E, along the west line of Lots 85 through 81, inclusive, of said North Park and along the west line of said Lot 24, a distance of 159.38 feet to a point that lies S 0°13'58" W, a distance of 153.12 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition, said point being the TRUE POINT OF BEGINNING of this description; thence continuing N 0°13'58" E, along the west line of said Lots 24 and 25, a distance of 25.75 feet to an angle point in the westerly boundary of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County; thence leaving said west line of said Lot 25, N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 4.89 feet; thence S 89°49'49" E, a distance of 150.00 feet to a point on the east line of said Lot 26, said point lies S 0°18'12" W, a distance of 122.03 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 189.30 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 26, 25 and 24, a distance of 30.51 feet; thence N 89°52'29" W, a distance of 150.43 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,598 square feet, more or less.

PARCEL 7: (APN: 459-141-41T)

That real property being a portion of Lots 26 and 27 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records; thence N 0°13'58" E, along the west line of Lots 85 through 81, inclusive, of said North Park and along the west line of Lots 24, 25 and 26 of said Block 2 of Muller and Northcraft Addition, a distance of 190.00 feet to a point that lies S 0°13'58" W, a distance of 122.50 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition; thence S 89°49'49" E, a distance of 0.47 feet to a point on the westerly boundary of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County, said point being the TRUE POINT OF BEGINNING of this description; thence N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 30.77 feet; thence S 89°47'08" E, a distance of 147.06 feet to a point on the east line of said Lot 27, said point lies S 0°18'12" W, a distance of 91.53 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 219.80 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 27 and 26, a distance of 30.51 feet; thence N 89°49'49" W, a distance of 150.00 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,540 square feet, more or less.

PARCEL 8: (APN: 459-141-42T)

That real property being a portion of Lots 27 and 28 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records; thence N 0°13'58" E, along the west line of Lots 85 through 81, inclusive, of said North Park and along the west line of Lots 24, 25, 26 and 27 of said Block 2 of Muller and Northcraft Addition, a distance of 220.63 feet to a point that lies S 0°13'58" W, a distance of 91.87 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition; thence S 89°47'08" E, a distance of 3.44 feet to a point on the westerly boundary of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County, said point being the TRUE POINT OF BEGINNING of this description; thence N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 30.77 feet; thence S 89°44'27" E, a distance of 144.13 feet to a point on the east line of said Lot 28, said point lies S 0°18'12" W, a distance of 61.02 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 250.31 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 28 and 27, a distance

of 30.50 feet; thence N 89°47'08" W, a distance of 147.06 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,450 square feet, more or less.

PARCEL 9: (APN: 459-141-43T)

That real property being a portion of Lots 28 and 29 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records; thence N 0°13'58" E, along the west line of Lots 85 through 81, inclusive, of said North Park and along the west line of Lots 24 through 28, inclusive, of said Block 2 of Muller and Northcraft Addition, a distance of 251.25 feet to a point that lies S 0°13'58" W, a distance of 61.25 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition; thence S 89°44'27" E, a distance of 6.42 feet to a point on the westerly boundary of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County, said point being the TRUE POINT OF BEGINNING of this description; thence N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 30.76 feet; thence S 89°41'46" E, a distance of 141.20 feet to a point on the east line of said Lot 29, said point lies S 0°18'12" W, a distance of 30.51 feet from the northeast corner of said Lot 30 and N 0°18'12" E, a distance of 280.82 feet from the southeast corner of said Lot 85; thence S 0°18'12" W, along the east line of said Lots 29 and 28, a distance of 30.51 feet; thence N 89°44'27" W, a distance of 144.13 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,360 square feet, more or less.

PARCEL 10: (APN: 459-141-44T)

That real property being a portion of Lots 29 and 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, being more particularly described as follows;

COMMENCING at the southwest corner of Lot 85 of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records; thence N 0°13'58" E, along the west line of Lots 85 through 81, inclusive, of said North Park and along the west line of Lots 24 through 29, inclusive, of said Block 2 of Muller and Northcraft Addition, a distance of 281.88 feet to a point that lies S 0°13'58" W, a distance of 30.62 feet from the northwest corner of Lot 30 in Block 2 of said Muller and Northcraft Addition; thence S 89°41'46" E, a distance of 9.39 feet to a point on the westerly boundary of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County, said point being the TRUE POINT OF BEGINNING of this description; thence N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 30.76

feet to the north line of said Lot 30; thence S 89°39'06" E, along said north line, a distance of 138.26 feet to the northeast corner of said Lot 30; thence S 0°18'12" W, along the east line of said Lots 30 and 29, a distance of 30.51 feet to a point that lies N 0°18'12" E, a distance of 280.82 feet from the southeast corner of said Lot 85; thence N 89°41'46" W, a distance of 141.20 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4,271 square feet, more or less.

MERGED

[DRAFT PENDING SUPPLEMENTAL ESCROW INSTRUCTION]

340 North Van Ness, Fresno, CA 93701

APN: 459-141-33

Lots 81 through 85 inclusive of North Park, according to the map thereof recorded in Book 2 of Record of Surveys at Page 14, Fresno County Records.

TOGETHER WITH that portion of Lots 24 through 30 in Block 2 of Muller and Northcraft Addition, according to the map thereof recorded in Book 1 of Plats at Page 63, Fresno County Records, more particularly described as follows;

BEGINNING at the southwest corner of said Lot 24 said corner also being the southwest corner of that parcel quitclaimed by the City of Fresno by a Quitclaim Deed recorded February 6, 1998 as Document No. 98017707, Official Records of Fresno County; thence N 0°13'58" E, along the west line of said Lots 24 and 25 and along the westerly boundary of said quitclaimed parcel, a distance of 47.63 feet to an angle point in the westerly boundary of said quitclaimed parcel; thence N 5°46'29" E, along said westerly boundary of said quitclaimed parcel, a distance of 127.95 feet to a point on the north line of said Lot 30; said point lying 12.36 feet easterly from the northwest corner of said Lot 30, said point also being the northeast corner of said quitclaimed parcel; thence easterly, along said north line of said Lot 30 to the northeast corner of said Lot 30; thence southerly, along the east line of said Lots 30 through 24 to the southeast corner of said Lot 24; thence westerly, along the south line of said Lot 24 to the POINT OF BEGINNING.

SUBJECT to an easement for public street purposes over the south 6.25 feet of said Lot 85 of North Park as granted to the City of Fresno by that Deed of Easement recorded September 24, 1981 in Book 7791 at Page 527, Official Records of Fresno County.

EXHIBIT D: BUDGET

	Total	FFDA Financing	HOME Funds
LAND			
Property	\$245,000	\$-0-	\$245,000
SOFT COSTS			
Permit and Fees	\$562,000	\$562,000	\$-0-
Architecture and Engineering	\$110,000	\$110,000	\$-0-
Legal	\$10,000	\$10,000	\$-0-
Taxes/Insurance	\$20,000	\$20,000	\$-0-
Other	\$141,000	\$141,000	\$-0-
Total Soft Costs	\$843,000	\$843,000	\$245,000
HARD COSTS			
Site Prep/Grading	\$50,000	\$50,000	\$-0-
Off Site Improvements	\$88,800	\$88,800	\$-0-
On Site Improvements	\$273,700	\$273,700	\$-0-
Direct Construction	\$2,276,800	\$2,276,800	\$-0-
Contingencies	\$134,600	\$134,600	\$-0-
Contractor Overhead	\$301,000	\$301,000	\$-0-
Other	\$	\$	\$-0-
Total Hard Costs	\$3,124,900	\$3,124,900	\$-0-
DEVELOPER FEE	\$	\$	\$-0-
CONSTRUCTION FINANCING FEES	\$89,300	\$89,300	\$-0-
OTHER			
Subdivision/Title/Consulting Fees	\$	\$	\$-0-
Marketing and Sales	\$	\$	\$-0-
Total Other Costs	\$	\$	\$-0-
TOTAL EXPENSES	\$4,302,200	\$4,057,200	\$245,000

EXHIBIT "E"

CERTIFICATION OF COMPLETION

Recorded at the Request of and
When Recorded Return to:

City of Fresno

City Clerk's Office

2600 Fresno Street, Room 2133

Fresno, CA 93721-3603

City of Fresno Certification of Completion

CERTIFICATE OF COMPLETION

APN: 459-141-35T/36T/37T/38T/39T/40T/41T/42T/43T/44T

Recitals:

A. By a Disposition and Development and HOME Investment Partnerships Program Agreement dated _____, 2010, ("HOME Agreement") between the City of Fresno, a municipal corporation ("CITY"), and FFDA Properties, LLC, a California limited liability company ("DEVELOPER"), the DEVELOPER agreed to develop twenty (20) rental units of which three (3) units will be affordable ("Project"), upon the premises legally described in EXHIBIT "A" attached to the HOME Agreement as amended from time to time, made a part hereof by this reference, (the "Property") for the rental of three (3) Affordable Units to/occupancy by Low-Income Households, while meeting the affordable housing, income targeting and other requirements of 24 CFR 92 according to the terms and conditions of the HOME Agreement and the Loan Documents and other document/instruments referenced therein.

B. The HOME Agreement or a memorandum of it was recorded on _____, 2010 as Instrument No. _____ in the Official Records of Fresno County, California.

C. Under the terms of the HOME Agreement, after the DEVELOPER completes the construction of seventeen (17) market rate units and three (3) Affordable Units, the DEVELOPER may ask the CITY to record a Certificate of Completion.

D. The DEVELOPER has asked the CITY to furnish the DEVELOPER with a recordable Certificate of Completion.

E. The CITY's issuance of this Certificate of Completion is conclusive evidence that the DEVELOPER has completed construction of the Project, including the Affordable Units, as set forth in the HOME Agreement.

NOW THEREFORE:

1. CITY certifies that the DEVELOPER commenced the construction of the Project Unit on _____, 20__ and completed the construction work on the Project Unit on _____, 20__, and has done so in full compliance with the HOME Agreement.

2. This Certificate of Completion is not evidence of the DEVELOPER compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project.

3. This Certificate of Completion is not a notice of completion as referred to in California Civil Code Section 3093.

4. Nothing contained herein modifies any provision of the HOME Agreement.

IN WITNESS WHEREOF, CITY has executed this Certificate of Completion as of this _____ day of _____, 20__.

CITY OF FRESNO

By: _____
Craig Scharton, Director
Downtown and Community Revitalization Department

ATTEST:
CITY CLERK

APPROVED AS TO FORM:
JAMES C. SANCHEZ

By: _____
Deputy
Attorney

By: _____
_____, Deputy City

Date: _____

Date: _____

CONSENT OF OWNER/DEVELOPER

Owner/Developer Name: FFDA Properties, LLC.
By signing below, the owner(s) of the property consent(s) to recording this Certificate of Completion against the Property described herein.

(Attach notary certificate of acknowledgment)

(Attach notary certificate of acknowledgment)

EXHIBIT "F"
PROMISSORY NOTE

PROMISSORY NOTE

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

\$245,000.00

Fresno, California, _____, 2009

MERGED APNs: 459-141-35T/36T/37T/38T/39T/40T/41T/42T/43T/44T

Promise to Pay. For value received, the undersigned, FFDA Properties, LLC, a California limited liability company ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation ("Lender"), the sum of Two Hundred and Forty Five Thousand Dollars and 00/100 (\$245,000.00), or such portion thereof that is actually advanced to Borrower, at the rate of five percent (5%) on the unpaid principal, due and payable on or before December 30, 2039, (the "Maturity Date") pursuant to the parties' Disposition and Development and HOME Investment Partnerships Program Agreement dated _____, 2010, on which date the unpaid principal balance together with any unpaid penalties HOME Agreement or late charges where applicable thereon shall be due and payable, along with attorney's fees and costs of collection, without relief from valuation and appraisal laws; provided that, in the event the Developer is not then in default of the Home Agreement.

Principal payment in the amount of Two Hundred and Forty Five Thousand Dollars and 00/100 (\$245,000.00) is due on or before the Maturity Date. Any failure to make payment required hereunder shall constitute a default under this Note.

Definitions. All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the HOME Agreement.

Business Day. Means any day other than Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day. However, if the extension would cause the payment to be made in a new calendar month, that payment will be made on the next preceding Business Day.

Security. This Note, and any extensions or renewals hereof, shall be secured by a Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note and executed in favor of the Lender ("Deed of Trust"), creating and insured as a not worse than 3rd position lien on the Property, subordinated only to a lien created by Borrower to insure payment of monies borrowed to pay for the construction of a completed Unit on the Property. Said Deed of Trust shall be subject to the terms of the Template Rider to the Deed of Trust attached hereto and such shall automatically be incorporated in the terms of the Deed of Trust that secures this Note.

Time is of the Essence. It will be a default under this Note if Borrower defaults under the HOME Agreement, defaults under any other Loan Documents, or if Borrower fails to pay when due any sum payable under this Note. In the event of a default by Borrower, the Borrower shall pay a late charge equal to the lesser of 2% of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the Loan Documents give rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind.

Terms of Payment. The indebtedness evidenced by this Note is payable annually on each June 30th hereunder, as provided in the attached debt service schedule incorporated herein, and may, at the option of the Borrower, be prepaid in whole or in part without penalty. Lender will apply all the prepayments first to the payment of any costs, fees, late charges, or other charges due under this Note or under any of the other Loan Documents and then to the principal balance.

All Loan payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate, and in the absence of that designation, to:

City of Fresno – Finance Department
Accounts Receivable
2600 Fresno Street, Suite 2156
Fresno, CA 93721

Borrower agrees to pay all costs including, without limitation, attorney fees, incurred by the holder of this Note in enforcing payment, whether or not suit is filed, and including, without limitation, all costs, attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by the holder of this Note of its rights and remedies under this Note. All costs incurred by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Borrower. Borrower will pay to Lender all attorney fees and other costs referred to in this paragraph on demand.

Any notice, demand, or request relating to any matter set forth herein shall be in writing and shall be given as provided in the HOME Agreement.

No delay or omission of Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as acquiescence, nor will any single or partial exercise preclude any further exercise. Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note and not in modification. No waiver

of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

Terms of Security Instruments. The Deed of Trust securing this note shall provide as follows:

DUE ON SALE-CONSENT BY BENEFICIARY. Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer of all or any portion of the Property, or any interest therein, as provided in the HOME Agreement, without the Beneficiary's prior consent. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of land interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

Assignment by Lender. Lender may transfer this Note and deliver to the transferee all or any part of the Property then held by it as security under this Note, and the transferee will then become vested with all the powers and rights given to Lender; and Lender will then be forever relieved from any liability or responsibility in the matter, but Lender will retain all rights and powers given by this Note with respect to Property not transferred.

Enforceability. If any one or more of the provisions in this Note is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. This Note will be binding on and inure to the benefit of Borrower, Lender, and their respective successors and assigns.

Governing Law. Borrower agrees that this Note will be deemed to have been made under and will be governed by the laws of California in all respects, including matters of construction, validity, and performance, and that none of its terms or provisions may be waived, altered, modified, or amended except as Lender may consent to in a writing duly signed by Lender or its authorized agents.

///
///
///

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

Borrower:

FFDA Properties, LLC,
a California limited liability company

By: _____

Name: Darius Assemi

Title: Vice President

(Attach notary certificate of acknowledgment)

Date: _____

72

Loan Amount \$245,000.00
 Interest Rate 5%
 Payment Period Annually

<u>Payment #</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest</u>	<u>Principal Balance</u>
1	15,937.60	3,687.60	12,250.00	241,312.40
2	15,937.60	3,871.98	12,065.62	237,440.42
3	15,937.60	4,065.58	11,872.02	233,374.84
4	15,937.60	4,268.86	11,668.74	229,105.98
5	15,937.60	4,482.30	11,455.30	224,623.68
6	15,937.60	4,706.42	11,231.18	219,917.26
7	15,937.60	4,941.74	10,995.86	214,975.52
8	15,937.60	5,188.82	10,748.78	209,786.70
9	15,937.60	5,448.26	10,489.34	204,338.44
10	15,937.60	5,720.68	10,216.92	198,617.76
11	15,937.60	6,006.71	9,930.89	192,611.05
12	15,937.60	6,307.05	9,630.55	186,304.00
13	15,937.60	6,622.40	9,315.20	179,681.60
14	15,937.60	6,953.52	8,984.08	172,728.08
15	15,937.60	7,301.20	8,636.40	165,426.88
16	15,937.60	7,666.26	8,271.34	157,760.62
17	15,937.60	8,049.57	7,888.03	149,711.05
18	15,937.60	8,452.05	7,485.55	141,259.00
19	15,937.60	8,874.65	7,062.95	132,384.35
20	15,937.60	9,318.38	6,619.22	123,065.97
21	15,937.60	9,784.30	6,153.30	113,281.67
22	15,937.60	10,273.52	5,664.08	103,008.15
23	15,937.60	10,787.19	5,150.41	92,220.96
24	15,937.60	11,326.55	4,611.05	80,894.41
25	15,937.60	11,892.88	4,044.72	69,001.53
26	15,937.60	12,487.52	3,450.08	56,514.01
27	15,937.60	13,111.90	2,825.70	43,402.11
28	15,937.60	13,767.49	2,170.11	29,634.62
29	15,937.60	14,455.87	1,481.73	15,178.75
30	15,937.69	15,178.75	758.94	(0.00)

EXHIBIT "G"

INSURANCE

Insurance. Throughout the life of this Agreement, the DEVELOPER shall itself and/or through its consultant(s), assignee(s), nominee(s), contractors and subcontractors pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with (an) insurance company(ies) either (1) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (2) authorized by the CITY's Risk Manager. The following policies of insurance are required:

A. Until issuance of Certificate(s) of Completion, BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

B. Following issuance of Certificate(s) of Completion, Commercial Property insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 10 30 (Cause of Loss – Special Form), with limits in an amount equal to full (100%) replacement cost (without deduction for depreciation) of the improvements with no coinsurance penalty provisions. Such insurance shall include coverage for business income, including "rental value", in an amount equal to the tow (2) years of the annual rent generated by the improvements. Coverage for business income, including "rental value" shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CO 00 30.

1. The above described policy(ies) of insurance shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice has been given to CITY an unrestricted thirty (30) day written notice in favor of the CITY, of policy cancellation, change or reduction of coverage. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, change or reduction in coverage, the DEVELOPER or its contractors/subcontractors, as the case may be, shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event the policy is due to expire during the term of this Agreement, Developer shall provide a new certificate, and applicable endorsements, a new certificate evidencing renewal of such policy shall be provided not less than fifteen (15) days prior to the expiration date of the expiring policy. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, the DEVELOPER or its contractors/subcontractors, as the case may be, shall file with the CITY a certified copy of the new or renewal policy and certificates for such policy.

2. The Builders Risk (Course of Construction) and Property insurance policies shall name the CITY as loss payee. The insurance required herein shall contain no special limitations on the scope of protection afforded to the CITY.

3. If at any time during the life of this Agreement or any extension, the DEVELOPER fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, until notice is received by the CITY that the

required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the CITY. Any failure to maintain the required insurance, subject to notice and cure requirements herein, shall be sufficient cause for the CITY to terminate this Agreement.

EXHIBIT "H" BONDS

Bonds. DEVELOPER shall pay for and maintain good and sufficient surety bonds from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California and Treasury-listed, in a form satisfactory to the CITY and naming the CITY as Co-Obligee.

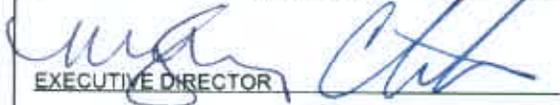
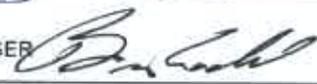
A. The "Faithful Performance Bond" shall be at least equal to 100% of the DEVELOPER's estimated construction costs, as reflected in the DEVELOPER's pro forma budget, attached hereto as Exhibit "C", to guarantee faithful performance of the Project, within the time prescribed, in a manner satisfactory to the CITY, consistent with the Agreement, and that all materials and workmanship will be free from original or developed defects.

B. The Material and Labor Bond" shall be at least equal to 100% of the DEVELOPER's estimated construction costs, as reflected in the DEVELOPER's pro forma budget, attached hereto as Exhibit "C", to satisfy claims of material supplies and of mechanics and laborers employed for this Project. The bond shall be maintained by the DEVELOPER in full force and effect until the Project is completed, and until all claims for materials and labor are paid, released, or time barred, and shall otherwise comply with any applicable provisions of the California Civil Code.

C. In lieu of bonds required above, CITY, in its sole discretion, may accept from the DEVELOPER an Irrevocable Standby Letter of Credit issued with the CITY named as the sole beneficiary in the amount(s) of the bonds required above. The Irrevocable Standby Letter of Credit is to be issued by the bank, and in a form, acceptable to the CITY. This Irrevocable Standby Letter of Credit shall be maintained by the DEVELOPER in full force and effect until the CITY is provided with a recorded Notice of Completion for construction of the Project and shall be subject to and governed by the laws of the State of California.



REPORT TO THE REDEVELOPMENT AGENCY AND CITY COUNCIL

AGENDA ITEM NO.: 11:00am "B"
BOARD/COUNCIL MEETING: 10-28-10
APPROVED BY
 EXECUTIVE DIRECTOR
 CITY MANAGER

October 21, 2010

FROM: Marlene Murphey, Executive Director
Fresno Redevelopment Agency

Craig Scharon, Director
Downtown and Community Revitalization Department

THROUGH: Claudia Cázares, Manager
Housing and Community Development Division

BY: Corina Nunez, Project Manager
Housing and Community Development Division

Presented to Fresno Redevelopment Agency
Date: 10/21/10
Discussion: Rev approved

SUBJECT: RECOMMEND APPROVAL OF A REDEVELOPMENT AGENCY OWNER PARTICIPATION AGREEMENT WITH FFDA PROPERTIES, LLC TO PROVIDE FINANCIAL ASSISTANCE IN THE AMOUNT OF \$625,000 AND APPROVAL OF A \$245,000 CITY OF FRESNO DISPOSITION AND DEVELOPMENT AGREEMENT AND HOME AGREEMENT WITH FFDA PROPERTIES, LLC, FOR THE CONSTRUCTION OF A 20-UNIT MIXED-INCOME RESIDENTIAL DEVELOPMENT PROJECT AT THE NORTHEAST CORNER OF VAN NESS AND MILDREDA AVENUES IN THE LOWELL NEIGHBORHOOD AND FREEWAY 99 CORRIDOR REDEVELOPMENT PROJECT AREA

RECOMMENDATIONS

Staff recommends Redevelopment Agency Board and City Council approval of:

- 1) A Redevelopment Agency (Agency) Owner Participation Agreement (OPA) (Exhibit "A") in the amount of \$625,000 and City Disposition and Development Agreement and HOME Agreement (Agreement) (Exhibit "B") in the amount of \$245,000, with FFDA Properties, LLC, (FFDA) for construction of a 20-unit mixed-income residential housing development project at the northeast corner of Van Ness Avenue and Mildreda Avenue in the Lowell neighborhood and Freeway 99/Golden State Boulevard Corridor Redevelopment Project Area; and
- 2) Negotiation and entry into the OPA and Agreement substantially in the form attached as Exhibit "A" and "B", with FFDA, subject to approval as to form by the City Attorney's office.

EXECUTIVE SUMMARY

On September 12, 2008, the City issued a Request for Proposals (RFP) from qualified developers to develop affordable housing on surplus City-owned infill properties located at various sites throughout the City. As an

incentive, the City offered the initial purchase price of the property (\$245,000) as the HOME subsidy to a proposed affordable or mixed-income housing project. In response to the RFP, FFDA submitted a successful proposal to construct a 20-unit mixed-income residential housing development project at the site.

After FFDA's analysis of its project pro forma, it was determined that the project had a shortfall which rendered it infeasible to be financed solely with private funds. Therefore FFDA requested Agency assistance and a \$625,000 OPA was negotiated to cover the gap, which includes cost of the land. The Agency's OPA and the City's Agreement collectively define the project description, scope of work, development schedule, and the developer's responsibility to secure the balance of financing to complete construction.

The Agency will record affordability covenants on five units, which will be preserved for households with incomes between 80% and 120% of Area Median Income (AMI). Two of the five units will have 55-year affordability covenants and be preserved for families whose incomes are at, or below, 120% AMI. Three of the five units (which are also designated HOME units) will have 55-year affordability covenants and be preserved for families whose incomes are at, or below, 80% AMI. The remaining 15 units will be preserved for families whose income are at, or below, 120% of AMI for a period of three years and will thereafter be available at market rate.

BACKGROUND

In July 2007, the Housing and Community Development Division purchased a 1.02 acre parcel located at 340 North Van Ness Avenue (northeast corner of Van Ness and Mildreda Avenues - Exhibit "C": Site Map) for \$245,000. Initial plans for the site were to develop a 10- to 15-unit single-family mixed-income project. However, in early 2008, as predevelopment of the project progressed, it was determined that the project was no longer feasible due to the dramatic drop in land values, and was therefore canceled.

In order to create another housing development opportunity at the site, the City issued an RFP in September 2008, offering the initial property purchase price as subsidy to a project. In response to the RFP, FFDA submitted a successful proposal to construct a 20-unit mixed-income residential development. Of the proposed 20 residential units, three units will be affordable to families with incomes at, or below, 80% of AMI and will carry 55-year affordability covenants and two units will be available to households with income between 80% and 120% of AMI and carry 55-year affordability covenants. The remaining 15 units will be preserved for families whose incomes are at, or below, 120% of AMI for a period of three years and will thereafter be available at market rate.

FFDA's proposed Van Ness development will consist of ten two-story buildings of town-homes (1,423 square feet, 3 bedroom, 2½ bath units) with exteriors designed in a vernacular architecture style to complement the distinctive Lower Fulton-Van Ness Historic District (see Exhibit "D": Project Design). The Fulton/Lowell Committee reviewed FFDA's proposed design plans for the site on April 26, 2010 and recommended approval of the overall design, with some minor modifications to the exteriors. FFDA is also working with the City's Historic Preservation Manager to ensure the exterior architecture is compatible with the late 19th century/early 20th century homes in the neighborhood. The development will also incorporate Universal Design features (in accordance with FMC 11-109), City of Fresno Green Program standards, and FFDA's Eco-Smart design features. Amenities include attached two-car alley-loaded garages, 14,000 square feet of open space, decorative wrought iron fencing and block or chain link fencing with semi-privacy slats, security vehicle and pedestrian entry, a decorative concrete piazza with connecting trails, 5'x7' indoor storage, and private yards in

selected units. Other amenities include convenient access to Freeway 180, Downtown Circular Trolley Route 4, and Fresno Area Express Route 28, which provides transit service to California State University Fresno, Manchester Center, and southeast to Ventura and Peach Avenues.

FFDA, a Granville Homes affiliate, is a leading local home builder committed to bringing quality housing to the City's downtown area and Fulton/Lowell District. FFDA will invest over \$1 million in owner equity for its proposed \$4.3 million Van Ness mixed-income housing development, adding to the portfolio of recent downtown area housing projects developed by Granville Homes affiliates. These developments include the Vagabond Lofts, a mixed-used project completed in 2006; Iron Bird Lofts, a mixed-use project recently completed; "H" Street Lofts, a mixed-income housing project completed in 2008; and Fulton Village, a mixed-income housing project currently under construction.

If approved as recommended, FFDA will enter into an Agreement and acquire the property from the City through escrow for \$245,000 (the amount of the City's initial purchase). The Agreement includes a Regulatory Agreement that establishes the City's 55-year affordability covenants on three units. Under this Agreement, which includes escrow instructions for sale of the property, FFDA will pay the City \$245,000 for the cost of the land.

The Agency's OPA terms include a loan in the amount of \$375,000 as well as a grant of \$250,000 at the completion of the project. The loan consists of 1% interest, deferred for ten years, amortized over 25 years, and no accrual of interest during the deferral period. The financial assistance to the project helps leverage and protects the Agency's investment of Low- and Moderate-Income Housing Funds already invested in the Lowell and downtown areas. This \$4.3 million project leverages nearly \$5.00 in private investment for every \$1.00 dollar in Agency assistance. Once completed, the project will produce additional tax increment for the life of the *Freeway 99/Golden State Boulevard Corridor Redevelopment Project*.

Given FFDA's project location in Lowell, the Agency's investment further improves a downtown housing market that has been steadily drawing the critical mass required to redevelop the area. Under the Agency's agreement with the City for federal Neighborhood Stabilization Program funds, it acquired and will rehabilitate and sell four foreclosed or abandoned single-family homes in Lowell, plus has acquired a fourplex, and a house that will be developed into a multi-family village type setting. These projects coupled with the proposed FFDA development, will help create a vibrant, attractive, and desirable neighborhood. In addition, the project will remove blight from, and help stabilize, the Lowell area and deliver needed affordable housing units in close proximity to jobs, educational opportunities, and community resources.

Upon completion, the project will bring the City closer to meeting the 2008-2013 Housing Element goals for infill housing development, the housing goals of the 2006-2010 Consolidated Plan, and closer to meeting the goals of the 10x10 Affordable Housing Plan to create 10,000 units by year-end 2010. Also, the project brings the Agency closer to its Five Year Implementation Plan goals for affordable housing production. In addition, the project's low-income units will increase the City's share of the upcoming State Housing Related Parks Program Grant. Under the grant program, each low-income bedroom unit created increases the City's 2010/11 allocation of funds, provided that the project foundations are poured by December 31, 2010. Most importantly, lower income households occupying the units will benefit from the project's affordability covenants.

In preparation of the project, a National Environmental Policy Act review was completed and resulted in a *Finding of No Significant Impact* and a California Environmental Quality Act review was also completed and resulted in an *Exempt Status* determination. On September 15, 2010 the City received authorization for use of HOME Program funds for the project from the U.S. Department of Housing and Urban Development.

HOUSING AND COMMUNITY DEVELOPMENT COMMISSION

The Housing and Community Development Commission considered and recommended this item for approval on October 13, 2010.

FISCAL IMPACT

The Agency budgeted the \$625,000 in its 2010-2011 Budget. The remainder of the necessary funding to complete financing of the project will come from loan commitments from conventional lenders and the developer's equity. The City will be reimbursed \$245,000 in HOME Program funds through the purchase of the parcel by FFDA.

ATTACHMENTS

- Exhibit A – Draft Owner Participation Agreement
- Exhibit B – Draft Disposition and Development Agreement and HOME Program
- Exhibit C – Site Map
- Exhibit D – Schematic Design Layout and Elevations