City of FRESNO

REPORT TO THE REDEVELOPMENT AGENCY BOARD

ITEM NO. 1:30pm # 2 "D"
COUNCIL MEETING: 4/8/10
APPROVED BY
EXECUTIVE DIRECTOR

Presented to Fresno Redevelopment Agency
Date 4/8/10
Disposition Rec approval

DATE: April 8, 2010

FROM: MARLENE MURPHEY, Executive Director

BY: JOHN RAYMOND
Assistant Executive Director

SUBJECT: Approve agreements with the Fresno Revitalization Corporation, Inc. a California Non-Profit Corporation and the Non-Profit arm of the Agency, for the Acquisition and Rehabilitation of a 118-unit Apartment Complex at 3033 E. Platt Avenue.

EXECUTIVE SUMMARY

Redevelopment Agency Staff recommend that the Agency Board approve the attached Agreements between the Redevelopment Agency of the City of Fresno and the Fresno Revitalization Corporation, Inc., a California Non-Profit Corporation and the non-profit arm of the Agency, for the acquisition, operation, and maintenance of a 118-unit apartment complex located at 3033 East Platt Avenue in Fresno, near Merged Redevelopment Project Area No. 1. These agreements would allow the FRC to accept and award of $2,772,253 in Neighborhood Stabilization Program ("NSP") set-aside funds from the City of Fresno, pursuant to the Housing and Economic Recovery Act of 2008. NSP is a subcomponent of the Community Development Block Grant Program (CDBG) and administered by HUD.

The intent of NSP is to stabilize neighborhoods through the acquisition of foreclosed and abandoned houses to arrest the decline in local neighborhoods caused by the national foreclosure crisis. On March 4, 2010, the City Council approved an NSP substantial amendment authorizing, among other actions, the award of $2,772,253 of NSP set aside funds to the FRC to acquire and rehabilitate the 118-unit multi-family complex. As required by HUD, at least twenty-five percent ($2,772,253) of the total NSP funds received by the City of Fresno are set-aside for projects that address the housing needs of very low-income persons. With the creation of affordability covenants on at least 60% of the units at the property, this project helps the City meet that requirement.

BACKGROUND

The subject property, called the Canyon Crest Condominiums, is currently owned by Inland Mortgage Capital Corporation ("IMCC") of Chicago as the result of a foreclosure of the previous owner. Located at 3033 East Platt Avenue, Fresno, CA 93721 (near the southwest corner of First and Tulare), it is a 118 unit apartment complex, approximately 90% occupied, listed for sale at a purchase price of $4,995,000.

The Agency pursued the subject property as a candidate for the NSP low income and multi-family obligation for the following reasons: a) there is a limited inventory of foreclosed multi-family properties currently on the market for sale; b) this project will satisfy the NSP 25% set

aside in a single action (rather than numerous smaller multi-family properties); c) the project is 90% leased with on-site management already in place; d) the lender's willingness to carry financing for the balance of the purchase price; e) a very quick closing to meet the NSP's tight timing constraints; and, f) the anticipated per unit acquisition cost of $39,831 makes it very attractive, especially when income restrictions are placed upon the units. The subject property, given its overall condition and occupancy levels, is an ideal candidate for the City of Fresno's Neighborhood Stabilization Program and will meet the NSP deadlines in late summer, 2010.

Working with the City Manager and Mayor's offices, the Agency submitted an offer to purchase the property on February 18, 2010, at a purchase price of $4,700,000, subject to appraisal, Agency Board approval and federal NSP guidelines requiring an acquisition through foreclosure to occur at a price not to exceed 99% of the appraised value. On February 19, 2010, the Agency received acceptance of its proposed terms subject to minor refinements.

As the Agency worked through the deal points with the seller and the City, it was determined that greater flexibility in the use of funds generated by the property for improvements to the property would be achieved from a structure in which Fresno Revitalization Corporation - that qualifies as an NSP-defined developer - holds title to the property. The City and Seller approved this structure in which the FRC holds title to the property with the Agency serving as the Guarantor of the Seller's loan and the Operator/Manager of the property through a series of agreements. The Agency will operate and manage the property in accordance with the Operating and Contractual Services Agreements with the FRC.

The final appraisal values the property in "as is" condition as $4,500,000. The "as is" appraisal takes into consideration approximately $230,000 for required repairs. Based upon that value, adjusted by NSP appraisal guidelines (purchase price must not exceed 99% of appraised value), staff offered a purchase price of $4,445,000 ($4,500,000 x .99 = $4,445,000). Based upon immediate deferred maintenance of $37,000, an additional adjustment was made for an Adjusted Purchase Price of $4,418,000. The Adjusted Purchase Price would be payable with $2,480,204 in cash from the NSP Loan proceeds with the Seller carrying the balance of $1,937,796, as a first trust deed loan, bearing interest at the rate of 6.35% per annum, for a period not to exceed 30 months. The difference between the $2,772,253 in total cash available (awarded by the City Council to the FRC on March 4, 2010) and the proposed $2,480,204 cash down payment ($2,772,253 - $2,480,204 = $292,049) will be used for unit repairs and/or closing costs and maintenance items.

In terms of the agreements between the Agency and FRC, the parties shall enter an Operating Agreement which contains the requirements to acquire, renovate and maintain the Property, under which the Agency shall provide FRC a Loan Guarantee of the Seller's Note from IMCC to assist FRC's acquisition of the Property in an amount not to exceed Two Million Dollars ($2,000,000) (the "Agency Guarantee") upon the terms and conditions specified in the Loan Guarantee. The Agency shall also provide administrative, financial and technical support to the FRC in the acquisition and operation of the Property through the Contractual Services Agreement.

The Operating Agreement between the Agency and FRC is similar to a development agreement with a private entity, whereby the Agency provides some form of project assistance (in this case, a Loan Guarantee) and in return for the assistance the Owner undertakes actions to complete the project. The second agreement, the Contractual Services Agreement, is where the FRC "hires back" the Agency to undertake all or most of the tasks the Agency has required of the FRC under the Operating Agreement. This structure separates the operating and contractual services agreements into two documents and would allow the ongoing operational obligations required through the Regulatory Agreement (exhibit to operating agreement) to stay in place upon the resale of the Property without having to redraft that agreement- e.g. affordability covenants, maintenance standards, nondiscrimination request.

The agreement also contains a Regulatory Agreement creating the affordability covenants and long-term maintenance and operating restrictions which shall be recorded against and run with the Property.

Under the terms of the NSP Agreement with the City of Fresno, at least 60% of the units shall be reserved for households of 50% of Area Median Income ("AMI") or below under the Federal NSP guidelines, which would be 71 units. Additionally, to meet the public purpose underlying the non-profit status of the FRC and the Housing Set-Aside requirements of the Agency (as a consequence of its loan guarantee), the remaining units net of the manager's unit (an additional 40% of the units (46 units) shall be restricted to households of 60% of AMI or below. This is the standard for lower-income rents under California Redevelopment Law; 50% of AMI is considered "very low income" rent.

All of the units will be counted toward the Agency's obligations to create or maintain affordable housing in Fresno.

Two proforma projections are described below:

Projection 1 assumptions are: (1) the one-bedroom units are rented at $525 per month; (2) the two bedroom units are rented at $650 per month; and, 3) that the vacancy/collection loss amounts to 10%, staff has estimated the net operating income at approximately $332,375 per year. Assuming annual debt service of $123,050.05 ($1,937,796 x .0635), the debt service coverage ratio (DSCR) equates to a significant 2.7. The DSCR is the primary measure to determine if a property will be able to sustain its debt based on cash flow. In this case, the project has 2.7 dollars available in cash flow for every dollar needed for debt service. Commercial banks typically require a DSCR of only 1.15 – 1.35; even in the current conservative lending climate DSCRs are still typically less than 1.5; consequently, a DSCR of 2.7 is extraordinarily conservative.

Projection 2 assumptions are: (1) the one-bedroom units are rented at $510 and the two-bedroom units are rented at $575 per month; (2) the vacancy/collection loss amounts to 10%; and, (3) the operating expenses are approximately 13% higher than projected, staff has

estimated the net operating income at approximately $247,740 per year. Assuming the same annual debt service of $123,050.05 ($1,937,796 x .0635), the debt service coverage ratio (DSCR) equates to 2.01. Under this scenario, the project has 2.01 dollars available in cash flow for every dollar of debt service - still highly extraordinary for a project of this type.

For the project to reach a "break-even" point at which debt service payments could be made but which there is no positive cash flow, 22 units would have to remain empty for an entire year, lowering the current occupancy rate from approximately 90% to about 71%, a significant drop-off in occupancy considering the current good condition of the project, its location near downtown and the Community Regional Medical Center, and the $292,000 in additional property upgrades that the RDA on behalf of the FRC would undertake on the Property. In addition, those conservative scenarios project a very low – and hence competitive – rent structure.

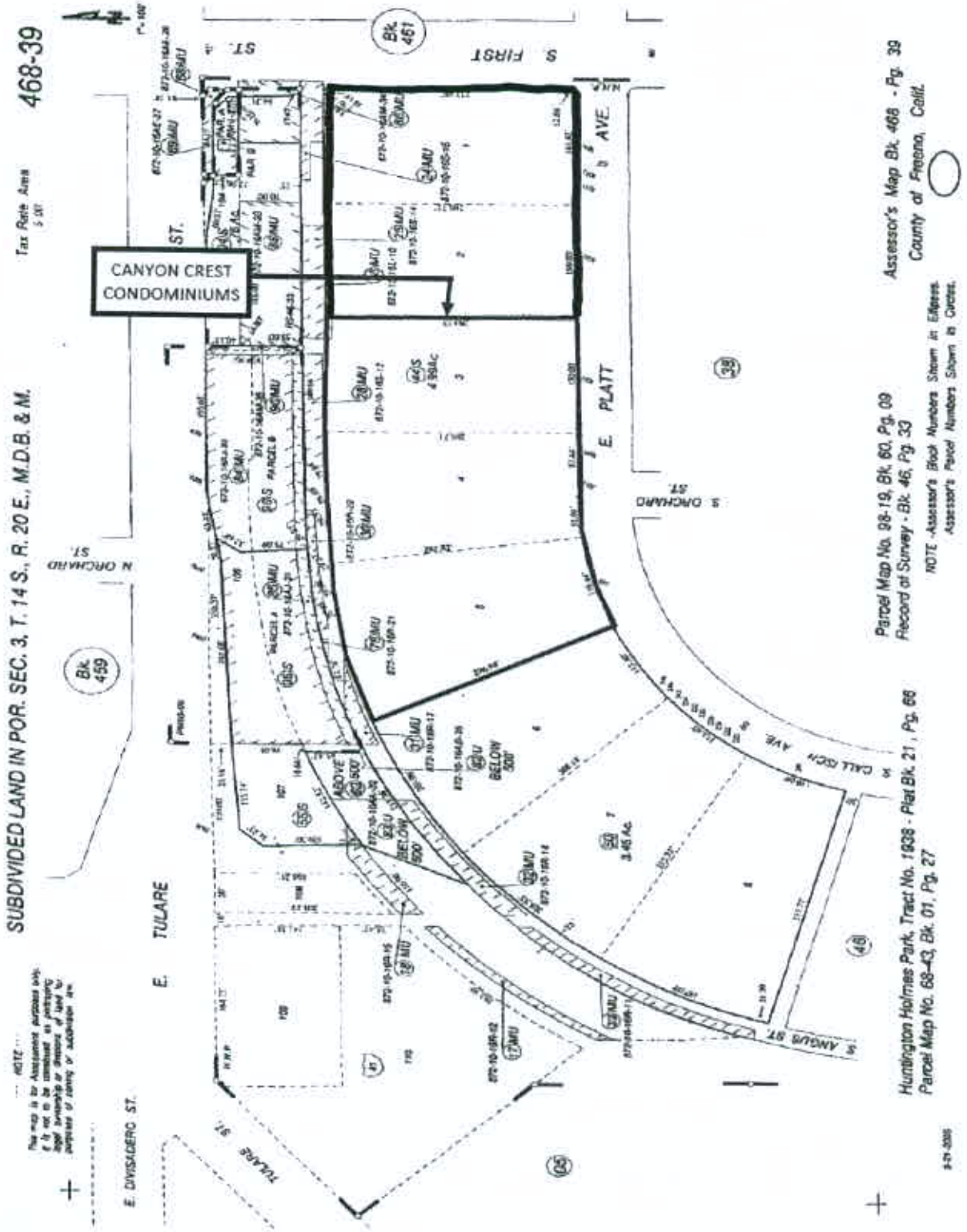
The Project has been environmentally assessed (Environmental Assessment No. H-2010-10) and was determined to be categorically excluded from review under Section 58.35 (a) (3) (ii) and (a) (5) of the National Environmental Policy Act (NEPA) Guidelines. Additionally, the Project has been assessed under the California Environmental Quality Act (CEQA), resulting in a Categorical Exemption. Based on the review, City staff determined that the project is consistent with all of the criteria specified for an exemption to the California Environmental Quality Act (CEQA) in accordance with Section 15301/Class 1 and 15378(b)(4) of the CEQA Guidelines.

The FRC Board approved the acceptance of the NSP Award in the amount of $2,772,253 from the City of Fresno. Additionally, the Operating Agreement, and the Contractual Services Agreement were approved by the FRC Board at a special meeting held on March 16, 2010 subject to the City Attorney's review of those documents.

Attachments:

1. Area Map
2. Draft Operating Agreement
3. Draft Contractual Services Agreement

PLAT MAP


468-39
Tax Rate Area
SUBDIVIDED LAND IN POR. SEC. 3, T. 14 S., R. 20 E., M.D.B. & M.
CANYON CREST
CONDOMINIUMS
Bk. 461
Bk. 459
S. FIRST ST.
N. ORCHARD ST.
S. ORCHARD ST.
E. TULARE
E. PLATT AVE.
E. DIVISADERO ST.
TULARE ST.
S. ANGUS ST.
CALIFORNIA AVE.
ABOVE 500'
BELOW 500'
3.45 Ac.
Parcel Map No. 98-19, Bk. 60, Pg. 09
Record of Survey - Bk. 46, Pg. 33
Huntington Holmes Park, Tract No. 1938 - Plat Bk. 21, Pg. 68
Parcel Map No. 68-43, Bk. 01, Pg. 27
Assessor's Map Bk. 468 - Pg. 39
County of Fresno, Calif.
NOTE -Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

1 30pm Z-D
4/8/10

CITY OF FRESNO
City Clerk's Office (Original)

Recorded at the Request of
and When Recorded Return to:

City of Fresno
Planning and Development Department
Housing and Community Development
Division
Attention: Housing Manager
2600 Fresno Street, Room 3070
Fresno, CA 93721-3605

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

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

By: _____
Bruce Rudd
Assistant City Manager

Date: 5/24/10

CITY OF FRESNO
NEIGHBORHOOD STABILIZATION PROGRAM AGREEMENT

by and between

CITY OF FRESNO,
a municipal corporation

and

FRESNO REVITALIZATION CORPORATION
a nonprofit public benefit corporation

regarding

"Canyon Crest Apartments"
APN: 468-390-44s

An Affordable Multi-Family Apartment Project

AGREEMENT BETWEEN THE FRESNO REVITALIZATION CORPORATION AND THE CITY OF FRESNO REGARDING THE ACQUISITION OF 118 MULTI-FAMILY HOUSING UNITS

THIS AGREEMENT is made and entered into, effective the 4th day of March 2010, by and between the CITY OF FRESNO, California, a municipal corporation, hereinafter referred to as the "City", and the Fresno Revitalization Corporation of the City of Fresno, a nonprofit public benefit corporation, hereinafter referred to as the "DEVELOPER".

RECITALS

WHEREAS, the U.S. Department of Housing and Urban Development, hereinafter referred to as "HUD", provides funding under its Neighborhood Stabilization Program, hereinafter "NSP" as authorized under Title III of Division B of the Housing and Economic Recovery Act of 2008, for the purpose of assisting in the redevelopment of abandoned and foreclosed homes under the Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes heading, hereinafter referred to as the "Act", incorporated herein by its reference; and

WHEREAS, City is a recipient of NSP funding under the Act for use in funding eligible activities furthering established national objectives to benefit its low, moderate and middle income residents as defined in the Act; and

WHEREAS, the NSP requires no less than twenty five percent (25%) of the CITY's NSP allocation be used for the benefit of households that earn not more than fifty percent (50%) of the area median income, by family size; 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 rental housing market; and

WHEREAS, the City in accordance with its 2006-2010 Consolidated Plan and Annual Action Plan, as amended, desires to provide NSP funds in the amount of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars ($2,772,253) to the DEVELOPER, as more fully described in Exhibit A, Project Description, upon the terms and conditions in this Agreement; and

WHEREAS, to further its goal to increase the supply of Affordable Rental Housing within the City of Fresno, the CITY desires to assist DEVELOPER by providing a Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars ($2,772,253) deferred payment, zero interest Loan to the Project (hereinafter referred to as "Loan"), for a term of fifty-five (55) years, for payment of NSP eligible Project costs, as further identified in Exhibit C (Project Budget and Cash Flow Statement), variously to be secured by the underlying real property and the Affordable Rental Housing covenants, upon the terms and conditions in this Agreement, for the acquisition of a

foreclosed 118-unit multi-family rental housing project, located at 3033 E. Platt Avenue, Fresno, CA 93721. The Loan will be due and payable at the earlier of fifty five (55) years from the City issued Certificate of Completion or the date upon which the DEVELOPER has completed payment on other property acquisition lien(s); 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, including NSP guidelines and NSP national objectives (iv) will increase, improve, and preserve the community's supply of Low, Moderate and Middle Income Housing available at affordable housing cost to persons and families of Low, Moderate and Middle Income, as defined hereunder, (v) planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of Low, Moderate and Middle 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 NSP Assisted Units constitutes routine 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 February 24, 2010, the Housing and Community Development Commission of the City of Fresno reviewed this Agreement and recommended approval; and

WHEREAS, pursuant to City Resolution No. 2009-153, the City Manager is authorized to execute, on behalf of the City, NSP agreements that are within available allocated NSP funding and in a standard form approved by the City Attorney; and

WHEREAS, on March 4, 2010, the Fresno City Council provided project approval

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, and subject to the terms and conditions and provisions hereof, the parties agree as follows:

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.

A. "Acquisition" means vesting of Property in fee title to the DEVELOPER.

B. "ADA" means the Americans with Disabilities Act of 1990, as most recently amended.

C. "Affirmative Marketing" means a good faith effort to attract eligible persons of all racial, ethnic and gender groups, in the housing market area, to rent the proposed Affordable Rental Housing Project, as hereinafter defined.

D. "Affordability Period" means the fifty-five (55) year period commencing from the date of issuance of the Certificate of Completion of the Project Property.

E. "Affordable Rental Housing" means all the rental housing units located at the Project Property, of which seventy one (71) will be NSP assisted units, each of which will be required to meet the affordability requirements of this Agreement. A total of forty-six [46] units will be required to meet the affordability requirements of the Housing Set Aside Program.

F. "Budget" means the Budget, and any changes thereto, approved by the CITY's Housing and Community Development Division Manager provided the total amount of NSP Funding allocated to the Project shall not be increased without City Council approval, attached hereto as Exhibit C.

G. "Certificate of Completion" means that certificate issued, in the form attached as Exhibit D, to DEVELOPER by the CITY evidencing the City-approved completion of the Project for purposes of this Agreement.

H. "CFR" means the Code of Federal Regulations.

I. "Current Market Appraised Value" means the value of a foreclosed upon NSP or residential property that is established through an appraisal made in conformity with the appraisal requirements of URA at 49 CFR 24.103 and completed within 60 days prior to a final offer being made for the property by a grantee, or DEVELOPER.

J. "Declaration of Restrictions" means the Declaration of Restrictions in the form attached hereto as Exhibit B, which shall be recorded against the Property upon the close of escrow, setting out the Affordable Rental Housing covenants and requirements of this Agreement which shall run with the land.

K. "Deed of Trust" means that standard, subordinate second (2nd) but no worse than third (3rd) position Deed of Trust (including security agreement) given by DEVELOPER as Trustor, to the CITY as beneficiary, through an escrow established by DEVELOPER with a City-approved title company, and recorded against the Property, insured in the full amount of the Loan, and acceptable to the City Attorney, as well as any amendments to, modifications of and restatements of said Deed of Trust. The terms of any such Deed of Trust are hereby incorporated into this Agreement by this reference.

L. "Eligible Costs" means the NSP eligible costs funded by the Loan, consistent with the Budget attached as Exhibit C, as authorized under Title III of Division B of the Housing and Economic Recovery Act of 2008, for the purpose of assisting in the redevelopment of abandoned and foreclosed homes under the Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes, 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.

M. "Event of Default" shall have the meaning assigned to such term under Section 36.A.i hereunder.

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

O. "Foreclosed" means a property that has been foreclosed upon, and is at the point that, under state or local law, the mortgage or tax foreclosure is complete.

P. "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.

Q. "Household" means one or more persons occupying a Project Property.

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

S. "Loan" means the loan of NSP Funds, in the total amount not to exceed Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars and 00/100 ($2,772,253) for eligible NSP costs, made available by the CITY to the Project pursuant to this Agreement, as more specifically described in Exhibit A, Project Description, and as authorized in the Exhibit C, Budget and in the Promissory Note attached hereto as Exhibit E. The Loan shall be payable in accordance with the terms of the Note, and shall be secured by a Deed of Trust recorded against the property.

T. "Loan Documents" are collectively this Agreement, the Note(s), Deed(s) of Trust, Declaration(s) 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.

U. "Neighborhood Stabilization Program Funds" (also referred to in this Agreement as "NSP Funds") means the NSP monies constituting the Loan, in an amount not to exceed the sum of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars and 00/100 ($2,772,253), used for NSP eligible costs.

V. "Project" means the purchase of one hundred eighteen (118) foreclosed Affordable Rental Housing Units located at 3033 E. Platt Ave., Fresno, CA 93721, of which seventy one (71) units will be leased to very low income households, all as described in the Project Description attached hereto and incorporated herein as Exhibit A.

W. "Project Completion Date" means the date by which the DEVELOPER has acquired the Project Property, expended NSP funds on eligible activities in accordance with this Agreement, and provided the City verification of the very low income household status for seventy one (71) housing units in the Project. The Project Completion Date for this project is August 31, 2010.

X. "Project Property" means the abandoned and/or foreclosed property to be purchased by the DEVELOPER according to NSP guidelines, and managed as a mixed income housing project as provided herein.

Y. "Project Schedule" means the schedule for completion of the Project included within the Exhibit A, Project Description and Schedule, consistent with the above Project Completion Date.

Z. "Promissory Note" means the Project Note in the amount of the total NSP funds to the DEVELOPER, substantially in the form attached hereto/incorporated herein as Exhibit E in principal amount of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars ($2,772,253), given by DEVELOPER as promisor, in favor of the CITY, as promisee, evidencing the Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement, secured by a standard Deed of Trust as 2nd but no worse than 3rd position lien upon the Property, naming the CITY as beneficiary and provided to the CITY no later than the date of initial disbursement hereunder, as well as any amendments to, modifications of and restatements of said Note consented to by CITY.

AA. "Rent" means the total monthly payments a tenant pays for a Unit including the following: use and occupancy of the Unit and land and associated facilities, including parking (other than parking services acquired by tenants on an optional basis), any separately charged fees or service charges assessed by DEVELOPER which are required of all tenants (other than security deposits), the cost of an adequate level of service for utilities paid by the tenant (including garbage collection, sewer, water, common area electricity, but not telephone service), any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than DEVELOPER, and paid by the tenant.

BB. "Revenue" has the same meaning as Program Income, as defined at 24 CFR 570.500(a) with the modifications as identified in the Federal Register, Volume 73, No. 194, Docket No. FR-5255-N-01.

CC. "Unit" means a dwelling unit of the Affordable Rental Housing.

DD. "Very Low Income Families" means families whose annual income does not exceed fifty percent (50%) of the median income for the Fresno, California area as determined by HUD.

2. Term. This Agreement and the NSP grant provided hereunder shall be for the period commencing upon the date of execution, and shall remain in force for the duration of the longer of the Affordability Period and the Loan unless earlier terminated as provided herein.

3. Timeframe for Completing Project.

A. DEVELOPER's daily schedule and hours worked under this Agreement on a given day shall generally be subject to DEVELOPER's discretion and Exhibit A, provided that DEVELOPER shall devote sufficient time as is reasonably necessary to fulfill the spirit and purpose of this Agreement. The DEVELOPER agrees to acquire the Property with NSP funds and verify very low income household status for at least seventy one (71) households within the Project Property, not later than August 31, 2010. Extensions may be granted by the City in its discretion upon DEVELOPER's successful completion of the Agreement requirements, and only to allow for the DEVELOPER's further utilization of Program Income as allowed by HUD and/or in this Agreement.

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

4. Loan Terms.

A. The City agrees to provide a NSP Loan to the DEVELOPER in the amount of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars and 00/100 ($2,772,253) for eligible costs. The DEVELOPER shall execute and deliver to the City the Loan Documents including the Note, and notarized Deed of Trust, for recordation against the Property.

B. The NSP Loan will be due and payable in accordance with the Note and not later than the maturity date provided in the Note.

5. Subordination. The Deed of Trust and/or Declaration of Restrictions may be subordinated to certain approved financing (in each case, a "Senior Loan"), to 2nd but no worse than 3rd position, but only on condition that all of the following conditions are satisfied: (a) all of the proceeds of the proposed Senior Loan, less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for

the Project consistent with an approved financing plan; (b) DEVELOPER must demonstrate to the CITY's reasonable satisfaction that subordination of the Deed of Trust and/or Declaration of Restrictions is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project; (c) the subordination agreement must provide the CITY with adequate rights to cure any defaults by DEVELOPER including providing the CITY or its successor with copies of any notices of default. Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval, subject to prior approval to form by the Fresno City Attorney.

6. No Litigation Material to Financial Condition. 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.

7. No Conflict of Interest. DEVELOPER represents and warrants 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.

8. No Legal Bar. 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/their obligations or its/their ability to complete the Project under this Agreement.

9. No Violation of Law. DEVELOPER represents and warrants as of the date hereof that, to the best of 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.

10. No Litigation Material to Project. 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.

11. 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.

12. Reporting Requirements.

A. DEVELOPER shall provide CITY with the following written performance reports on or before the dates indicated:

i. From the date of Commencement of the Project, until issuance of the final Certificate of Completion, DEVELOPER shall submit a Monthly 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), and provide a final report submitted within 45 days of the end of the term hereof and at any time hereunder upon written request of the City.

ii. Annually, beginning on the first day of the month following the CITY's issuance of the final Certificate of Completion, and continuing until the termination of the Agreement, DEVELOPER shall submit an Annual Report to the CITY, in a form approved by the CITY. The Annual Report shall include, at a minimum, the following information: the rent, the annual income and the family size of the Households. The report shall also state the date tenancy commenced for each rental Unit, certification from an officer of DEVELOPER that the Project is in compliance with the Affordable Rental Housing Requirements, and such other information the CITY may be required by law to obtain. DEVELOPER shall provide any additional information reasonably requested by the CITY.

iii. Annually, beginning on the first day of the month following the CITY's issuance of the final Certificate of Completion, and continuing until the expiration of the Agreement, DEVELOPER shall submit proof of insurance as required in Paragraph 47 below.

13. Project Property Purchase and Appraisal Requirements.

A. DEVELOPER is required to ensure the purchase of the Foreclosed-upon Property be at a minimum discount of one percent (1%) from the current market-appraised value of the Property.

B. DEVELOPER will be required to perform an appraisal to support their determination of fair market value, for purposes of calculating the purchase discount. The appraisal requirement applies to any NSP-assisted acquisition of a foreclosed-upon home or residential property (including voluntary acquisitions). The appraisal performed must be in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within sixty (60) days prior to a final offer being made for the property by the DEVELOPER. Additional requirements regarding appraisals are included as Exhibit G: Appraisal Requirements.

14. NSP Funds Disbursement.

A. NSP funds shall be disbursed into escrow to assist the DEVELOPER in purchasing the Project Property and/or to reimburse DEVELOPER for incurred eligible rehabilitation costs, in accordance with the Proposed Budget attached hereto as Exhibit C and incorporated herein, provided that the specific line item amounts in said Budget may be varied, added and/or stricken by the City's Housing and Community Development Division Manager, and further provided that in any event total NSP funds disbursed in pursuit of said Budget shall not exceed in the aggregate the lesser of the NSP Loan amount or the CITY's available and allocated NSP Funding during the term hereof.

B. NSP funds shall be disbursed only as authorized above, upon verification satisfactory to CITY that expenses to be incurred in performing the Project are eligible under the Act, according to the following schedule and conditions precedent to disbursement, as applicable:

i. Upon written request to CITY and within 30 days thereof, provided that CITY's receipt of substantiating invoices, accounts, documents and records for the disbursement request shall all be express conditions precedent to any payment obligation by CITY.

ii. Except to the extent expressly provided for herein, all costs/expenses incurred by DEVELOPER hereunder shall be the sole responsibility and liability of DEVELOPER.

iii. All funds are paid contingent upon DEVELOPER's continuous compliance with all applicable, uniform administrative requirements, program regulations, and recapture and reversion requirements set out in the Act.

iv. The representations and warranties contained in or incorporated by reference in this Agreement continue to be true, complete and accurate.

v. 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.

vi. 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.

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

15. Use of Funds. The DEVELOPER shall use the funds provided by the CITY solely in pursuit of the Project.

16. Availability of NSP Entitlement Funds. DEVELOPER acknowledges and agrees that the NSP funding hereunder is subject to the control of HUD and may be encumbered, withdrawn, or otherwise made unavailable to the CITY (whether earned or promised to, or by, the DEVELOPER). The DEVELOPER shall not be paid such funds unless and until they are made available for payment to the CITY by HUD and allocated and available per CITY Council Action. No other funds owned or controlled by the CITY shall be obligated under this Agreement unless specifically approved and permitted by the Fresno CITY Council. Nothing herein constitutes a pledging or obligating of CITY funds, its General Fund, or any real and personal property taxes, sales taxes or any other tax revenues. The CITY will provide prompt notice to the DEVELOPER, upon CITY's notice from HUD, indicating NSP funds may be unavailable to the CITY.

17. Construction Standards.

A. DEVELOPER shall rehabilitate the proposed housing units assisted under this Agreement in compliance with all applicable local codes, ordinances and zoning requirements in effect at the time of issuance of Certification of Completion.

B. DEVELOPER, during its time on title, shall maintain Project Properties in a safe and secure state, while complying with all applicable codes, laws, and ordinances.

18. Identification Signage. The DEVELOPER shall place a poster or sign, identifying the City of Fresno, as a Project participant. The sign shall also include the CITY'S Housing Logo, as well as the Equal Housing Opportunity logo, as mandated by HUD. The poster/sign shall be appropriately placed, and shall be in place for 5 months following Property acquisition.

19. Contracts and Subcontracts. Consistent with this Agreement, 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. 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.

20. Mechanic's Liens and Stop Notices.

A. If any claim of lien is filed against the Property or a stop notice affecting any financing, NSP 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.

B. 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.

21. Permits and Licenses. Upon CITY's reasonable request, and as applicable, the DEVELOPER shall submit, for CITY approval, all the necessary permits and licenses required for Commencement of Construction. 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 Affordable Rental Housing Project, and for its stated purposes in accordance with all applicable building, environmental, ecological, landmark, subdivision, zoning codes, laws, and regulations. The DEVELOPER is responsible, at its sole cost and expense, to determine the location of any utilities on the Property and to negotiate with the utility companies for and to relocate the utilities, if any, as necessary to complete the Project.

22. 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.

23. Covenants and Restrictions to Run with the Land.

A. 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 the Affordable Rental Housing requirements therein, said covenants and restrictions shall expire. DEVELOPER further warrants, covenants and agrees to ensure that the covenants and restrictions set forth herein shall run in favor of the CITY.

B. 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 lease of the proposed Project by certain Very Low Income Families, and (b) by making possible the obtaining of advantageous financing for acquisition.

C. The DEVELOPER covenants and agrees that until the expiration of the Affordability Period it shall cause the Affordable Rental Housing to be used for Affordable Housing.

D. 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.

E. All present and future owners of the Affordable Rental Housing 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 Affordable Rental Housing 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, tenant or occupant, 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 Affordable Rental Housing, all as though such covenants and restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

F. 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.

24. Displacement of Persons. DEVELOPER warrants, covenants and agrees that it will take all reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations and farms).

25. Initial and Annual Income Certification. DEVELOPER warrants, covenants and agrees that it shall comply with the procedures for annual income determinations as set forth by the U.S. Department of Housing and Urban Development for the Neighborhood Stabilization Program. DEVELOPER shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from each tenant Household renting any Unit. 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) obtain an income tax return for the most recent tax year, or (5) 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.

26. 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), including any amendments thereto, in the Affordable Housing Project. These requirements apply to all units and common areas in the Project Property. 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. DEVELOPER shall be responsible for all disclosure, inspection, testing, evaluation, control and abatement activities.

27. Affordable Rental Housing.

A. DEVELOPER covenants and agrees that the Project shall constitute Affordable Rental Housing with at least seventy one (71) units preserved as Very Low Income Rental Housing during the entire Affordability Period. This covenant as to Affordable Rental Housing 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 Rental 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.

28. Compliance with Environmental Laws.

A. The DEVELOPER shall cause the Project to be in compliance with, and not to cause or permit the housing project to be in violation of, any environmental law, rule, regulation, ordinance, or statute. Although the CITY may utilize its employees and agents for regular inspection and testing of the eligible 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.

B. Additionally, the DEVELOPER agrees:

i. That the CITY shall not be directly or indirectly involved with 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; and

ii. 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 project site(s), 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; and

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

1. 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;

2. 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

3. 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

4. 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 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.

29. Certificate of Completion. Upon completion of the acquisition of the Project, DEVELOPER shall certify in writing to the CITY that the Affordable Rental Housing has been acquired. Upon completion of the Affordable Rental Housing, DEVELOPER shall also submit to the CITY a cost-certifying final budget where DEVELOPER shall identify the actual costs of construction of the Project. This final cost-certification shall identify costs in line-item format, consistent with the Project Budget. Upon a determination by the CITY that DEVELOPER is in compliance with all of DEVELOPER construction obligations, as specified in this Agreement, the CITY shall furnish, within 30 calendar days of a written request by DEVELOPER, a recordable Certificate of Completion for the Project in the form attached hereto as Exhibit D. 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 DEVELOPER with a written statement indicating in what respects 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 DEVELOPER will need to take or what standards it will need to meet in order to obtain the Certificate of Completion. Upon DEVELOPER taking the specified measures and meeting the specified standards, DEVELOPER will certify to the CITY in writing of such compliance and the CITY shall deliver the recordable Certificate of Completion to DEVELOPER in accordance with the provisions of this section.

30. Property Management.

A. Operation of the Project. DEVELOPER shall lease, operate and manage the Project in full conformity with the terms of this Agreement.

B. Occupancy Requirements. Seventy One (71) Project Units shall be rented and occupied by, or if vacant, available for rental occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than fifty percent (50%) 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, 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, DEVELOPER shall return to CITY all NSP Funds disbursed to DEVELOPER by CITY. Affordable rents will be set at HUD fair market rents, and will not exceed thirty-five percent (35%) of the tenant's household income, including utilities, for the term of this Agreement. Forty Six (46) Project Units shall be required to meet the affordable housing income restrictions as required by the Housing Set Aside program.

C. Leasing the Project. Before leasing any Units, DEVELOPER shall submit its proposed form of Lease for CITY's review and approval. DEVELOPER covenants and agrees to utilize only Leases that have been approved in advance by CITY. The CITY shall respond to DEVELOPER submission of a sample Lease within thirty (30) days. Should CITY not respond within thirty (30) days of Lease submittal, DEVELOPER shall be authorized to use the submitted sample Lease. Additionally, DEVELOPER agrees not to terminate the tenancy or to refuse to renew a Lease with a tenant of the Affordable Rental Housing assisted with NSP 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 30 days written notice served by 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.

D. Lease Provisions. Leases are subject to the following:

i. DEVELOPER shall include in Leases for all Units, provisions which authorize DEVELOPER to immediately terminate the tenancy of any Household one or more of whose members misrepresented any fact material to the Household's qualification as a Household for Very 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 increases above the applicable limits for Very 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-five percent (35%) of the Household's actual adjusted monthly income.

E. Final Management Plan. Within sixty (60) calendar following property purchase, DEVELOPER shall submit to the CITY, for review and approval, a plan for marketing and managing the proposed Affordable Rental Housing ("Final Management Plan"). The Final Management Plan shall address in detail how DEVELOPER or its designated management entity plans to market the availability of Units to prospective tenants and how DEVELOPER plans to certify the eligibility of potential tenants. The Final Management Plan shall also address how DEVELOPER and/or the management entity plan to manage and maintain the Affordable Rental Housing, and shall include appropriate financial information and documentation. The Final Management 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 and checks;
- 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; and
- Tenant/Landlord dispute resolution procedures.

i. The Final Management Plan shall contain copies of all standardized forms associated with the above listed topics. The Final Management Plan shall include a form Lease agreement that DEVELOPER propose to enter into with Project tenants. DEVELOPER shall abide by the terms of this Final Management Plan, approved by the CITY, in marketing, managing and maintaining the Housing.

ii. At least ninety (90) calendar days prior to the Project Completion Date, 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.

F. Property Management. With respect to the Project, DEVELOPER shall comply with the following:

i. Management Responsibilities. DEVELOPER directly and/or through its designated management entity, is specifically responsible for all management functions with respect to the Affordable Rental Housing Project including, without limitation, the selection of 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.

G. Maintenance and Security. DEVELOPER shall at its own expense maintain the Affordable Rental Housing in good condition, in good repair and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of the Unit occupants. DEVELOPER shall not commit or permit any waste on or to the Affordable

Rental Housing, and shall prevent and/or rectify any physical deterioration of the housing. DEVELOPER shall maintain the housing in conformance with all applicable federal, state and local laws, ordinances, codes and regulations, the Final Management Plan, and this Agreement.

H. Damage to Property. To the extent consistent with the requirements of any permitted encumbrance, or as otherwise approved by the CITY, and subject to the insurance requirements of this Agreement, if any building or improvement constructed on the Property is damaged or destroyed by an insurable cause, 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 Project Unit. Such work or repair shall commence within ninety (90) days after the insurance proceeds are made available to DEVELOPER and shall be complete within one (1) year 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, DEVELOPER shall make up the deficiency.

I. Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. DEVELOPER shall not illegally discriminate or segregate in the development, construction, use, enjoyment, occupancy or conveyance of any part of the Affordable Rental Housing 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. DEVELOPER shall otherwise comply with all applicable local, state and federal laws concerning nondiscrimination in housing. Neither DEVELOPER nor any person claiming under or through 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 DEVELOPER as to the Units or the housing project or portion thereof, shall contain covenants concerning nondiscrimination consistent with this section. DEVELOPER shall include a statement in all advertisements, notices and signs for availability of Units for rent to the effect that DEVELOPER is an Equal Housing Opportunity Provider.

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

J. Rent Schedule and Utility Allowances. DEVELOPER covenants and agrees not to charge rent for Units in an amount which exceeds those rents as established by HUD to be fair market rent for the Fresno, California area and further covenants and agrees not to impose a monthly allowance for utility services to tenants of such Units in 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 Units and the monthly allowances for utilities and services to be charged during any annual period until the expiration of the Affordability Period.

K. Fees, Taxes and Other Levies. 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, 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, DEVELOPER deposit 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.

L. Financing. DEVELOPER shall promptly inform the CITY of any new financing or funding, and DEVELOPER shall provide the CITY copies of all agreements with any and all Funding Sources for this Project. DEVELOPER agrees to notify the CITY immediately of termination or cancellation of any such agreement(s) or receipt of notice of default/default thereunder. 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). In the event DEVELOPER fails to comply with its obligations of this section, the loan shall become immediately due and payable as provided for in this Agreement. This section shall survive expiration or termination of this Agreement.

31. Financial Statements and Audits.

A. 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. Annually, within one hundred and eighty (180) days following: 1) the end of fiscal year(s) in which the NSP 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:

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

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

32. Inspection and Audit of Books, Records and Documents.

A. The DEVELOPER shall be accountable to the CITY for all NSP Funds disbursed for this 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 Project or all matters covered in this Agreement and for up to five (5) years after the expiration or termination of this Agreement.

B. 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 NSP Funds and to keep all invoices, receipts and other documents related to expenditures financed with NSP Funds for not less than five (5) 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.

C. The CITY may audit any conditions relating to this Agreement at the CITY's expense, 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. This section shall survive the termination of this Agreement.

D. 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.

33. 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.

34. No Other Liens. 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 Affordable Housing Project consistent with the attached Exhibit C Project Budget, without the prior written consent of the CITY.

35. 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.

36. Termination of Agreement.

A. This Agreement shall terminate upon the earlier of:

i. DEVELOPER's Default. The parties agree that each of the following shall constitute a default by DEVELOPER for purposes of this Agreement where such breach remains uncured for thirty (30) calendar days following City's notice to DEVELOPER describing such breach, or if such breach is not reasonably susceptible of cure, immediately upon notice of breach by City to DEVELOPER:

1. The DEVELOPER's use of NSP funds for other uses than described in the Scope of Work.

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

3. 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:

a. Failure to meet performance measures and schedule.

b. Any representation, warranty, or certificate given or furnished by or on behalf of DEVELOPER shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that DEVELOPER concealed or failed to disclose a material fact to City, provided, however, that if any representation, warranty, or certification that proves to be materially false is due merely to DEVELOPER's inadvertence, 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.

c. 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 fourteen (14) 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 fourteen (14) days.

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

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

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

ii. Written notice by either party to the other without cause.

iii. Complete performance by each party hereto.

iv. Expiration.

B. Upon the happening of a default by DEVELOPER and a failure to cure said default within 30 days of the date of the notice of default (or a more immediate date if the default is related to imminent health and/or safety concerns), City's obligation to disburse NSP funding shall terminate, and 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 City may choose in its sole discretion:

i. Terminate this Agreement immediately upon written notice to DEVELOPER, in which event any unearned and improperly NSP funds disbursed to DEVELOPER by City shall be returned to City;

ii. Bring an action in equitable relief (1) seeking specific performance by 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;

iii. Pursue any other remedy allowed at law or in equity or under this Agreement.

C. Upon any termination, the City's obligations hereunder shall terminate and all unexpended or improperly expended NSP funds subject to this Agreement shall revert to and/or be recaptured for the City's NSP Program, provided that if the DEVELOPER is not in default at the time of termination the DEVELOPER shall be reimbursed for eligible project activities satisfactorily performed prior to the effective date of the notice of termination.

D. Notwithstanding the foregoing and without waiver or limitation, in accordance with the Act including 24 CFR 85.43, suspension or termination of this Agreement may occur if the DEVELOPER materially fails to comply with any term of the

NSP grant, and the grant may be terminated for convenience in accordance with 24 CFR 85.44.

E. Those provisions of this Agreement intended by its terms therein to survive the termination of this Agreement shall so survive.

37. On-Site Monitoring. Authorized representatives of HUD or the City shall have the right to monitor the DEVELOPER's performance under this Agreement. Such monitoring may include inspection activities, review of records, and attendance at meetings.

38. Records.

A. The DEVELOPER shall maintain all necessary books and records with respect to disbursement of money, to property, and to personnel in accordance with usual and customary business accounting practices. The DEVELOPER shall document all DEVELOPER expenditures under this Agreement with properly executed payroll, time records, invoices, contracts, vouchers, or other official documentation evidencing the nature and propriety of the charges. All such materials shall be retained by the DEVELOPER for a period of not less than five (5) years from termination of this Agreement.

B. The DEVELOPER shall, at such time and in such forms as the City or HUD may require, furnish statements, records, data, copies, and information pertaining to matters covered by this Agreement. The City has the right, upon request, to inspect and copy all DEVELOPER documents and records pertaining to this Agreement.

39. Compliance with Governmental Regulations.

A. The DEVELOPER shall, at its sole cost and expense, comply with applicable municipal, county, state, and federal law, regulations, rules and requirements now in force, or which may hereafter be in force, pertaining to any and all activities under this Agreement. The DEVELOPER shall comply with all applicable provisions of 24 CFR 570, et seq., including Subpart K thereof; except that the DEVELOPER does not assume the CITY's non-delegable environmental responsibilities described in 24 CFR 58 and/or 24 CFR 570-604, and does not assume the City's responsibility for initiating the review process under Executive Order 12372.

i. Both City and DEVELOPER agree to jointly and severally comply with the requirements of the Office of Management and Budget Circular A-87, "Cost principles for State, Local, and Indian Tribal Governments"; OMB Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations"; 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; and 24 CFR Part 570.502 "Applicability of Uniform Administrative Requirements". Each party shall be responsible for determining the applicability of the foregoing.

ii. The DEVELOPER agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973 and HUD implementing regulation 24 CFR Part 8.

40. Project Responsibilities/Public Work-Prevailing Wage Requirements. DEVELOPER shall be solely responsible for all aspects of DEVELOPER's conduct in connection with the Project, including but not limited to, compliance with all local, state and federal laws including, without limitation, as to prevailing wage and public bidding requirements, as applicable. This Project is a "public work" project for federal purposes including Davis Bacon and Related Acts wage requirements absent written direction/determination otherwise by U.S. HUD or a court of competent jurisdiction. Based thereon DEVELOPER shall cause the Project work to be performed as a "public work". The Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification, or type of workman needed in the execution of contracts for the City. A copy of the resolution is on file at the Office of the City Clerk. Actual wage schedules are available upon request at the CITY's Construction Management Office. Without limiting the foregoing, DEVELOPER shall be solely responsible for 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 and/or payroll monitoring/auditing is solely for the purpose of determining whether DEVELOPER is properly discharging its obligation to the CITY, and shall not be relied upon by DEVELOPER or by any third parties as a warranty or representation by the CITY as to governmental compliance and/or the quality of the work completed for the Project

41. Contract Award.

A. The DEVELOPER will be responsible for all aspects of the project contract award and management including any compliance with all applicable laws and regulations. The DEVELOPER shall verify with the Labor Relations and Equal Opportunity Division of the U.S. Department of Housing & Urban Development (HUD) Area Office that any low bidder has not been debarred or suspended from participating in the federal project.

i. Any such award shall be subject to all the terms and conditions herein.

42. Accessibility

A. 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:

i. At least five percent (5%) of the dwelling units, or at least eleven (11) units, whichever is greater, must be constructed to be accessible for persons with mobility disabilities. An additional two percent (2%) of the dwelling units, or at least four (4) units, whichever is greater, 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).

ii. 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:

1. Provide at least one accessible building entrance on an accessible route.

2. Construct accessible and usable public and common use areas.

3. Construct all doors to be accessible and usable by persons in wheelchairs.

4. Provide an accessible route into and through the covered dwelling unit.

5. Provide light switches, electrical outlets, thermostats and other environmental controls in accessible locations.

6. Construct reinforced bathroom walls for later installation of grab bars around toilets, tubs, shower stalls and shower seats, where such facilities are provided.

7. Provide usable kitchens and bathrooms such that an individual who uses a wheelchair can maneuver about the space.

43. Discrimination Prohibited.

A. The DEVELOPER agrees to comply with the City's Fair Employment Practices and shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, religion, sex, national origin, ancestry, or physical or mental handicapped. More specifically, the DEVELOPER agrees as follows:

i. The DEVELOPER warrants, covenants and agrees that it shall comply 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 purchased and rehabilitated in the future, and to assess the results of these actions.

ii. No person in the United States shall, on the grounds of race, color, religion, national origin, sex or sexual preference, ancestry, or physical or mental handicap be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

iii. The DEVELOPER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual preference, national origin, ancestry, or physical or mental handicap. The DEVELOPER shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, or physical or mental handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The DEVELOPER agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

iv. The DEVELOPER will, in all solicitation or advertisements for employees placed by or on behalf of the DEVELOPER, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual preference, national origin, ancestry or physical or mental handicap.

B. The DEVELOPER will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the such labor union or workers' representatives of the DEVELOPER'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

44. Conflict of Interest.

A. Prior to City's execution of this Agreement, DEVELOPER shall complete a City of Fresno Conflict of Interest Disclosure Statement. Said Statement is attached hereto as Exhibit F and incorporated herein by reference. During the term of this Agreement, DEVELOPER shall have the obligation and duty to immediately notify City in writing of any change to the information provided by DEVELOPER on Exhibit F.

i. No member, officer, or employee of the DEVELOPER or its designees or agents who exercise any function or responsibility with respect to the programs during his/her tenure or for one (1) year thereafter, shall have any interest,

direct or indirect, in any contract or subcontract, or the proceeds thereof, for Services to be performed in connection with this Agreement. The DEVELOPER shall incorporate, or cause to be incorporated, in all contracts and subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

ii. DEVELOPER shall not employ or retain the services of any person while such person either is employed by City or is a member of any City commission, board, committee, or similar City body. This requirement may be waived by the City's Chief Administrative Officer if no actual or potential conflict is involved.

iii. DEVELOPER shall comply with all applicable laws, rules, regulations and requirements governing avoidance of impermissible conflicts, including without limitation Government Code 1090 et seq., the requirements of the California Political Reform Act (Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.).

iv. DEVELOPER represents and warrants that as of the effective date hereof, it represents no client or customer whose interests are adverse to the City's.

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

45. 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.

46. Indemnification.

A. DEVELOPER shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents 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 City, 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 DEVELOPER's performance of this Agreement. DEVELOPER's obligations under the preceding sentence shall apply regardless of whether City or any of their 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.

B. If DEVELOPER should contract or subcontract all or any portion of the work to be performed under this Agreement, DEVELOPER shall require each contractor

or subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of the preceding paragraph.

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

47. Insurance and Bonds.

A. Insurance. Throughout the life of this Agreement, the DEVELOPER shall 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:

i. Prior to repair and rehabilitation of the Project Property and 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.

ii. Following acquisition of the Project Property 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 of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of the Project Property with no coinsurance penalty provisions. Such insurance shall include coverage for business income, including "rental value", in an amount equal to the two (2) years of annual Rent. 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 CP 00 30.

iii. 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. 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.

iv. The Builders Risk (Course of Construction) and Fire and Extended Coverage insurance policies shall be endorsed to name the City as a loss payee.

v. DEVELOPER shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or his/her designee prior to DEVELOPER'S execution of this Agreement.

vi. The fact that insurance is obtained by DEVELOPER shall not be deemed to release or diminish the liability of DEVELOPER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and each of its officials, officers, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by DEVELOPER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of DEVELOPER.

vii. Upon request of City, DEVELOPER shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

viii. 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.

B. Bonds. The 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.

i. The "Faithful Performance Bond" shall be at least equal to 100% of DEVELOPER'S estimated construction costs to guarantee faithful performance of the Project, within the time prescribed, in a manner satisfactory to the CITY, and that all materials and workmanship will be free from original or developed defects.

ii. The "Material and Labor Bond" shall be at least equal to 100% of DEVELOPER'S estimated construction costs to satisfy claims of material supplies and of mechanics and laborers employed for this Project. The bond shall be maintained by 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.

iii. In lieu of the bonds required above, CITY, in its sole discretion, may accept from 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 a bank, and in a form, acceptable to CITY. This Irrevocable Standby Letter of Credit shall be maintained by Developer in full force and effect until 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.

48. DEVELOPER Certification.

A. The DEVELOPER certifies to the best of its knowledge and belief that no federally appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, or a member of Congress, or an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification or any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federally appropriated funds have been paid or will be paid to a person for influencing an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the DEVELOPER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The DEVELOPER shall require that the language of the above certification be included in the documents for all DEVELOPER tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all developers/contractors shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement.

49. Independent Contractor. In the furnishing of the services provided for herein, the DEVELOPER is acting as an independent contractor. Neither the DEVELOPER, nor any of its officers, associates, agents or employees shall be deemed an employee or agent of the City for any purpose. Nothing in this Agreement shall create a limited or general partnership or joint venture. DEVELOPER shall have no authority to bind the

City absent City's express written consent. Except to the extent otherwise provided in this Agreement, DEVELOPER shall bear its own costs/expenses in pursuit hereof.

50. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

51. Binding. Subject to Section 52 below ("Assignment"), once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

52. Assignment. This Agreement is personal to the DEVELOPER and there shall be no assignment by the DEVELOPER of its rights or obligations under this Agreement without the prior written approval of the City. Any attempted assignment by the DEVELOPER, its successors or assigns, shall be null and void unless approved in writing by the City. Notwithstanding the above, DEVELOPER may assign its rights, duties and obligations, title and interest under this Agreement to a wholly owned single purpose subsidiary of DEVELOPER, subject to written approval by City. However, in the event of such assignment as provided herein, DEVELOPER is in no way relieved of any of its responsibilities, and shall remain fully responsible and liable to City under the terms of this Agreement and all related agreements, and DEVELOPER shall retain full control and responsibility for the Project.

53. Waiver.

A. The waiver by either party of a breach by the other of any provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

i. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

54. Heading. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

55. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

56. Interpretation. The parties acknowledge that this agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of, or against any party, but rather by construing the terms in accordance with their generally accepted meaning. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of this Agreement shall control and take precedence.

57. 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 in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

58. Time of Essence. Time is of the essence for the performance of this Agreement.

59. Extent of Agreement. Each party acknowledges that they have read and fully understands the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement maybe modified only by written instrument duly authorized and executed by both the City and the DEVELOPER.

60. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit hereto, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within the exhibit. Furthermore, in the event of any conflict between the body of this Agreement and any document or instrument referenced therein, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within said document or instrument.

///

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

CITY OF FRESNO

Bruce Rudd
Assistant City Manager

FRESNO REVITALIZATION CORPORATION
a California nonprofit public benefit corporation

Name: Jan Minami
Title: President

ATTEST:
REBECCA E. KLISCH
CITY CLERK

By: Cindy Bruer 5/26/10
Deputy

FRESNO REVITALIZATION CORPORATION
a California nonprofit public benefit corporation

Name: Sally M. Caglia
Title: Secretary

APPROVED AS TO FORM:
JAMES SANCHEZ
CITY ATTORNEY

By: Staice S. Mehlbrean 5/19/10
Deputy

ADDRESSES:

CITY:
Housing and Community Development Division
Planning and Development Department
Attn: Housing Manager
2600 Fresno St., Room 3070
Fresno, CA 93721

FRESNO REVITALIZATION CORPORATION:
2344 Tulare Street, Suite 200
Fresno, CA 93721

Attachments:
Exhibit A – Project Description, Schedule and Legal Description
Exhibit B – Declaration of Restrictions
Exhibit C – Budget and Cash Flow
Exhibit D – Certificate of Completion
Exhibit E – Promissory Note
Exhibit F – Disclosure of Conflict of Interest
Exhibit G – Appraisal Requirements

CLERK'S CERTIFICATION

State of California)
County of Fresno)

On May 26, 2010, before me, Cindy Bruer, Deputy City Clerk, personally appeared Bruce Rudd, Assistant City Manager of the City of Fresno who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to be 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), acted, executed the instrument.

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

WITNESS my hand and official seal.

REBECCA E. KLISCH. CMC
CITY CLERK, City of Fresno

By Cindy Bruer
Deputy

EXHIBIT A
Project Description, Schedule and Legal Description

A. The Agreement provides for the use of Neighborhood Stabilization Program (NSP) funds in the amount of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty-Three Dollars ($2,772,253), by the DEVELOPER, for the purchase and rehabilitation of a one hundred eighteen (118) unit multi-family rental housing project.

B. The project is located at 3033 E. Platt Avenue, Fresno, CA 93721, with APN 468-390-44s.

NSP FUNDED UNITS			
% of Median	One Bedroom Units	Two Bedroom Units	Totals
50% or less	52	19	71
Affordable per Housing Set Aside Requirements	34	12	46

Schedule

Activity	Timeline
Open Escrow	No later than April 30, 2010
Close Escrow	May 31, 2010
Confirm Very Low Income Households on 71 units	August 31, 2010

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lots 1, 2, 3, 4 and 5 of Tract No 1938, Huntington Holmes Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded April 26, 1963 in Volume 21 Pages 66, 67 and 68 of Plats, Fresno County Records.

Excepting therefrom all oil, gas, other hydrocarbon substances and minerals of any kind or character, in, on, or thereunder, as reserved in deeds of record.

APN: 468-390-44s

EXHIBIT B
EXEMPLAR DECLARATION OF RESTRICTIONS

RECORDING REQUESTED BY AND for the benefit of the City of Fresno and is exempt from the payment of a recording fee in accordance with Government Code Sections 6103 and 27383.

AND WHEN RECORDED MAIL TO:

CITY OF FRESNO
Housing and Community Development Division
2600 Fresno Street, Room 3070
Fresno, CA 93721

Title Order No._ Escrow No.____

APN: 468-390-44s

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this _____, by [_____], ("Declarant"), or assignees, in favor of the City of Fresno, acting by and through its Planning and Development 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 468-390-44s, which is more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, Pursuant to a certain Neighborhood Stabilization Program Agreement dated _____, 2010, incorporated herein, ("NSP Agreement") and instruments referenced therein, Declarant agrees to utilize and City agrees to provide certain NSP Funds from the United States Department of Housing and Urban Development, to Declarant for certain affordable housing (the "Project") upon the Property to be rented and maintained as affordable to very low income families, subject to the terms and conditions set forth in the NSP Agreement; and

WHEREAS, the NSP regulations promulgated by HUD, and the NSP Agreement impose certain affordability requirements upon property benefited thereby, which affordability restrictions shall be enforceable for a fifty five (55) year 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 acquisition, rental and occupancy of 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 Property 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 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 of fifty five (55) years constituting the Affordability Period.

Period of Affordability: The Neighborhood Stabilization Program requires the City to set periods of affordability as provided in NSP regulations. The minimum period of affordability for this program is fifty five (55 years). Year one shall be the 12-month period following issuance of the Certificate of Completion of the Project Property, with each succeeding year beginning on the anniversary thereof and ending 12 month hence. There will be no partial years.

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 NSP Agreement, and are established and agreed upon for the purpose of enhancing and protecting the value of the Project Property and in consideration for City entering into the NSP Agreement with Declarant. All terms not otherwise defined herein shall have the meaning ascribed to such term in the NSP Agreement.

2. Restrictions. The following covenants and restrictions on the use and enjoyment of the Project Property shall be in addition to any other covenants and restrictions affecting the Project 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 Project 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 Project 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(s) and the Affordability Period when determined by the City. Unless otherwise provided in the NSP Agreement, the term Affordable Housing shall include, without limitation, compliance with the following requirements:

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 Project 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 Project Property.

Principal Residence. Each unit constituting the Project upon the Property shall be rented only to natural persons, who shall occupy the Unit as the principal residence. The foregoing requirement that the tenant of each Unit constituting the Project Property occupy the Unit as the tenant's principal residence does not apply to persons, other than natural persons, who acquire the Project Property or portion thereof by foreclosure or deed in lieu of foreclosure; or (ii) HUD qualified entities that acquire the Project Property or portion thereof, with the consent of the City.

Income Requirements. The NSP funded units constituting the Project upon the Property and each of them may be rented only to (a) natural person(s) whose annual household income at the time is not greater than fifty percent (50%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size. A total of seventy one (71) floating units are NSP funded units.

Item (a) above is hereinafter referred to as the Covenant and Restrictions.

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 Project 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 Project 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 Project 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 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.

5. Benefit. This Declaration shall run with and bind the seventy one (71) Project Units 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 Project 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 Project 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 NSP 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"

FRESNO REVITALIZATION CORPORATION
a California non-profit public benefit corporation

By:_____

Date:_____

By:_____

Date:_____

Exhibit C

NSP Budget and Cash Flow

Use	NSP Amount	Private Financing
Acquisition	$ 2,480,204	$1,937,796
Rehabilitation and Closing Costs	$292,049	0
Total	$2,772,253	$1,937,796

Proposed Rehabilitation Costs			
	REHAB SIX UNITS	EXTERIOR WORK	TOTAL
SITE ACQUISITIONS	0	0	0
SITE IMPROVEMENTS	0	8500	8500
CONCRETE	0	24286	24286
PLUMBING	22740	0	22740
WOOD FRAMING	5050	14000	19050
WINDOWS	3000	0	3000
ELECTRICAL	6380	0	6380
MECHANICAL	9230	0	9230
BUILDING	6000	12470	18470
EXTERIOR	800	26380	27180
INTERIOR	56796	0	56796
PERMITS	4000	2500	6500
OVERHEAD EXPENSES	1500	5500	7000
CLOSING EXPENSES	0	0	0
DEVELOPER FEE	11549	9363	20912
PEST CONTROL WORK		17,000	
POOL REPAIRS		20,000	
CONTINGENCY		10,003	
GRAND TOTAL	$127,046	$ 150,003	$ 277,049

Operating Pro Forma		
	Pro Forma Monthly	Pro Forma Annually
RENTAL INCOME		
GROSS RESIDENTIAL RENT	65,950.00	791,400.00
LESS VACANCY ADJUSTMENTS	(6,595.00)	(79,140.00)
EFFECTIVE GROSS INCOME (EGI)	59,355.00	712,260.00
OPERATING EXPENSES		
PAYROLL EXPENSES ON-SITE MANAGER	(4,166.67)	(50,000.00)
PAYROLL EXPENSES ON-SITE MAINTENANCE	(2,716.67)	(32,600.00)
ADMIN EXPENSES (NET OF MGMT FEE)	(1,229.17)	(14,750.00)
MANAGEMENT FEES (4% of EGI)	(2,374.20)	(28,490.40)
MARKETING/RETENTION	(1,180.00)	(14,160.00)
MAINTENANCE & REPAIR	(2,950.00)	(35,400.00)
TURNOVER EXPENSES	(1,966.67)	(23,600.00)
UTILITIES	(6,432.58)	(77,191.00)
RESERVES FOR REPLACEMENT	(1,966.67)	(23,600.00)
INSURANCE	(2,500.00)	(30,000.00)
PROPERTY TAXES	(4,174.50)	(50,094.00)
TOTAL OPERATING EXPENSES	(31,657.12)	(379,885.40)
NET OPERATING INCOME	27,697.88	332,374.60
INTEREST EXPENSE	(10,254.17)	(123,050.05)
NET INCOME/CASH FLOW	$ 17,443.71	$ 209,324.55

Exhibit D
EXEMPLAR CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno
Housing Division
2600 Fresno Street, Room 3070
Fresno, CA 93721

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

APN: 468-390-44s

City of Fresno

By:_____, Director
Planning and Development Department

Date:_____

CERTIFICATE OF COMPLETION

APN: _____

Recitals:

A. By a Neighborhood Stabilization Program Agreement dated _____, 2010, ("NSP Agreement") between the City of Fresno, a municipal corporation ("CITY"), and _____, a California Corporation, ("DEVELOPER"), the DEVELOPER agreed to acquire a one hundred eighteen (118) unit multi-family rental housing project ("Project"), upon the premises legally described in Exhibit A, attached to the NSP Agreement, made a part hereof my this reference, (the "Property"), for the purposes of Affordable Rental Housing, with the assistance of NSP funds while meeting the affordable housing, income targeting and other requirements of the NSP, according to the terms and conditions of the NSP Agreement and the Loan Documents and other document/instruments referenced therein.

B. The NSP 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 NSP Agreement, after the DEVELOPER completes the Project, the DEVELOPER may ask CITY to record a Certificate of Completion.

D. The DEVELOPER has asked 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 Property as set forth in the NSP Agreement.

NOW THEREFORE:

1. CITY certifies that the DEVELOPER commenced the Project on the Project Property on _____, 2010 and completed the Project on the Project Property on _____, 2010, and has done so in full compliance with the NSP 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 NSP Agreement.

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

CITY OF FRESNO

By:_____
_____, Director
Planning and Development Department

ATTEST:
CITY CLERK

By:_____
Deputy

Date: _____

APPROVED AS TO FORM:
JAMES C. SANCHEZ

By:_____
Deputy

Date: _____

CONSENT OF DEVELOPER

FRESNO REVITALIZATION CORPORATION

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 E
EXEMPLAR PROMISSORY NOTE

(Program: Neighborhood Stabilization Program)

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

$2,772,253 Fresno, California, ____, 2010

Promise to Pay. For value received, the undersigned, _____, a California Company ("Developer" or "Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation, ("Lender"), the sum of Two Million Seven Hundred Seventy Two Thousand Two Hundred Fifty Three Dollars and 00/100 ($2,772,253.00) at zero percent interest, due and payable at the earlier of (i) 55 years from the City issued Certificate of Completion (the Affordability Period) or (ii) the date upon which the Borrower has completed payment on other property acquisition lien(s). On or before the earliest of (i) or (ii) above (the "Maturity Date"), and pursuant to the parties' Neighborhood Stabilization Program Agreement dated _____ , 2010 ("NSP Agreement"), on which date the unpaid principal balance together with interest and unpaid penalties or late charges where applicable thereon shall be due and payable in a lump sum, along with attorney's fees and costs of collection, without relief from valuation and appraisement laws; provided that, in the event the Developer is not then in default of the NSP Agreement, the Developer may at any time pay off the principal prior to the Maturity Date. If, upon sale of the Project Property, by Borrower, and the repayment of the Note associated with the First Deed of Trust, there are inadequate proceeds to pay Lender the full principal and interest due under this Promissory Note solely from the proceeds of the sale, Lender shall accept such payment from Borrower as full repayment of all unpaid principal due without any further recourse to Borrower.

Any failure to make a 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 NSP 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.

Affordability Period. The minimum period of affordability for this Program is fifty five (55) years. Year one shall be the 12-month period following issuance of the Certificate of

Completion for the Project, with each succeeding year beginning on the anniversary thereof and ending 12 month hence. There will be no partial years.

Security. Lender, by any and all UCC-1 Financing Statement(s) filed, may perfect Lender's security interest in this Note, the NSP Agreement, and any extensions or renewals hereof, and any and all accounts, chattel paper, payment intangibles, or promissory notes.

Time is of the Essence. It will be a default under this Note if Borrower defaults under the NSP Agreement, defaults under any other Program 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 Program documents and then to 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 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 Program 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
Finance/Treasury Section
2600 Fresno Street, Room 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 NSP 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, 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 collateral 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 collateral 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 Note to be executed by its authorized agent as of the date and year first above written.

Fresno Revitalization Corporation, Borrower

By:_____ Date:_____
Name:_____
Title:_____
(Attach notary certificate of acknowledgment)

Exhibit F
DISCLOSURE OF CONFLICT OF INTEREST

		YES*	NO
1.	Are you currently in litigation with the City of Fresno or any of its agents?		✓
2.	Do you represent any firm, organization or person who is in litigation with the City of Fresno?		✓
3.	Do you currently represent or perform work for any clients who do business with the City of Fresno?		✓
4.	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City, or in a business which is in litigation with the City?		✓
5.	Are you or any of your principals, managers or professionals, related by blood or marriage to any City employee who has any significant role in the subject matter of this service?		✓
6.	Are you employed by any other jurisdictions or agencies?		✓

* If the answer to any question is yes, please explain in full.

Jan Minami

Name: Jan Minami
Title: President

EXHIBIT G
Appraisal Requirements

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and its implementing regulations (49 CFR Part 24) set forth minimum requirements for real property acquisition appraisals for Federal and federally-assisted programs. Appraisals subject to the URA must be prepared according to these requirements.

The acquiring DEVELOPER has a legitimate role in contributing to the appraisal process, especially in developing a scope of work and defining the appraisal task. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal task.

The scope of work is a written set of expectations that form an agreement or understanding between the appraiser and the DEVELOPER as to the specific requirements of the appraisal, resulting in a report to be delivered to the DEVELOPER by the appraiser. The scope of work must address the unique, unusual and variable appraisal performance requirements of the appraisal. Either the appraiser or the DEVELOPER may recommend modifications to the initial scope of work, but both parties must approve changes.

SCOPE OF WORK

The appraiser must, at a minimum:

1. Provide an appraisal meeting the definition of an appraisal found at 49 CFR 24.2(a)(3) which is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

2. Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property.

3. Perform an inspection of the subject property. The inspection should be appropriate for the appraisal task, and the scope of work should address:

    - The extent of the inspection and description of the neighborhood and proposed project area,

    - The extent of the subject property inspection, including interior and exterior areas,

    - The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property.)

4. The appraisal must have been completed within 60 days of the offer made for the property.

5. The acquiring DEVELOPER has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal stated above and the five following requirements:

   (i) An adequate description of the physical characteristics of the property being appraised including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

   (ii) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.

   (iii) A description of comparable sales, including a description of all relevant physical, legal and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

   (iv) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

   (v) The effective date of the valuation, date of appraisal, signature, and certification of the appraiser (see attached sample).

6. The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

CERTIFICATE OF APPRAISER

I hereby certify:

That on _____ date(s), I personally made a field inspection of the property herein appraised and have afforded the owner or a designated representative the opportunity to accompany me on this inspection. I have also personally made a field inspection of the comparable sales relied upon in making said appraisal. The property being appraised and the comparable sales relied upon in making this appraisal were as represented in the appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct; subject to the limiting conditions therein set forth.

That I understand that such appraisal may be used in connection with the acquisition of property for a project utilizing U.S. Department of Housing and Urban Development funds.

That such appraisal has been made in conformity with appropriate laws, regulations, and policies and procedures applicable to appraisal of property for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said State.

That any decrease or increase in the fair market value of real property prior to the date of valuation caused by the project for which such property is acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner, was disregarded in determining the compensation for the property.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the acquiring DEVELOPER or officials of the U.S. Department of Housing and Urban Development and I will not do so until so authorized by said officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That I have not given consideration to, or included in my appraisal, any allowance for relocation assistance benefits.

That my opinion of the fair market value of the property to be acquired as of _____ is $_____ based upon my independent appraisal and the exercise of my professional judgment.

Name _____
Signature _____
Date _____

CITY OF FRESNO
City Clerk's Office (Original)

1:30pm #2 - D
4/8/10

OPERATING AGREEMENT AND LOAN GUARANTY

by and between

Redevelopment Agency of the City of Fresno,
a public body, corporate and politic

and

FRESNO REVITALIZATION CORPORATION,
a California Non-Profit Public Benefit Corporation

regarding

Canyon Crest Condominiums

(A Multi-Family Rental Apartment Property)

ATTACHMENTS

Exhibit A: Legal Description of Property

Exhibit B: Plat Map of the Property

Exhibit C: Budget/Financial Plan

Exhibit D: Certificate of Completion

Exhibit E: Basic Program of Work

Exhibit F: Regulatory Agreement

Exhibit G: Loan Guaranty

Exhibit H: Agreement for Purchase and Sale of Real Property

Exhibit I: Neighborhood Stabilization Program Agreement

Exhibit J: Seller's Loan Documents

Exhibit K: Contractual Services Agreement between RDA and OWNER

OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Agreement") is entered as of the Effective Date (defined in this Agreement), between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic, ("Agency") and the FRESNO REVITALIZATION CORPORATION, a California Non-Profit Public Benefit Corporation ("Owner")

RECITALS

The parties enter this Agreement based on the following facts, understandings, and intentions:

A. By authority granted under California Redevelopment Law (the "Law"), the Agency has prepared and is responsible for carrying out the redevelopment plan for certain Redevelopment Project Areas (the "Plan"), including as to certain priority of use of Tax Increment and/or Housing Set Aside Funds (collectively "Tax Increment".)

B. To the extent provided in or allowed by the Law including California Health and Safety Code ("Cal. H.& S.C.") Sections 33334.2 and 33449, as provided by joint resolutions of the Fresno City Council and the Agency, findings and determinations pursuant to Cal. H.&S.C. Section 33334.2(g), the Plan and limited to the terms and conditions therein, the Agency may make improvements upon and/or construct and improve structures in order to provide housing for persons and families of low or moderate income, including related on-site and off-site improvements, by variously: (1) allowing the use of Housing Set Aside Funds outside the Airport Area Revitalization, Central Business District, Central City Commercial Revitalization, Chinatown Expanded, Convention Center, Freeway 99-Golden State Boulevard Corridor, Fruit/Church, Mariposa, Roeding Business Park, South Fresno Industrial Revitalization, South Van Ness Industrial, Southeast Fresno Revitalization, West Fresno I, West Fresno II, West Fresno III, redevelopment plans; (2) restricting the use of the Housing Set Aside Funds to certain of the Community Development Block Grant eligible areas of the City; and (3) placing a priority on the use of the Housing Set Aside Funds from certain Project Areas to be used either within or adjacent to the Central Area or adjacent to certain Project Areas.

C. Agency administers the Low and Moderate Income Housing Fund established pursuant to Cal. H.& S.C. Sections 33334.2 et seq.

D. Owner is a California Non-Profit Public Benefit Corporation, exempt from federal and state income tax under Section 501 c(3) of the Internal Revenue Code and Section 23701(d) of the California Revenue & Taxation Code for the purpose of assisting the Agency with revitalization of the downtown area of Fresno, California.

E. Owner shall acquire all rights, title and interest in fee to the certain real property described in Exhibit "A" attached hereto and incorporated herein (the "Property"). The Property is located adjacent to the Central Area and within the territorial jurisdiction of the Agency for the use of Housing Set Aside Funds.

F. Owner proposes to acquire a multi-family residential project on the Property consisting of one hundred eighteen (118) residential units, wherein one hundred seventeen (117) units shall be rented to very low and lower income households.

G. Owner proposes to enter an Agreement with the City of Fresno whereby the City shall make a loan to Owner from its Neighborhood Stabilization Program ("NSP") in the amount of $2,772,253 to Owner for acquisition and renovation of the Property under the terms and conditions of that NSP Agreement, attached hereto as Exhibit "I" to this Agreement.

H. Owner agrees to undertake improvements to the Property in accordance with the Basic Program of Work described in Exhibit "E" attached hereto and incorporated herein (the "Basic Program of Work").

I. The Property and associated on site and off site improvements are collectively referred to in this Agreement as the "Improvements" or the "Property," all of which will directly benefit the Property and the Plan Area.

J. Agency is willing to assist Owner's acquisition of the of the Property by providing a Loan Guaranty to Owner through the use of certain Housing Set Aside (Tax Increment) Funds in an amount of One Million, Nine Hundred Thirty-Seven Thousand, Seven Hundred Ninety-Six Dollars ($1,937,796.00) (the "Agency Guaranty") upon the terms and conditions specified in this Agreement and provide administrative, financial and technical support to the Owner in the acquisition and operation of the Property.

K. The Agency Loan Guaranty shall be made in accordance with this Agreement. The Agency Guaranty and performance of the affordability and other covenants and restrictions set forth in this Agreement shall be evidenced by a Regulatory Agreement shown in Exhibit "F" to this Agreement and which shall be recorded against and run with the Property.

L. The Housing and Community Development Commission reviewed the Property and this Agreement on February 24, 2010, and recommended that the City Council and Agency Board approve it.

M. The Agency Board reviewed and approved the Property and this Agreement on April 8, 2010.

N. The Project has been environmentally assessed (Environmental Assessment No. H-2010-10) and was determined to be categorically excluded from review under Section 58.35 (a)(3) ii and (a)(5) of the National Environmental Policy Act (NEPA) Guidelines. Additionally, the Project has been assessed under the California Environmental Quality Act (CEQA), resulting in a Categorical Exemption. Based on the review, City staff determined that the project is consistent with all of the criteria specified for an exemption to CEQA in accordance with Section 15301/Class 1 and 15378(b)(4) of CEQA Guidelines.

O. Agency has further determined this Project is in the best interests of, and will materially contribute to, Plan implementation. Further, Agency has found the Project: (i) will have a positive influence in the Plan Area, and surrounding environs; (ii) is in the vital and best interests of Agency and the health, safety, and welfare of City

residents; (iii) complies with applicable federal, state, and local laws and requirements; (iv) will help eliminate blight; (v) will improve and preserve the community's supply of low and moderate income housing available at affordable rent, as defined by Cal. H.& S.C. Section 50053, to persons and families of low or moderate income, as defined in Cal. H.& S.C. Section 50093; (vi) will be available to meet the replacement housing provisions in Cal. H.& S.C. Section 33413; (vii) will apply funds solely within the respective Plan areas except to the extent otherwise provided herein and allowed by Law; (viii) includes only planning and administrative expenses incurred in pursuit hereof that are necessary for the production, improvement, or preservation of low and moderate income housing; (ix) will comply with all owner participation rules and criteria of Agency and the Plan; and (x) will comply with any and all applicable review and other requirements of the City's Historical Preservation Ordinance.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the covenants, conditions and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. DEFINITIONS. Besides definitions contained elsewhere in this Agreement, the definitions in this Section will govern the construction, meaning, application and interpretation of the various terms used in this Agreement.

1.1. "ADA" means the Americans with Disabilities Act of 1990.

1.2. "Affordability Period" means a period of fifty-five (55) years commencing from the date Agency records the Certificate of Completion, shown in Exhibit "D" to this Agreement.

1.3. "Affordable Very Low Income Rent" shall mean annual rentals (not including a reasonable utility allowance) whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by the U.S. Department of Housing and Urban Development ("HUD"), or its successor, which is currently thirty-five percent (35%) of fifty percent (50%) of the annual median income for the Fresno Metropolitan Statistical Areas adjusted for the family size appropriate for the Unit.

1.4. "Affordable Lower Income Rent" shall mean annual rentals (including a reasonable Utility Allowance) whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by California Health & Safety Code Section 50053 (b)(3), or its successor, which is currently thirty percent (30%) of sixty percent (60%) of the annual median income for the Fresno Metropolitan Statistical Area adjusted for the family size appropriate for the Unit.

1.5. "Affordable Rent" shall refer to Affordable Very Low Income Rent and Affordable Lower Income Rent.

1.6. "Agency" means the Redevelopment Agency of the City of Fresno, a public body, corporate and politic, organized and existing under the California Health & Safety Code Section 33000 *et. seq.*, and any assignee of or successor to its rights, powers and responsibilities.

1.7. "Agency Assistance" shall mean the Agency Loan Guaranty as defined in Section 1.8 below, as well as any Agency Tax Increment or Low and Moderate Income Set-Aside funds used to cover debt service shortfalls or for Agency-funded capital improvements to the Project.

1.8. "Agency Loan Guaranty" means a loan guaranty of a promissory note by an affiliate of the Property Seller, Inland Mortgage Capital Corporation, in an amount of One Million, Nine Hundred Thirty-Seven Thousand, Seven Hundred Ninety-Six Dollars ($1,937,796.00) made by Agency to Owner as a contribution towards the Project, upon the terms and conditions set forth in this Agreement and the Loan Guaranty shown in Exhibit "G" of this Agreement.

1.9. "Agreement" means this Operating Agreement, including all agreements shown in the exhibits and included by reference.

1.10. "Budget" means the Budget/Financial Plan for the Property attached hereto and incorporated herein as Exhibit "C" (the "Budget").

1.11. "Certificate of Completion" means that Certificate issued in the form attached as Exhibit "D" to Owner by Agency evidencing completion of the Property for purposes of this Agreement.

1.12. "City of Fresno" or "City" shall mean the City of Fresno, California, a Charter City.

1.13. "Community Development Block Program" refers to the program of the United States Department of Housing and Urban Development ("HUD"), of which the Neighborhood Stabilization Program is a subcomponent, enacted under Title I of the Housing and Community Development Act of 1974.

1.14. "Day" whether or not capitalized, means a calendar day, unless stated otherwise.

1.15. "Eligible Very Low Income Tenant" shall mean those tenants whose household incomes do not exceed fifty percent (50%) of the annual median income for the Fresno Metropolitan Statistical Area.

1.16. "Eligible Lower Income Tenant" shall mean those tenants whose household incomes do not exceed eighty percent (80%) of the annual median income for the Fresno Metropolitan Statistical Area.

1.17. "Eligible Over Income Tenant" shall mean those tenants whose occupancy at the Property precedes the acquisition of the Property by Owner and the recordation of these Restrictions, but whose household

incomes exceed eighty percent (80%) of the annual median income for the Fresno Metropolitan Statistical Area for the household size, and which household the Owner has determined would be infeasible to relocate under the Federal Uniform Relocation Act ("URA"), 49 CFR Part 24 or HUD Regulations Section 104(d).

1.18. "Eligible Tenant" shall mean a Very Low Income Tenant or a Lower Income Tenant. An Eligible Over Income Tenant is an Eligible Tenant.

1.19. "Fresno Metropolitan Statistical Area Median Income" shall be determined by reference to the calculations published by HUD.

1.20. "Default" means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.

1.21. "Director" means the Executive Director of Agency.

1.22. "Effective Date" means the date of complete execution of the Agreement following the Agency Board approval thereof.

1.23. "Environmental Laws" means any federal, state, or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials or waste including, without limitation, any state or federal lien or "super lien" law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.

1.24. "Funding Source" means the loan made to the Owner by the City of Fresno ("NSP Loan") and the seller's note made by Inland Mortgage Capital Corporation, ("Seller's Note") along with any Agency Assistance and other funding sources secured by Owner to acquire, operate or renovate the Improvements as shown in Exhibit "C."

1.25. "Financing Plan" means the Budget including sources and uses of funds sufficient for Owner to acquire, operate or renovate Improvements according to the Basic Program of Work as described in Exhibit "E".

1.26. "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code; (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code; (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code; (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code; (e) petroleum; (f) friable asbestos; (g) polychlorinated byphenyls; (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title

22, California Administrative Code; (i) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.);* or, (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.)*; provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential rental housing or associated buildings and grounds, or typically used in household activities, in a manner typical of other residential rental housing developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Sections 25249.8 *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine.

1.27. "Household" means one or more persons occupying a Unit.

1.28. "Housing Set-Aside Funds" means those California Health and Safety Code Section 33334.2 monies held and administered by Agency, a portion of which shall be used to provide the Loan Guaranty to Owner for eligible costs and expenses incurred by Owner in acquiring and renovating the Improvements in such amounts, and upon such terms and conditions specified in this Agreement.

1.29. "Improvements" mean the Units Owner will acquire, operate and renovate on the Property, including associated fencing, pools, recreation areas, parking lots, and landscaping improvements.

1.30. "Initial Lease-up Period." The period of time after Owner has closed escrow on the Property from Seller and undertakes (a) the leasing of vacant units to income-qualified households; (b) the leasing of the six units requiring significant renovation and rehabilitation; and (c) the process of income-qualifying existing tenants living at the Property. The Parties expect the Initial Lease-up Period to be complete by September 30, 2010.

1.31. "Law" means the Community Redevelopment Law of the State (California Health and Safety Code Sections 33000 *et seq.*)

1.32. "Loan Documents" means collectively this Agreement, the Seller's Note, the NSP Agreement, the Loan Guaranty Agreement, the Deeds of Trust, and all exhibits and attachments thereto as they may be amended, modified or restated from time to time.

1.33. The term "Manager's Unit" or "Management Representative's Unit" shall mean the one (1) unit of the Property that shall be designated by Owner

as a residence for a "Qualified Manager" or "Qualified Management Representative." The Manager's Unit shall not be an income-restricted Unit.

1.34. "Material Change" means a change, modification, revision or alteration to the Loan Documents that significantly deviates from those previously approved by the Agency, provided that fully funded change(s) which do not result in a change in the number or type (i.e. residential, affordable and commercial) of Units and/or an increase in the total Agency Assistance funding provided in this Agreement shall not constitute Material Change(s).

1.35. "Neighborhood Stabilization Program" or "NSP" shall mean a program administered by the City of Fresno resulting from the Congressional adoption of Title III of the Housing and Economic Recovery Act (HERA) of 2008. NSP is a subcomponent of the Community Development Block Grant Program (CDBG) administered by HUD and provides entitlement grants to state and local communities to purchase foreclosed or abandoned property to rehabilitate, resell, or redevelop homes or multi-family units in an effort to stabilize neighborhoods and arrest the decline of house values in neighboring homes.

1.36. "Owner" means Fresno Revitalization Corporation, Inc. a California Non-Profit Public Benefit Corporation.

1.37. "Plan" means the Redevelopment Plan for the Merged Project Area No. 1 Project Area.

1.38. "Project" means the acquisition of 118 residential units; the full renovation of no fewer than six (6) units; and, associated public area improvements as more particularly described in Exhibit "E". Upon completion of the Project, Owner will implement an on-going program of unit upgrade upon vacancy.

1.39. "Project Area" means Merged Project Area No. 1.

1.40. "Project Completion Date" means the date that Agency shall have determined the Project has reached completion in accordance with the scope of work described in the Basic Program of Work attached as Exhibit "E", as evidenced by Agency's issuance of a Certificate of Completion, and shall be no later than July 31, 2010.

1.41. "Property" means the real property described in Exhibit "A".

1.42. The term "Qualified Manager" shall mean the resident Property Manager selected and retained by Owner pursuant to the Regulatory Agreement. The Qualified Manager shall reside in the "Manager's Unit" designated by Owner or shall designate one unit as a "Management Representative's Unit" for an employee of Qualified Manager charged with on-site and after-hours duties. The Manager's Unit shall be restricted to occupancy

by the Qualified Manager and their households, but shall not be subject to any income restriction.

1.43. "Basic Program of Work" means the schedule attached as Exhibit "E," setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may revise the Basic Program of Work from time to time on mutual written agreement of Owner and Agency, but any delay or extension of the Completion Date is subject to the requirements in this Agreement.

1.44. The term "Regulatory Agreement" shall mean that Regulatory Agreement attached hereto as Exhibit "F", running with the land and providing for the proper maintenance of common facilities and improvements and the management and use of the Property and to ensure the Restricted Units remain affordable pursuant to the terms of this Agreement.

1.45. "Release of Restrictions" means a release of those covenants, conditions and restrictions contained in this Agreement.

1.46. "Restricted Units" shall refer to a total of one hundred seventeen (117) units of which (a) seventy one (71) residential units shall be reserved for Eligible Very Low Income Tenants at rents not exceeding the Affordable Very Low Income Rent; and, (b) forty-six (46) residential units shall be reserved for eligible Lower Income Tenants at rents not exceeding the Affordable Lower Income Rent; as more particularly described in the Regulatory Agreement attached hereto as Exhibit "F".

1.47. "Security Financing Interest" means a security interest which Owner grants in the Property and the Improvements thereon before the Agency issues and records a Release of Restrictions.

1.48. "Seller" shall mean IMCC Canyon Crest, LLC, a Delaware Limited Liability Company.

1.49. "Unit", as used in this Agreement, shall refer to any of the one hundred eighteen (118) residential units in the Property.

2. RESTRICTIONS UPON TRANSFER. Except as may be expressly provided herein, all of the terms, covenants and conditions of this Agreement shall be binding on, and shall inure to the benefit of, Owner and the permitted successors, assigns and nominees of Owner. Wherever the term "Owner" is used herein, such term shall include any permitted successors and assigns of Owner as herein provided.

2.1 Qualifications of Owner. The qualifications and identity of Owner are of particular concern to the Agency, particularly with the relationship between Owner and Agency, and it is because of such qualifications and identity that Agency has entered into this Agreement with Owner. Based upon these considerations, the Agency has imposed those restrictions on transfer set forth in this Agreement.

2.2 Restrictions on Transfer. Prior to issuance of the Certificate of Completion, Owner shall not Transfer this Agreement or any of Owner's rights hereunder, or any interest in the Property or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Agency, and if so purported to be Transferred, the same shall be null and void. In considering whether it will grant approval to any Transfer by Owner of its interest in the Property before the issuance of the Certificate of Completion, which Transfer requires Agency approval, Agency shall consider factors such as (i) whether the completion or implementation of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Owner's obligations hereunder; and (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects. In addition, no attempted assignment of any of Owner's obligations hereunder shall be effective unless and until the successor party executes and delivers to Agency an assumption agreement in a form approved by the Agency assuming such obligations. After the issuance of a Certificate of Completion, the restrictions upon Transfer by Owner are contained in the Regulatory Agreement shown in Exhibit "F."

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

a. Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 3, but Owner shall notify Agency in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Property.

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

c. The granting of easements to any appropriate governmental agency or utility or permits to facilitate the development of the Property.

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

e. A sale or transfer between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the Trustor or transfers to a corporation or partnership in which the immediate family members or shareholders of the transferor have a controlling majority interest of 51% or more.

f. A sale or transfer to a Qualified Tax Credit Investor; provided that such Qualified Tax Credit Investor shall be in a non-managing role.

g. A sale or transfer of general partner interests to a nonprofit general partner.

h. A sale or transfer of general partner interests to a nonprofit general partner.

2.4 Allowed Transfer. Owner may assign its rights, duties and obligations, title and interest under this Agreement to a wholly owned single purpose subsidiary of Owner, subject to written approval by Agency. However, in the event of such assignment as provided herein, Owner is in no way relieved of any of its responsibilities, and shall remain fully responsible and liable to Agency under the terms of this Agreement and all related agreements, and Owner shall retain full control and responsibility for the Project.

3. ACQUISITION OF THE PROPERTY. The Property is currently owned by the Seller and was obtained through a foreclosure process. Seller shall convey the Property to Owner and Owner shall acquire the Property from Seller, upon the terms and conditions set forth in an Agreement for Purchase and Sale of Real Property between Seller and Owner, which form is included in Exhibit "H" of this Agreement. The Agency has agreed to provide a Loan Guaranty of a Seller's Note to Owner for the acquisition of the Property in the amount of One Million, Nine Hundred Thirty-Seven Thousand, Seven Hundred Ninety-Six Dollars ($1,937,796.00). The conveyance of the Property shall be by the form of a Grant Deed. Consideration for the Loan Guaranty shall be the performance of the terms and conditions of this Agreement including the Regulatory Agreement shown in Exhibit "F" of this Agreement.

In addition to the Seller's Note, the Owner shall enter an Agreement with the City of Fresno ("NSP Agreement") under which the City shall make a loan from its Neighborhood Stabilization Program ("NSP Loan") in the amount of $2,772,253 under the terms and conditions of the NSP Agreement, attached as Exhibit "I" to this Agreement.

The total cost of the Property as approved by Agency, including acquisition and renovation, is estimated to be Four Million Seven Hundred Thousand Dollars ($4,700,000).

4. AGENCY PARTICIPATION IN PURCHASE ESCROW. Escrow shall be opened within the time period specified in the Purchase and Sale Agreement. Agency and Owner shall promptly prepare, execute, and deliver to the Escrow Agent such

additional escrow instructions related to the Loan Guaranty consistent with the terms herein as shall be reasonably necessary.

4.1 Agency's Conditions to Loan Guaranty. Agency's obligation to provide a Loan Guaranty, shall, in addition to any other conditions set forth herein in favor of Agency, be conditional and contingent upon the satisfaction, or waiver by Agency, of each and all of the following conditions (collectively the "Agency's Conditions to Closing"):

i. Title shall be conveyed to Owner in a good condition, free and clear of all liens, encumbrances, clouds, conditions, rights of occupancy and possession, except those conditions recited in the Regulatory Agreement, the Seller's Deed of Trust, the City's Deed of Trust, and the Loan Guaranty.

ii. Owner shall have obtained approval of financing commitments including the City NSP Agreement and the Seller's Note for the acquisition and renovation of the Property in accordance with Section 3, and Agency shall have approved such commitments.

iii. Seller shall have deposited into escrow all the required documents.

iv. Owner shall have approved the physical and environmental condition of the Property.

v. Owner shall have deposited into escrow all the required documents.

Any waiver of the foregoing conditions must be express and in writing. In the event that Owner fails to satisfy Agency's foregoing conditions or defaults in the performance of its obligations hereunder and such failure or default continues beyond the notice and cure period set forth in Section 14 of this Agreement, Agency may withhold the Loan Guaranty. The Loan Guaranty shall be in an amount of One Million, Nine Hundred Thirty-Seven Thousand, Seven Hundred Ninety-Six Dollars ($1,937,796.00), non-recourse, upon the terms contained herein and in the Seller's Note, included in this Agreement as Exhibit "J."

4.2 Evidence of Financial Capability. Owner shall submit to Agency's Executive Director for approval evidence that Owner has the financial capability necessary for the acquisition and renovation of the Property pursuant to this Agreement. Such evidence of financial capability shall include all of the following:

i. Documentation that Owner has secured the Seller's Note and the City NSP Note.

ii. Reliable cost estimates for Owner's total cost of acquiring the Property and developing the Project (including both "hard" and "soft" costs).

iii. A financial statement and/or other documentation reasonably satisfactory to the Executive Director sufficient to demonstrate that Owner has adequate funds available to cover the difference between the total acquisition and renovation costs of the Property and the proceeds of the NSP and Seller's loan commitments.

iv. A copy of the proposed contract between Owner and its general contractor for all of the improvements required to be made by Owner hereunder, certified by Owner to be a true and correct copy thereof. The Agency shall also have the right to review and approve any revisions that are made to the proposed contract after its approval by the Executive Director.

v. Owner covenants and agrees to take all action, furnish all information, give all consents and pay all sums reasonably required to keep the construction loan commitment in full force and effect and shall comply with all conditions thereof, and shall promptly execute, acknowledge and deliver all applications, credit applications and data, financial statements, and documents reasonably required in connection therewith.

5. AFFORDABILITY RESTRICTIONS. Upon attaining required financing and closing escrow on the Property as described herein, Owner agrees to record the Regulatory Agreement whereby a total of one hundred seventeen (117) units plus one (1) unrestricted Manager's Unit shall be restricted for fifty-five years (55), with seventy-one (71) units restricted for rental to households of Very Low Income and forty-six (46) units restricted for fifty-five years (55) for rental to households of Lower Income, all as described in the Regulatory Agreement included in this Agreement as Exhibit "F."

5.1 Effect of Covenants. All covenants set forth in the Regulatory Agreement without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency for the entire period during which such covenants shall be in force and effect, without regard to whether the Agency is or remains an owner of any land or interest therein to which such covenants relate. The Agency, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

5.2 Covenants Run With the Land. The Owner covenants and agrees for itself, its successors and assigns, which covenants shall run with the land for the period of the Regulatory Agreement and bind every successor or assign in interest of Owner, that during acquisition and renovation of the Property pursuant to this Agreement and thereafter, neither the Property nor the improvements, nor any portion thereof, shall

be improved, used or occupied in violation of any applicable governmental restrictions or the restrictions of this Agreement. Furthermore, Owner and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Property or in the improvements, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Property or the improvements, or any portion thereof.

5.3 Property Solely Used for Stated Purpose. Notwithstanding anything to the contrary or that appears to be to the contrary in this Agreement, Owner hereby covenants, on behalf of itself, and its successors and assigns, which covenants shall run with the land for the period of the Regulatory Agreement and bind every successor and assign in interest of Owner, that, Owner and such successors and assigns shall use the Property solely for the purpose of renovating, maintaining and operating a residential rental project meeting the requirements and restrictions of this Agreement and the Regulatory Agreement, including, without limitations, restriction of the rental and occupancy of the Restricted Units only to Eligible Tenants for a rent not in excess of an Affordable Rent for the period specified herein. All Restricted Units constructed pursuant to this Agreement shall be occupied at all times only by the Household of the Eligible Tenant who has rented that Restricted Unit under the terms contained in the Regulatory Agreement, Exhibit "F."

5.4 Leasing of Residences by Owner.

a. Lease-up Period. Monthly during the Initial Lease-up Period, and annually thereafter, Owner shall provide Agency with a report with respect to Restricted Units under lease, leases in default, the number and status of Eligible Over-Income Tenants and such other information as Agency may reasonably request.

b. Restricted Residences. As set forth above, each of the Restricted Units shall be rented to an Eligible Tenant for a rental rate which does not exceed an Affordable Rent for the applicable Restricted Unit.

c. Annual Tenancy Report. Owner shall provide Agency annually, by January 31, with a report on Property occupancy for each Restricted Unit, including information concerning the number of months during which each Restricted Unit was occupied, and the income category of each tenant Household occupying a Restricted Unit, and the number and status of Eligible Over-Income Tenants. The annual report and Owner's records related to each tenancy shall be subject to inspection and audit upon Agency's written request.

6. IMPROVEMENTS ON THE PROPERTY. The Property shall be improved by Owner substantially as provided in the Basic Program of Work, attached hereto as Exhibit "E", the Regulatory Agreement, and the plans and permits approved by Agency and City pursuant to Section 6 of this Agreement.

6.1 Permits. Owner warrants and represents that the City's General Plan and Zoning Ordinance permits Owner's proposed construction, operation, and use of the Property as provided in this Agreement, including without limitation the Basic Program of Work, subject only to approval of the Property pursuant to Health and Safety Code Sections 33433. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items, nor a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

6.2 Timely Submittal of Applications. Owner shall exercise its commercially reasonable efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Property, Owner shall comply with all applicable development standards in City's Municipal Code and shall comply with all building code, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

6.3 Agency Assistance in Application Process. Subject to Owner's compliance with (i) the applicable City development standards for the Property, and (ii) all applicable laws and regulations governing such matters as public hearings, site plan review and environmental review, Agency agrees to provide reasonable assistance to Owner, at no cost to Agency, in the expeditious processing of Owner's submittals required under this Section in order that Owner can obtain a final City action on such matters set forth in the Basic Program of Work. City or Agency's failure to provide necessary approvals or permits within such time periods, after and despite Owner's reasonable efforts to submit the documents and information necessary to obtain the same, shall constitute an Enforced Delay.

6.4 Project Responsibilities/Public Work-Prevailing Wage Requirements. Owner shall be solely responsible for all aspects of Owner's conduct in connection with the Project, including but not limited to, compliance with all local, state and federal laws including, without limitation, as to prevailing wage and public bidding requirements, as applicable. This Project is a "public work" project for federal purposes including Davis Bacon and Related Acts wage requirements absent written direction/determination otherwise by U.S. HUD or a court of competent jurisdiction. Based thereon Owner shall cause the Project work to be performed as a "public work." The City Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification, or type of

workman needed in the execution of contracts for the City. A copy of the resolution is on file at the Office of the City Clerk. Actual wage schedules are available upon request at the City's Construction Management Office. Without limiting the foregoing, Owner shall be solely responsible for 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 and/or payroll monitoring/auditing is solely for the purpose of determining whether Owner is properly discharging its obligation to the City, and shall not be relied upon by Owner or by any third parties as a warranty or representation by the City as to governmental compliance and/or the quality of the work completed for the Project.

6.5 CEQA. The Project has been environmentally assessed (Environmental Assessment No. H-2010-10) and was determined to be categorically excluded from review under Section 58.35 (a)(3) ii and (a)(5) of the National Environmental Policy Act (NEPA) Guidelines. Additionally, the Project has been assessed under the California Environmental Quality Act (CEQA), resulting in a Categorical Exemption. Based on the review, City staff determined that the project is consistent with all of the criteria specified for an exemption to CEQA in accordance with Section 15301/Class 1 and 15378(b)(4) of CEQA Guidelines.

6.6 Financing of Improvements. The cost of constructing all of the improvements required to be constructed for the Project shall be borne by Owner, except for any work expressly set forth in this Agreement or the NSP Agreement to be performed or funded by the Agency or others.

6.7 Completion of Improvements. Owner shall begin and complete all plans, reviews, and construction specified in the Basic Program of Work. Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days. Owner shall keep the Agency informed of the progress of construction and shall submit monthly to the Agency written reports of the progress of the construction in the form required by the Agency.

6.8 Schedule of Performance. It is understood that the Schedule of Performance contained in the Basic Program of Work is subject to all of the terms and conditions set forth in the text of the Agreement. The time periods set forth in the Schedule of Performance may be altered or amended only by written agreement signed by both Owner and Agency. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The Executive Director of Agency shall have the authority to approve extensions of time without Agency Board action not to exceed a cumulative total of 180 days.

6.9 Agency Access to the Property During Construction. Until Agency issues the Certificate of Completion, Agency will have access to the Property, after reasonable notice to the Owner (except in emergencies),

without charge or fee, during normal construction hours, for purposes of assuring compliance with this Agreement. Agency representatives will comply with all safety rules while on the Project or the Property.

6.10 Maintenance of Improvements. Owner will design and construct the Improvements, and after that, prior to any allowable transfer or sale thereof, Owner will maintain the Property according to all applicable laws including, without limitation, all applicable state labor standards, Agency zoning and development standards, building, plumbing, mechanical and electrical codes, all provisions of the Fresno Municipal Code and all applicable access requirements. Agency makes no representation about which, if any, of such laws, ordinances, regulations or standards apply to development of the Project.

7. CERTIFICATE OF COMPLETION. Upon the substantial completion of all construction required to be completed by Owner on the Property, Agency shall furnish Owner with a Certificate of Completion for the Property in the form attached hereto as Exhibit "D" upon written request therefor by Owner. The Certificate of Completion shall be executed and notarized so as to permit it to be recorded in the office of the Recorder of Fresno County. A Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Property and of full compliance with the terms of this Agreement with respect thereto. A partial Certificate of Completion applicable to less than the entire Property shall not be permitted.

After the issuance of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement with respect to the Property, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Regulatory Agreement attached hereto. After issuance of a Certificate of Completion, the Agency shall not have any rights or remedies under this Agreement with respect to the Property, except as otherwise set forth or incorporated in the Regulatory Agreement.

Agency shall not unreasonably withhold a Certificate of Completion. If Agency refuses or fails to furnish a Certificate of Completion within thirty (30) days after written request from Owner or any entity entitled thereto, Agency shall provide a written statement of the reasons Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain Agency's opinion of the action Owner must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Agency will issue its Certificate of Completion upon the posting of a bond in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to Agency.

A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Owner to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not a notice of completion as referred to in the California Civil Code Section 3093. Nothing herein shall prevent or affect Owner's right

to obtain a Certificate of Occupancy from the City before the Certificate of Completion is issued.

8. MAINTENANCE OBLIGATIONS. Owner covenants and agrees for itself, its successors and assigns, and every successor in interest to the Property or any part thereof, that, after Agency's issuance of its Certificate of Completion the Owner shall be responsible for maintenance of all improvements that may exist on the Property from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in good condition and repair, and shall keep the Property free from any accumulation of debris or waste materials. The Owner shall also maintain all landscaping required in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land in accordance with and for the term of the Regulatory Agreement. Owner's further obligations to maintain the Property, and Agency's remedies in the event of Owner's default in performing such obligations, are set forth in the Regulatory Agreement. Owner hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City that would otherwise apply, except as specified in said Regulatory Agreement. Upon the sale of any portion of the Property, Owner (but not Owner's successor) shall be released from the requirements imposed by this Section, and the financial liability therefor, as to the portion of the Property conveyed.

9. INDEMNIFICATION. Owner shall indemnify, hold harmless and defend Agency 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 Owner, Agency 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 from the negligent or intentional acts or omissions, or willful misconduct of Owner or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

Agency shall indemnify, hold harmless and defend Owner 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 Agency, Owner 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 from the negligent or intentional acts or omissions, or willful misconduct of Agency or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by Agency of governmental immunities including California Government Code section 810 et seq.

Owner agrees that this Agreement shall in no way act to abrogate or waive any immunities available to Agency under the Tort Claims Act of the State of California.

In the event of concurrent negligence on the part of Owner or any of its officers, officials, employees, agents or volunteers, and Agency or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages

shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

10. INSURANCE. Throughout the life of this Agreement, the Owner shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with an insurance company 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 Agency's Risk Manager or his/her designee. The following policies of insurance are required:

(i) 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 of insurance in an amount equal to the 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 one (1) year 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 CP 00 30.

Owner shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Owner shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the Agency's Risk Manager or his/her designee

The policy of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to the Agency. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Owner shall furnish the Agency with a new certificate and applicable endorsements for such policy. In the event the policy is due to expire during this Agreement, Owner shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The Property insurance policy shall name the Agency as a loss payee. The insurance required herein shall contain no special limitations on the scope of protection afforded to the Agency.

Owner shall furnish the Agency with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the Agency's Risk Manager or his/her designee prior to the Agency's execution of this Agreement**. Upon request of the Agency, Owner shall immediately furnish the Agency with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said

copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

Any failure to maintain the required insurance shall be sufficient cause for the Agency to terminate this Agreement. No action taken by the Agency hereunder shall in any way relieve Owner of its responsibilities under this Agreement.

10.1. Non-cancellation of Policies. All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to Agency. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Owner shall furnish Agency with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the term of this Agreement, Owner shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

10.2 Agency is Loss Payee. The Builders Risk (Course of Construction) and Fire and Extended Coverage insurance policies shall be endorsed to name Agency as a loss payee.

10.3 Endorsements. Owner shall furnish Agency with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the Agency's Risk Manager or his/her designee prior to Agency's execution of this Agreement.

10.4 Failure to Maintain Insurance. If at any time Owner fails to maintain the required insurance in full force and effect, Owner shall immediately discontinue all work under this Agreement until Agency receives notice 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 Agency. Owner's failure to maintain any required insurance shall be sufficient cause for Agency to terminate this Agreement.

10.5 No Release from Liability. The fact that insurance is obtained by Owner shall not be deemed to release or diminish the liability of Owner, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify Agency, City and each of their officials, officers, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Owner. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Owner.

The Owner agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which the Owner may be

held responsible for the payment of damages to any persons or property resulting from the Owner's activities or the activities of any person or persons for which the Owner is otherwise responsible.

10.6 Request for Policies. Upon request of Agency, Owner shall immediately furnish Agency with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

11. LIENS AND TAXES.

11.1 Property Liens. Until the date Owner is entitled to the issuance by Agency of a Certificate of Completion, Owner shall not place or allow to be placed thereon any mortgage, trust deed, encumbrance or lien (except mechanic's liens prior to suit to foreclose the same being filed) prohibited by this Agreement. Owner shall remove or have removed any levy or attachment made on the Property, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Owner from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to Owner in respect thereto.

Owner will take reasonable efforts to not permit any lien or stop notice to be filed against the Property, provided Owner may reasonably determine to contest any such lien or stop notice. If a claim of lien or stop notice is recorded against the Property or Improvements, Owner, within 30 days after recordation of a claim of lien or stop notice or within 5 days after Agency's demand, whichever first occurs, will do the following:

a. Pay and discharge the same; or

b. Effect the release of such lien by recording and delivering to Agency a surety bond in sufficient form and amount (i.e. 150%), or otherwise; or

c. Give Agency other assurance which Agency, in its sole discretion, deems satisfactory to protect the Agency from the effect of the lien or bonded stop notice.

11.2 Property Taxes. Owner shall pay, when due, all real estate taxes and assessments assessed or levied subsequent to conveyance of title. Nothing in this Agreement shall prevent owner from petitioning the County of Fresno for a welfare exemption from property taxes based on the percentage of affordable units in the Property.

12. MORTGAGE PROTECTIONS. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust, provided, however, that any subsequent owner of the Property shall be bound by such

remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

12.1 Permitted Mortgages. Notwithstanding the restrictions on transfer in Section 2.2, mortgages required for any reasonable method of financing of the construction of the improvements are permitted before issuance of a Certificate of Completion but only for the purpose of securing loans of funds used or to be used for financing the acquisition of the Property, for the construction of improvements thereon, and for any other expenditures necessary and appropriate to improve the Property under this Agreement, or for restructuring or refinancing any for same, so long as the refinancing does not exceed the then outstanding balance of the existing financing, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors. The Owner (or any entity permitted to acquire title under this Section) shall notify the Agency in advance of any mortgage, if the Owner or such entity proposes to enter into the same before issuance of the Certificate of Completion. The Owner or such entity shall not enter into any such conveyance for financing without the prior written approval of the Agency, which approval shall not be unreasonably withheld or delayed. Any lender approved by the Agency shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, the Owner shall promptly notify the Agency of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Certificate of Completion, whether by voluntary act of the Owner or otherwise. After the issuance of a Certificate of Completion, the limitations on encumbrances contained in the Regulatory Agreement shall be in effect.

12.2 Agency's Rights upon Failure of Holder to Complete Improvements. In any case where one hundred eighty (180) days after default by Owner in completion of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Property or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, Agency may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

i. The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

ii. All expenses incurred by the holder with respect to foreclosure, if any;

iii. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Property, such as insurance premiums or real estate taxes, if any;

iv. The costs of any improvements made by such holder, if any; and

v. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the Agency.

In the event that the holder does not exercise its option to construct afforded in this Section, and Agency elects not to purchase the mortgage of holder, upon written request by the holder to Agency, Agency agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by Agency), who shall assume the obligations of making or completing the improvements required to be constructed by Owner, or such other improvements in their stead as shall be satisfactory to Agency. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs i. through v. hereinabove, and any balance remaining thereafter shall be applied as follows:

i. First, to reimburse Agency, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Agency, including but not limited to payroll expenses, management expenses, legal expenses, and others.

ii. Second, to reimburse Agency, on its own behalf and on behalf of the City, for all payments made by Agency to discharge any other encumbrances or liens on the Property or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Owner, its successors or transferees.

iii. Third, to reimburse Agency, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Agency, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section.

iv. Fourth, any balance remaining thereafter shall be paid to Owner.

<u>12.3 Right of Agency to Cure Mortgage, Deed of Trust or Other Security Interest Default.</u> In the event of a default or breach by Owner (or

entity permitted to acquire title under this Section), which continues beyond any applicable notice and cure period, of a mortgage prior to the issuance by Agency of a Certificate of Completion for the Property or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, Agency may cure such default prior to completion of any foreclosure. In such event, Agency shall be entitled to reimbursement from Owner or other entity of all costs and expenses incurred by Agency in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subject to:

i. Any mortgage for financing permitted by this Agreement; and

ii. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided that nothing herein shall be deemed to impose upon Agency any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Property in the event of its enforcement of its lien.

After the conveyance of title and prior to the recordation of a Certificate of Completion for construction and development, and after the Owner has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property or any portion thereof, the Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Owner to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Owner in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Notwithstanding anything to the contrary contained herein, the terms and conditions contained in this Agreement and the Regulatory Agreement will be subordinated to the liens securing any financing permitted under this Agreement.

13. NON-DISCRIMINATION PROVISIONS

13.1 Obligation to Refrain from Discrimination. There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Property, or any portion thereof, nor shall Owner, or any person claiming under or through Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants,

lessees, subtenants, sublessees or vendees of the Property or any portion thereof (except as permitted by this Agreement). The nondiscrimination and nonsegregation covenants contained herein shall remain in effect in perpetuity.

13.2 Form of Nondiscrimination and Nonsegregation Clauses. Subject to the tenancy/occupancy restrictions on the Restricted Units not prohibited by federal law as embodied in this Agreement, which may modify the following nondiscrimination clauses, express provisions shall be included in all deeds, leases, and contracts with respect to the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Project in substantially the following form:

(a) (1) In deeds the following language shall appear--"The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(b) (1) In leases the following language shall appear--"The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

> That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as

those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(c) In contracts entered into by the Agency relating to the sale, transfer, or leasing of land or any interest therein acquired by the Agency within any survey area or redevelopment project the foregoing provisions in substantially the forms set forth shall be included and the contracts shall further provide that the foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

14. DEFAULTS, REMEDIES, AND TERMINATION. Subject to any Enforced Delay, failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a written notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise, shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for

performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

14.1 Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Legal actions must be instituted and maintained in the Superior Court of the County of Fresno, State of California, in any other appropriate court in that county, or in the Federal District Court in the Eastern Division of the Central District of California.

a. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

b. In the event that any legal action is commenced by Owner against Agency, service of process on Agency shall be made by personal service upon the Executive Director or Secretary of Agency, or in such other manner as may be provided by law.

c. In the event that any legal action is commenced by Agency against Owner, service of process on Owner shall be made in such manner as may be provided by law and shall be valid whether made within or without the State of California.

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

14.3 Specific Performance. In addition to any other remedies permitted by this Agreement, if either party defaults hereunder by failing to perform any of its obligations herein, each party agrees that the other shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the appropriateness of such remedy. In this regard, Owner specifically acknowledges that Agency is entering into this Agreement for the purpose of assisting in the redevelopment of the Property and not for the purpose of enabling Owner to speculate with land.

15. GENERAL PROVISIONS

15.1 Notices, Demands and Communications Between the Parties. Except as expressly provided to the contrary herein, any notice, consent,

report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; or by facsimile, if such facsimile is followed by a notice sent out the same day by mail; in any case, delivered to the address, addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

Agency:	Redevelopment Agency of the City of Fresno 2344 Tulare Street, Suite 200 Fresno, CA 93721 Attn: Executive Director
Owner:	Fresno Revitalization Corporation c/o Redevelopment Agency of the City of Fresno 2344 Tulare Street, Suite 200 Fresno, CA 93721

15.2 Nonliability of City and Agency Officials and Employees; Conflicts of Interest; Commissions.

a. Personal Liability. No member, official, employee, agent or contractor of City or Agency shall be personally liable to Owner in the event of any default or breach by Agency or for any amount which may become due to Owner or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 15.2 is intended to limit Agency's liability.

b. Financial Interest. No member, official, employee or agent of City or Agency shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

c. Commissions. Neither the Agency nor the Owner has retained any broker or finder or has paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement. Neither party shall be liable for any real estate commissions, brokerage fees or finders' fees which may arise from this Agreement, and each party agrees to hold the other harmless from any claim by any broker, agent, or finder retained by such party.

15.3 Books and Records.

a. Owner shall prepare and maintain all books, records and reports necessary to substantiate Owner's compliance with the terms of this Agreement or reasonably required by the Agency.

b. Either party shall have the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the other party pertaining to the Property as pertinent to the purposes of this Agreement.

15.4 Assurances to Act in Good Faith. Agency and Owner agree to execute all documents and instruments and to take all action, including deposit of funds in addition to such funds as may be specifically provided for herein, and as may be required in order to consummate conveyance and development of the Property as herein contemplated, and shall use their best efforts, to accomplish the closing and subsequent development of the Property in accordance with the provisions hereof. Agency and Owner shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.

15.5 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all attachments attached hereto, which are by this reference incorporated in this Agreement in their entirety. This Agreement also includes any other documents incorporated herein by reference, as though fully set forth herein.

15.6 Entire Agreement, Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of Agency or Owner, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Owner.

15.7 Severability. In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any term, covenant, condition, provision or agreement contained herein.

15.8 Execution.

1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

2. Agency represents and warrants that: (i) it is a Redevelopment Agency duly organized and existing under the laws of the State of California; (ii) by proper action of Agency, Agency has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Agency does not violate any provision of any other agreement to which Agency is a party.

3. Owner represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Owner, Owner has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Owner does not violate any provision of any other agreement to which Owner is a party.

15.9 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Agency and Owner have executed this Operating Agreement by duly authorized representatives on the date first written hereinabove.

"OWNER"
FRESNO REVITALIZATION CORPORATION, a California non-profit public benefit corporation

By: Jan Minami

Date: _____

Its: President

By: Sally M. Taylor

Date: _____

Its: Secretary

Fresno Revitalization Corporation
c/o Redevelopment Agency of the City of Fresno
2344 Tulare Street, Suite 200
Fresno, CA 93721

Date: 5/27/10

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

Marlene Murphey

Marlene Murphey, Executive Director

Redevelopment Agency of the City of Fresno
2344 Tulare Street, Suite 200
Fresno, CA 93721

ATTEST:
REBECCA KLISCH
Ex-Officio Clerk

Cindy Brier 5/27/10
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
Ex-Officio Attorney

By: Steve L. Mehrian 5/20/10
Deputy

[END OF SIGNATURES]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____

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

Witness my hand and official seal.

_____

Notary Public

[SEAL]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____

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

Witness my hand and official seal.

_____

Notary Public

[SEAL]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____

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

Witness my hand and official seal.

_____

Notary Public

[SEAL]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____

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

Witness my hand and official seal.

_____

Notary Public

[SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lots 1, 2, 3, 4 and 5 of Tract No 1938, Huntington Holmes Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded April 26, 1963 in Volume 21 Pages 66, 67 and 68 of Plats, Fresno County Records.

Excepting therefrom all oil, gas, other hydrocarbon substances and minerals of any kind or character, in, on, or thereunder, as reserved in deeds of record.

APN: 468-390-44s

EXHIBIT "B"
PLAT MAP OF THE PROPERTY

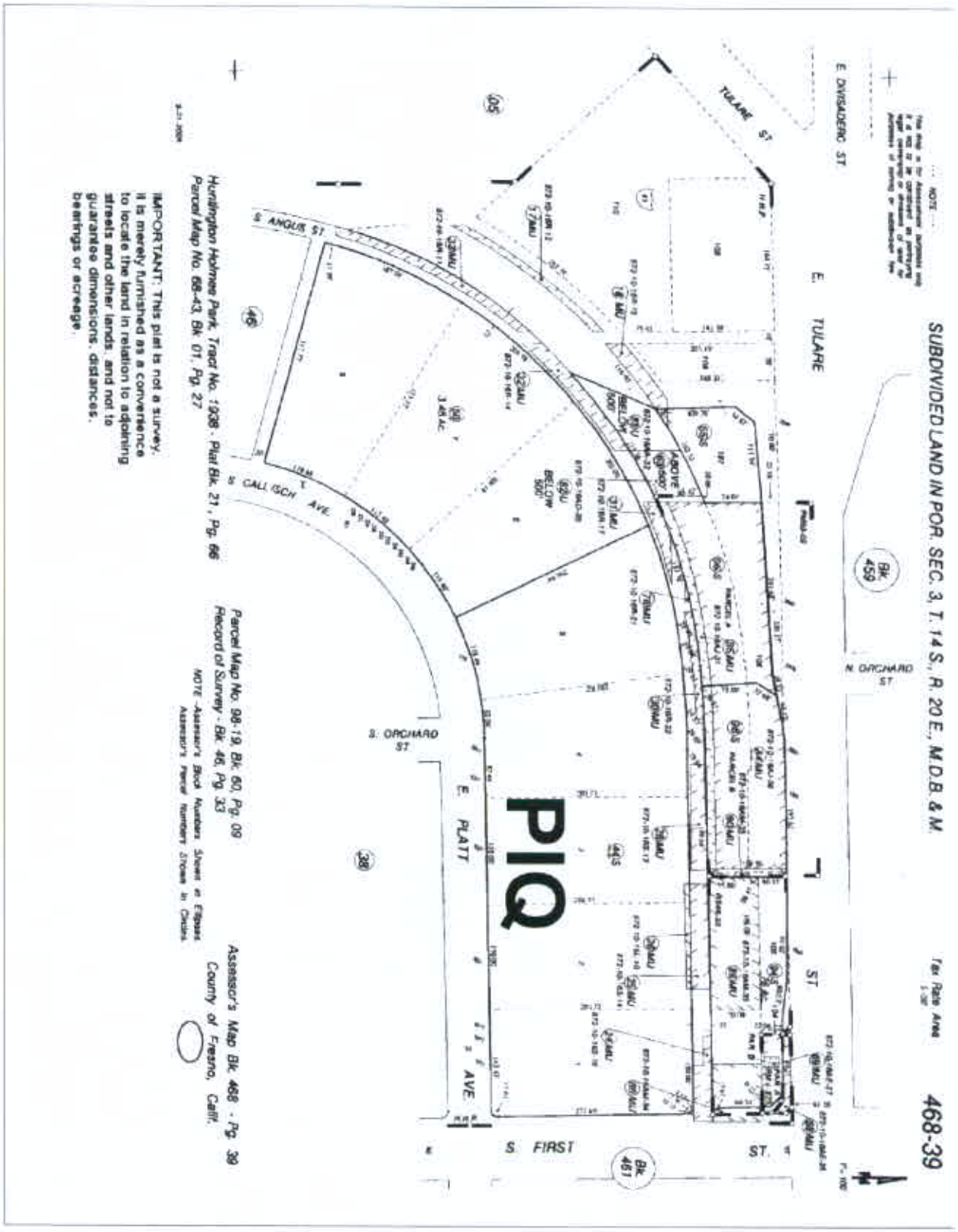


EXHIBIT "C"
BUDGET/FINANCIAL PLAN

Proposed Initial Renovation Costs

	REHAB SIX UNITS	EXTERIOR WORK	TOTAL
SITE ACQUISITIONS	0	0	0
SITE IMPROVEMENTS	0	8500	8500
CONCRETE	0	24286	24286
PLUMBING	22740	0	22740
WOOD FRAMING	5050	14000	19050
WINDOWS	3000	0	3000
ELECTRICAL	6380	0	6380
MECHANICAL	9230	0	9230
BUILDING	6000	12470	18470
EXTERIOR	800	26380	27180
INTERIOR	56796	0	56796
PERMITS	4000	2500	6500
OVERHEAD EXPENSES	1500	5500	7000
CLOSING EXPENSES	0	0	0
DEVELOPER FEE	11549	9363	20912
GRAND TOTAL	$127,046	$103,000	$230,046

Proposed Sources and Uses of Funds
Acquisition and Rehab Project

	Sources	Uses
ACQUISITION		
CITY NSP LOAN (ACQUISITION PORTION)	$2,480,204	
LOAN FROM INLAND MORTGAGE CAPITAL	$1,937,796	
ESTIMATED CLOSING COSTS		$15,000
TOTAL PURCHASE PRICE		$4,418,000
REHAB		
CITY NSP LOAN (REHAB PORTION)	$292,049	
REHAB OF SIX UNITS		$127,046
EXTERIOR DEFERRED MAINTENANCE		$103,000
PEST CONTROL WORK		$17,000
POOL REPAIRS		$20,000
CONTINGENCY		$10,003

Proposed Operating Pro Forma		
	Pro Forma Monthly	Pro Forma Annually
RENTAL INCOME		
GROSS RESIDENTIAL RENT	65,950.00	791,400.00
LESS VACANCY ADJUSTMENTS	(6,595.00)	(79,140.00)
EFFECTIVE GROSS INCOME (EGI)	59,355.00	712,260.00
OPERATING EXPENSES		
PAYROLL EXPENSES ON-SITE MANAGER	(4,166.67)	(50,000.00)
PAYROLL EXPENSES ON-SITE MAINTENANCE	(2,716.67)	(32,600.00)
ADMIN EXPENSES (NET OF MGMT FEE)	(1,229.17)	(14,750.00)
MANAGEMENT FEES (4% of EGI)	(2,374.20)	(28,490.40)
MARKETING/RETENTION	(1,180.00)	(14,160.00)
MAINTENANCE & REPAIR	(2,950.00)	(35,400.00)
TURNOVER EXPENSES	(1,966.67)	(23,600.00)
UTILITIES	(6,432.58)	(77,191.00)
RESERVES FOR REPLACEMENT	(1,966.67)	(23,600.00)
INSURANCE	(2,500.00)	(30,000.00)
PROPERTY TAXES	(4,174.50)	(50,094.00)
TOTAL OPERATING EXPENSES	(31,657.12)	(379,885.40)
NET OPERATING INCOME	27,697.88	332,374.60
INTEREST EXPENSE	(10,254.17)	(123,050.05)
NET INCOME/CASH FLOW	$ 17,443.71	$ 209,324.55

EXHIBIT "D"
CERTIFICATE OF COMPLETION

CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

Redevelopment Agency of City of Fresno
2344 Tulare St., Suite 200
Fresno, Ca. 93721
Attention: Executive Director

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

Redevelopment Agency of the
City of Fresno

By:_____
Marlene Murphey
Its: Executive Director

Dated:_____

Certificate of Completion
Canyon Crest Condominiums

Recitals:

A. By an Operating Agreement (the "Agreement") dated [_____], 2010 between the Fresno Revitalization Corporation, a California nonprofit public benefit corporation ("Owner") and the Redevelopment Agency of the City of Fresno, a public body corporate and politic ("Agency"), Owner agreed to acquire, renovate and maintain certain residential units on the premises legally described in Attachment "A" hereto (the "Property") and preserve the Affordable Units, as defined in the Agreement as rental housing for Low and Very Low-Income Families with the assistance of an Agency loan guaranty while meeting the Affordable Housing, income targeting and other requirements of the Community Redevelopment Law set forth at California Health and Safety Code Sections 33000 et seq. for a fifty-five (55) year Affordability Period according to the terms and conditions of the Agreement.

B. The Agreement was recorded on [_____] , 2010 in the Official Records of Fresno County, California as Instrument No. _____.

C. Under the terms of the Agreement, after Owner completes the renovation work on the Property, Owner may ask Agency to record a Certificate of Completion.

D. Owner has asked Agency to furnish Owner with a recordable Certificate of Completion.

E. Agency's issuance of this Certificate of Completion is conclusive evidence that Owner has completed the renovation work on the Property as set forth in the Agreement.

NOW THEREFORE:

1. Agency certifies that Owner commenced the renovation construction work on the Project on [_____], 2010, and completed the construction work on the Project on _____, 2010, and has done so in full compliance with the Agreement.

2. This Certificate of Completion is not evidence of Owner's 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 Agreement.

IN WITNESS WHEREOF, the Agency has executed this Certificate of Completion as of this ___ day of _____, 2010.

Redevelopment Agency of the City of Fresno

By:_____

Marlene Murphey
Executive Director

Owner hereby consents to recording this Certificate of Completion against the Property described herein.

Dated: _____, 2010

Fresno Revitalization Corporation

By:_____

Its: _____

THE ABOVE PARTIES ARE TO SIGN THIS INSTRUMENT BEFORE A NOTARY PUBLIC.

ATTEST:
Ex-Officio Clerk, Redevelopment Agency
Agency

By:_____
Deputy

Dated: _____

APPROVED AS TO FORM:
Ex-Officio Attorney, Redevelopment

By:_____
Deputy

Dated: _____

1:30pm #2-D
11/8/10

CITY OF FRESNO
City Clerk's Office (Original)

CONTRACTUAL SERVICES AGREEMENT
BY AND BETWEEN
THE FRESNO REVITALIZATION CORPORATION, INC.
AND THE
REDEVELOPMENT AGENCY OF THE CITY OF FRESNO

THIS AGREEMENT is made and entered into the 26th day of May, 2010 ("Effective Date"), by and between the FRESNO REVITALIZATION CORPORATION, a California Non-Profit Public Benefit Corporation (hereinafter referred to as "FRC"), and the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic (hereinafter referred to as "AGENCY").

RECITALS

The parties enter this Agreement based on the following facts, understandings, and intentions:

WHEREAS, by authority granted under California Health and Safety Code (Cal. H.&S.C.) Section 33000 *et. seq.* (the "Law"), the Agency has prepared and is responsible for carrying out the redevelopment plan for certain Redevelopment Project Areas (the "Plan"), including as to certain priority of use of Tax Increment and/or Housing Set Aside Funds (collectively "Tax Increment"); and

WHEREAS, to the extent provided in or allowed by Cal. H.&S.C. Sections 33334.2 and 33449, as provided by joint resolutions of the Fresno City Council and the Agency, findings and determinations pursuant to Health and Safety Code Section 33334.2(g), the Plan and limited to the terms and conditions therein, the Agency may make improvements upon and/or construct and improve structures in order to provide housing for persons and families of low or moderate income, including related on-site and off-site improvements, by variously: (1) allowing the use of Housing Set Aside Funds outside the Airport Area Revitalization, Central Business District, Central City Commercial Revitalization, Chinatown Expanded, Convention Center, Freeway 99-Golden State Boulevard Corridor, Fruit/Church, Mariposa, Roeding Business Park, South Fresno Industrial Revitalization, South Van Ness Industrial, Southeast Fresno Revitalization, West Fresno I and West Fresno II redevelopment plans; (2) restricting the use of the Housing Set Aside Funds to certain of the Community Development Block Grant eligible areas of the City; and, (3) placing a priority on the use of the Housing Set Aside Funds from certain Project Areas to be used either within or adjacent to the Central Area or adjacent to certain Project Areas; and

WHEREAS, the Fresno Revitalization Corporation, is a California Public Benefit Corporation, is exempt from federal and state income tax under Section 501 c(3) of the Internal Revenue Code and Section 23701(d) of the California Revenue & Taxation Code for the purpose of assisting the Agency with revitalization of the downtown area of Fresno, California; and

WHEREAS, FRC proposes to acquire all rights, title and interest in fee to the Canyon Crest Condominium project, that certain real property further described in Exhibit "A" attached hereto and incorporated herein (the "Property") pursuant to an Agreement for Purchase and Sale of Real Property between the FRC and IMCC Canyon Crest, LLC, a Delaware Limited Liability Company ("Seller"), as described in Exhibit "F" of this Agreement. The Property is located within the territorial jurisdiction of the Agency for the use of Low- and Moderate-Income Housing Funds; and

WHEREAS, the Property is a multi-family residential project consisting of one hundred eighteen (118) residential units. All of the units except for one Qualified Manager's Unit, which will not be income-restricted, are to be considered "Affordable Units." Sixty percent, or seventy one (71), of the Affordable Units are to be rented and preserved as Affordable Rental Housing for households at 50% of Area Median Income or below and forty-six (46) of the Affordable Units are to be rented and preserved as Affordable Rental Housing for households at 60% of Area Median Income or below; and

WHEREAS, pursuant to a Neighborhood Stabilization Program Agreement ("NSP" and "NSP Agreement") between FRC and the City of Fresno, entered pursuant to the Congressional adoption of Title III of the Housing and Economic Recovery Act (HERA) of 2008, FRC shall receive a total of $2,772,253 in NSP multi-family funds, with $2,480,204 set aside for the acquisition of the Property, with the balance of $292,049 drawn down for rehabilitation and closing costs. FRC agrees to undertake acquisition and improvements in accordance with the schedule of performance contained within said NSP Agreement attached and incorporated herein as Exhibit "B"; and

WHEREAS, pursuant to an Operating Agreement between FRC (as "FRC") and Agency (the "Operating Agreement"), dated _____ and attached and incorporated herein as Exhibit "C", FRC agrees to undertake improvements in accordance with the schedule of performance contained within said Operating Agreement; and

WHEREAS, pursuant to the Operating Agreement, Agency has agreed to assist FRC's acquisition of the of the Property by providing a Loan Guaranty to FRC through the use of certain Housing Set Aside Funds in the amount of One Million, Nine Hundred Thirty-Seven Thousand, Seven Hundred Ninety-Six Dollars ($1,937,796.00) (the "Loan Guaranty") upon the terms and conditions specified in the Operating Agreement and the Loan Guaranty Agreement; and

WHEREAS, the Agency agrees to provide administrative, financial and technical support to the FRC in acquiring and operating the Property; and

WHEREAS, the performance of the affordability and other covenants and restrictions set forth in the Operating Agreement shall be evidenced by a Regulatory Agreement which shall be recorded against and run with the Property, attached and incorporated herein as Exhibit "D"; and

WHEREAS, FRC desires to obtain professional services to assist with the acquisition, operation, management, renovation and re-marketing of the Property, and desires the Agency to provide the services described herein; and

WHEREAS, Agency is engaged in the business of obtaining technical and expert services and hereby represents that it is professionally capable of performing the services called for by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Work. Agency shall perform to the satisfaction of FRC, the services described in Exhibit "E", attached hereto and incorporated herein by reference.

2. Compensation.

a. Agency's sole compensation for satisfactory performance of all services required pursuant to this agreement, including the Loan Guaranty, shall be ten percent (10%) of the net operating income of the Property, defined as the adjusted gross income less the normal and customary operating expenses incurred at the Property, before debt service; and expenses consisting solely of Property-related expenses with acceptable supporting documentation.

b. Statements may be rendered monthly and shall be payable in the normal course of Agency business.

c. The parties may modify this Agreement to increase the scope of work or provide for the rendition of services not required by this Agreement, which modification may include an agreed-upon increase in Agency's compensation. Any increase or change in the scope of work must be made by written amendment to the Agreement signed by an authorized representative for each party. Agency shall not be entitled to any additional compensation if work is performed prior to a signed written amendment.

3. Termination of Agreement.

a. This Agreement may be terminated by either party upon 30 calendar days prior written notice should the other party fail substantially to observe, fulfill or perform any obligation, covenant, term or condition in accordance with this Agreement. A party will have failed substantially to observe, fulfill or perform any obligation, covenant, term or condition of this Agreement, if such failure is not cured within such 30 calendar days prior written notice and this shall constitute a material default and breach of this Agreement.

b. In the event of termination pursuant to Section 3a or not due to the material default of Agency, Agency shall be paid compensation for services satisfactorily performed prior to the effective date of the notice of termination. In the event of termination due to the material default of Agency, FRC may withhold an amount that would otherwise be payable as an offset to, but not in excess of, FRC'S damages caused by such failure.

c. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

4. Time of Performance. The services of Agency as described in this Agreement are to commence upon issuance of a "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all the services required by this Agreement shall be completed per time frame indicated on the Scope of Work.

5. Ownership of Documents. Any and all writings and documents prepared or provided by FRC pursuant to this Agreement are the property of FRC and shall be turned over to FRC upon expiration or termination of the Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that Agency shall perform the work agreed to be done by it under this Agreement, and that FRC relies upon the skill of Agency to do and perform its work in a skillful manner.

7. Indemnification. FRC shall indemnify, hold harmless and defend Agency 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 FRC, Agency 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 from the negligent or intentional acts or omissions, or willful misconduct of FRC or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

Agency shall indemnify, hold harmless and defend FRC 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 Agency, FRC 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 from the negligent or intentional acts or omissions, or willful misconduct of Agency or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by Agency of governmental immunities including California Government Code section 810 et seq.

FRC agrees that this Agreement shall in no way act to abrogate or waive any immunities available to Agency under the Tort Claims Act of the State of California.

In the event of concurrent negligence on the part of FRC or any of its officers, officials, employees, agents or volunteers, and Agency or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

8. Insurance. It is understood and agreed that FRC and Agency maintain insurance policies or self-insurance programs to fund their respective liabilities. Evidence of Insurance, e.g., Certificates of Insurance or other similar documentation, shall not be required of either party under this Agreement.

9. General Terms.

a. Except as otherwise provided by law, all notices expressly required of FRC within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by FRC'S Acting Chairman.

b. In performing the work or services to be provided hereunder, Agency shall not employ or retain the services of any person while such person either is employed by FRC, or is a member of the FRC board or committee. This requirement may be waived in writing by the respective Agency Executive Director for the Agency and Acting Chairman for the FRC if no actual or potential conflict is involved.

c. Records of Agency's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to FRC or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment. In addition, all books, documents, papers, and records of Agency pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This Section 9c shall survive expiration or termination of this Agreement.

d. Prior to execution of this Agreement by FRC, Agency shall have provided evidence to FRC that Agency or Agency's agents are qualified to perform the services called for by this Agreement. If Agency should subcontract all or any portion of the work to be performed under this Agreement, Agency shall require each subcontractor to provide evidence to FRC that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

10. Conflict of Interest and Non-Solicitation.

a. Agency shall comply, and require any of its subcontractors to comply, with all laws and regulations including, without limitation, conflict of interest laws, such as Government Code 1090 et. seq., the California Political Reform Act (Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of FRC, Agency shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Agency and the respective subcontractor(s) are in full compliance with all laws and regulations. Agency shall take, and require any subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Agency shall immediately notify FRC of these facts in writing.

b. Agency represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

11. Nondiscrimination. There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Property, or any portion thereof, nor shall FRC, or any person claiming under or through FRC, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants,

lessees, subtenants, sublessees or vendees of the Property or any portion thereof (except as permitted by this Agreement). The nondiscrimination and nonsegregation covenants contained herein shall remain in effect in perpetuity.

Agency shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. During the performance of this Agreement, Agency agrees as follows:

a. Agency will comply with all laws and regulations, as applicable. No person in the United States shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

b. Agency will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Agency shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

c. Agency will, in all solicitations or advertisements for employees placed by or on behalf of AGENCY, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

12. Independent Contractor and Not a Partnership/Joint Venture.

a. In the furnishing of the services provided for herein, Agency is acting as an independent contractor. Neither Agency, nor any of its officers, associates, agents or employees shall be deemed an employee, partner or agent of FRC for any purpose. However, FRC shall retain the right to verify that Agency is performing its respective obligations in accordance with the terms hereof.

b. This Agreement does not evidence a partnership or joint venture between Agency and FRC. Agency shall have no authority to bind FRC absent FRC'S express written consent. Except to the extent otherwise provided in this Agreement, Agency shall bear its own costs/expenses in pursuit hereof.

13. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth below or at such other address as the parties may from time to time designate by written notice:

Agency:	Redevelopment Agency of the City of Fresno 2344 Tulare Street, Suite 200 Fresno, CA 93721 Attn: Executive Director
FRC:	Fresno Revitalization Corporation c/o Redevelopment Agency of the City of Fresno 2344 Tulare Street, Suite 200 Fresno, CA 93721

14. Binding. Once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

15. Assignment.

a. There shall be no assignment by Agency of its rights or obligations under this Agreement without the prior written approval of FRC. Any attempted assignment by Agency, its successors or assigns, shall be null and void unless approved in writing by FRC.

b. FRC may assign its rights, duties and obligations, title and interest under this Agreement to a wholly owned single purpose subsidiary of FRC, subject to written approval by Agency. However, in the event of such assignment as provided herein, FRC is in no way relieved of any of its responsibilities, and shall remain fully responsible and liable to Agency under the terms of this Agreement and all related agreements, and FRC shall retain full control and responsibility for the Project.

16. Compliance With Law. In providing the services required under this Agreement, the Parties shall at all times comply with all applicable laws of the United States, the State of California and City of Fresno, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

17. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

18. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

19. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

20. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

21. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

22. 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 in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

23. 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 shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

24. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both FRC and Agency.

[END – SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Agency and FRC have executed this Contractual Services Agreement by duly authorized representatives on the date first written hereinabove.

"FRC"
Fresno Revitalization Corporation
A California Non-Profit Public Benefit Corporation

By: _____
Its: President

Date: 5/26/10

By: _____
Its: Secretary

Date: 5/24/10

"AGENCY"

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

Marlene Murphey
Marlene Murphey
Executive Director
Date: 5/27/10

ATTEST:

REBECCA KLISCH
Ex-Officio Clerk, Fresno Redevelopment Agency

By: Cindy Bruer 5/27/10
Deputy

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

By: _____ 5/26/10
Deputy

ATTACHMENTS

Exhibit A: Legal Description of Property
Exhibit A1: Plat Map of the Property
Exhibit B: Neighborhood Stabilization Program Agreement
Exhibit C: Operating Agreement between Agency and FRC
Exhibit D: Regulatory Agreement
Exhibit E: Scope of Work
Exhibit F: Purchase and Sale Agreement
Exhibit G: Note from Seller to FRC
Exhibit H: Certificate of Continuing Program Compliance

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lots 1, 2, 3, 4 and 5 of Tract No 1938, Huntington Holmes Park, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded April 26, 1963 in Volume 21 Pages 66, 67 and 68 of Plats, Fresno County Records.

Excepting therefrom all oil, gas, other hydrocarbon substances and minerals of any kind or character, in, on, or thereunder, as reserved in deeds of record.

APN: 468-390-44s

EXHIBIT "A-1"
PLAT MAP OF THE PROPERTY

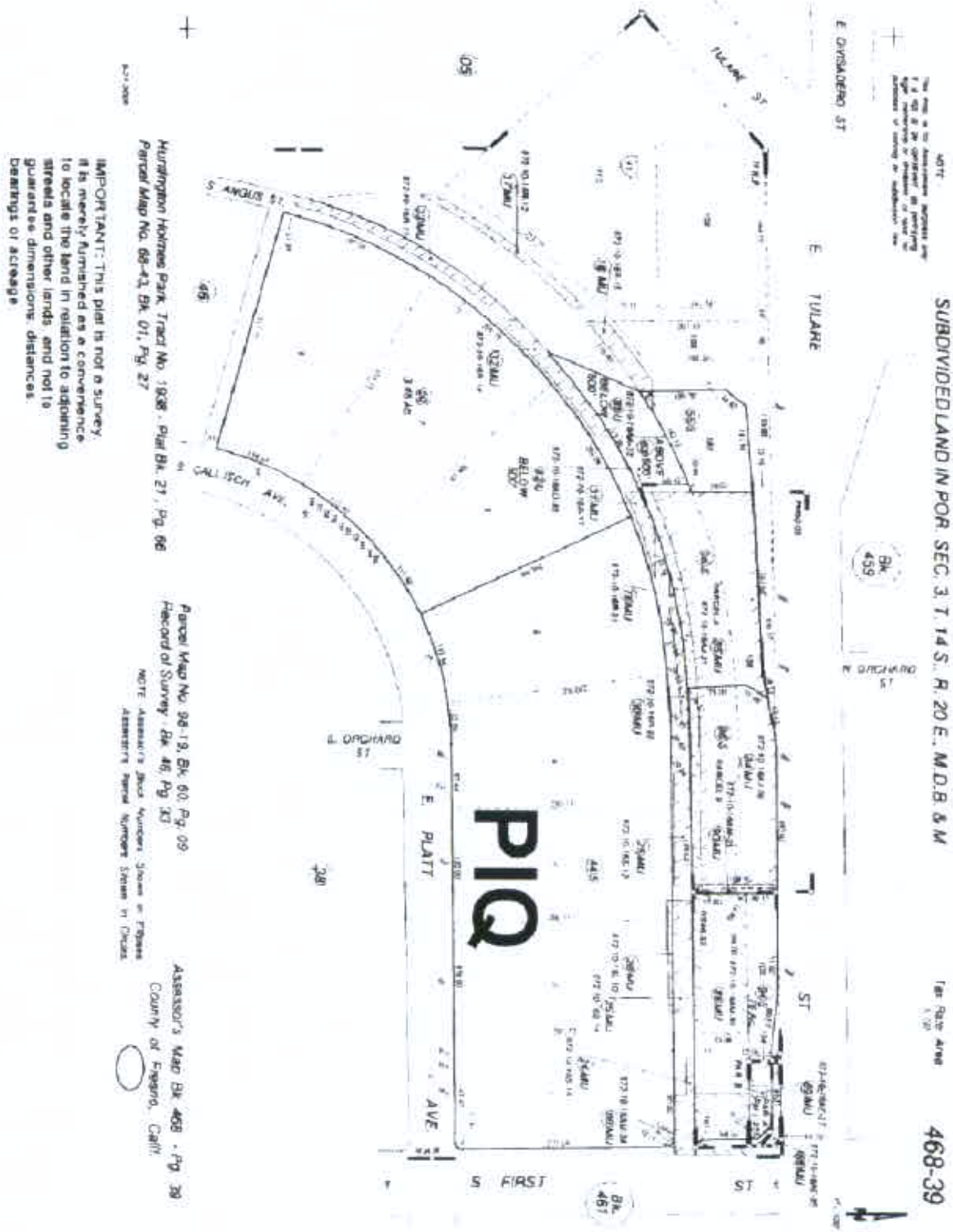


EXHIBIT "E"
SCOPE OF WORK

Property Acquisition

On the Effective Date of this Agreement, the Property is owned by the IMCC Canyon Crest, LLC, a Delaware Limited Liability Company ("Seller"), which acquired the Property through foreclosure. The purpose of this Agreement is for the Agency to take all actions on behalf of the FRC to acquire the Property from Seller upon the terms and conditions set forth in the Purchase and Sale Agreement, shown in Exhibit "F" to this Agreement; undertake the renovation of six gutted units at the Property, and provide for the ongoing operation and maintenance of the Property under the terms of the Regulatory Agreement, shown in Exhibit "D" to this Agreement, including the establishment of affordability restrictions on the units; and, provide for the remarketing of the Property to a qualified affordable housing development and property management company.

Pursuant to the Operating Agreement, shown in Exhibit "C" to this Agreement, the Agency shall provide a Loan Guaranty of a Note from Seller to FRC (the Note is shown in Exhibit "G") for the acquisition of the Property in the amount One Million, Nine Hundred Thirty-Seven Thousand, Seven Hundred Ninety-Six Dollars ($1,937,796.00). The conveyance of the Property shall be in the form of a Grant Deed. Consideration for the Loan Guaranty shall be the performance of the terms and conditions of the Operating Agreement and the Regulatory Agreement.

In addition to the guaranty of the Seller's Note, the Agency shall undertake any and all actions on behalf of the FRC to allow FRC to enter an Agreement with the City of Fresno, under which the City shall make a loan from its Neighborhood Stabilization Program in the amount of $2,772,253 under the terms and conditions of that Agreement, attached as Exhibit "B" to this Agreement.

Agency shall undertake on behalf of FRC all tasks necessary for the closing of the acquisition of the Property from Seller, including but not limited to the preparation, execution, and delivery to the Escrow Officer, identified in the Purchase and Sale Agreement, such additional escrow instructions consistent with the terms herein as shall be reasonably necessary. These tasks may include but are not limited to:

a. Determination that Title shall be conveyed in a good condition, free and clear of all liens, encumbrances, clouds, conditions, rights of occupancy and possession, except those exceptions to title approved pursuant to the Purchase and Sale Agreement; the Seller's Deed of Trust; the City's Deed of Trust; the Loan Guaranty Deed of Trust; and the Regulatory Agreement.

b. Through the Escrow Officer, determine Seller has deposited into escrow a certificate ("FIRPTA Certificate") in such form as may be required by the Internal Revenue Service pursuant to Section 1445 of the Internal Revenue Code.

c. Finalize financing commitments including the City NSP Agreement, the Seller's Note, and the Loan Guaranty for the acquisition and renovation of the Property in accordance with the terms of the Operating Agreement.

d. Approve the physical and environmental condition of the Property in accordance with the terms of the Operating Agreement.

e. Deposit into escrow all the documents required under the Purchase and Sale Agreement.

f. Communicate with the Escrow Officer to determine in writing the fees, charges, and costs necessary to clear title and close escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing.

g. At the close of escrow, ensure FRC has received an ALTA Policy of Title Insurance (the "Title Policy") for the FRC's interest, wherein the Title Company shall insure that title to the Property shall be vested in FRC, containing no exception to such title which has not been approved or waived by FRC in accordance with this Section. The Title Policy shall include any available additional title insurance, extended coverage or endorsements that FRC has reasonably requested.

h. Ensure the NSP Agreement between FRC and City is recorded, which requires that for a period of fifty-five (55) years from occupancy of the Affordable Units (the "Affordability Period"), seventy-one (71) of the Units on the Property may only be used for the residential use of housing subject to the terms of that certain NSP Agreement, and which shall bind every successor or assign in interest of FRC.

i. Ensure the Regulatory Agreement between FRC and Agency is recorded, which requires that for a period of fifty-five (55) years from occupancy of the Affordable Units (the "Affordability Period"), one hundred seventeen (117) of the Units on the Property may only be used for the residential use of housing subject to the terms of that certain Regulatory Agreement, and which shall bind every successor or assign in interest of FRC.

Operation, Maintenance and Leasing of Residences

As of the Effective Date of this Agreement, the Property is managed by Pinnacle Property Management ("Manager"), which is under contract with Seller to provide on-site and off-site property management services (the "Management Contract"). Under this Agreement the Agency shall take all actions on behalf of the FRC to ensure that the Property is operated and maintained in a first class condition upon the terms and conditions set forth in the Regulatory Agreement with the current Manager or any future manager. This includes the transitional tasks of certifying existing apartment leases, income-qualifying existing and new tenants, transferring the Management Contract to the FRC, and acquiring a new property manager for the Property, if necessary. The tasks undertaken by the Agency shall include but are not limited to:

a. Initial Lease-up Period. Monthly during the Initial Lease-up Period as defined in Section 1.30 of the Operating Agreement, and annually thereafter, Agency, on behalf of FRC and working with the contract Property Manager, prepare a report with respect to Affordable Units under lease, leases in default, and such other information as Agency may require as shown in the Certificate of Continuing Program Compliance as shown in Exhibit "H" to this Agreement.

b. Restricted Residences. As set forth above, Agency shall on behalf of FRC enforce that each of the Affordable Units shall be rented to an Eligible Tenant for a rental rate which does not exceed an Affordable Rent for the applicable Affordable Unit. Agency shall cause to be produced an operations manual for the income qualification of residents and for the transition from non-restricted units to Restricted Units, including a procedure that allows Eligible Over Income Tenants as defined in the Operating Agreement to occupy Lower Income Units and the process whereupon vacated Eligible Over Income Units are leased to Eligible Lower Income Tenants through the income certification of such tenant's income in accordance with the Regulatory Agreement.

c. Annual Tenancy Report. Agency on behalf of FRC shall annually, by January 31, compile a report on Project occupancy for each Affordable Unit, including information concerning the number of months during which each Affordable Unit was occupied, and the income category of each tenant household occupying an Affordable Unit.

d. Taxes and Assessments. Agency on behalf of FRC shall pay, when due, all real estate taxes and assessments assessed or levied subsequent to conveyance of title. Agency shall assist FRC in the application of a property tax waiver through the County of Fresno, for a percentage of taxes up to the annually income-certified percentage of residents.

e. Property Maintenance. Agency on behalf of FRC shall undertake all maintenance obligations on the Property in accordance with and for the term of the Regulatory Agreement. Agency shall assume FRC's obligations to maintain the Property, and Agency's remedies in the event of FRC's default in performing such obligations, are set forth in the Regulatory Agreement.

f. Insurance. Prior to conveyance of title to the FRC, Agency shall on behalf of the FRC procure and maintain insurance policies required under the Operating Agreement, the Seller's Note or Deed of Trust, or the NSP Agreement, whichever provides for the highest level of coverage. Agency shall procure such coverage on behalf of the FRC during the entire term of ownership by the FRC, with such cost payable from the gross rental receipts of the Property.

Improvements on the Property

As of the Effective Date of this Agreement, the Property has six gutted units and requires health and safety upgrades and repairs, as described herein and in the Basic Program of Work in Exhibit E of the Operating Agreement. Agency shall undertake improvements on the Property on behalf of FRC, pursuant to the Operating Agreement and the plans and permits approved by Agency and City. Except to the extent of the Agency Financial Assistance, the cost of constructing all of the improvements required to be constructed for the Property shall be borne by FRC from the NSP Agreement and from gross rental receipts of the Property. The tasks undertaken by the Agency shall include but are not limited to:

a. Exercise reasonable efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner.

b. Obtain all required City approvals and permits, including site plan review, conditional use permits, building, grading, and landscaping as provided in the Operating Agreement.

c. Review and approve plans and drawings for all improvements to be made on the Property, including for site plan review, building, grading, landscaping and other plans and drawings, as provided in the Operating Agreement.

d. Obtain reliable cost estimates and negotiate and prepare contracts between FRC and general contractor for all of the improvements required to be made by FRC hereunder.

Compliance with Prevailing Wage Requirements

Agency shall assist the FRC and take all actions on behalf of FRC to comply with the obligations related to Davis Bacon prevailing wages required in the NSP Agreement and further shown in Section 6.4 of the Operating Agreement:

> "6.4 Project Responsibilities/Public Work-Prevailing Wage Requirements. FRC shall be solely responsible for all aspects of FRC's conduct in connection with the Project, including but not limited to, compliance with all local, state and federal laws including, without limitation, as to prevailing wage and public bidding requirements, as applicable. This Project is a "public work" project for federal purposes including Davis Bacon and Related Acts wage requirements absent written direction/determination otherwise by U.S. HUD or a court of competent jurisdiction. Based thereon FRC shall cause the Project work to be performed as a "public work." The City Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification, or type of workman needed in the execution of contracts for the City. A copy of the resolution is on file at the Office of the City Clerk. Actual wage schedules are available upon request at the City's Construction Management Office. Without limiting the foregoing, FRC shall be solely responsible for 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 and/or payroll monitoring/auditing is solely for the purpose of determining whether FRC is properly discharging its obligation to the City, and shall not be relied upon by FRC or by any third parties as a warranty or representation by the City as to governmental compliance and/or the quality of the work completed for the Project."