9:30am - C
9/16/10

Recorded at the Request of and
When Recorded Return to:

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

FRESNO County Recorder
Robert C. Werner
DOC- 2010-0139473
Tuesday, OCT 19, 2010 09:57:30
Ttl Pd $0.00 Nbr-0003311364
GSF/R7/1-8

CITY OF FRESNO
City Clerk's Office (Original)

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: 10/8/10

Amendment No. 3
To HOME Investment Partnerships Program Agreement
Recorded Jul 19, 2007 DOC- 2007-0138809
by and between

CITY OF FRESNO,
a municipal corporation

and

Habitat for Humanity Fresno Inc.,
a nonprofit public benefit corporation

regarding

"South Clara Estates"
Southeast Corner of Clara and North Avenues – APN# 329-020-07t
An Affordable Single Family Homes Project
(Time Extension)

AMENDMENT NO. THREE TO
HOME INVESTMENT PARTNERSHIPS AGREEMENT
"South Clara Estates"

This Amendment No. Three to the HOME Investment Partnerships Community Housing Development Organization Agreement, hereinafter referred to as "Amendment No. Three", is made and effective as of October 1, 2010, by and between the CITY OF FRESNO, a municipal corporation, acting through its Downtown and Community Revitalization Department - Housing and Community Development Division ("CITY"), and Habitat For Humanity Fresno Inc., a California non-profit public benefit corporation in good standing with principal offices in Fresno, California, including any and all nominees/assignees thereof consented to by CITY (collectively hereinafter referred to as "Habitat").

RECITALS

WHEREAS, the CITY and Habitat are parties to a November 4, 2008 Assignment/Assumption of HOME Investment Partnerships Program Community Housing Development Organization (CHDO) Agreement incorporated herein, whereunder HABITAT assumed a certain June 16, 2005 HOME Program CHDO Agreement as twice amended and deed of trust thereunder, referred to herein as the "HOME Agreement" incorporated herein, pursuant to which the CITY, to further its goal to increase the supply of Affordable Housing within the City of Fresno, agrees to assist Habitat by providing HOME Program funds, upon the terms and conditions in the HOME Agreement, related to ten (10) separate single-family Affordable Housing Units located on APN#s 329-220-01, 329-220-02, 329-220-03, 329-220-04, 329-220-06, 329-220-07, 329-220-08, 329-220-10, 329-220-11 and 329-220-12 at the Southeast Corner of Clara and North Avenues in southwest Fresno, including related on-site and off-site improvements, referred to herein as the "Project"; and

WHEREAS, due to unexpected delays in the assignment assumption to Habitat, their ability to meet bonding requirements, completion of site improvements and the current market conditions Habitat has requested a time extension for completion of the Project; and

WHEREAS, Habitat's Board of Directors approved this Amendment No. Three on Sep 23, 2010.

AMENDMENT

NOW THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree to the following:

1. The HOME Agreement is hereby amended to extend the Project Completion Date to December 31, 2012, as more specifically provided in the Revised Project Schedule attached hereto as "Exhibit A"

2. Habitat hereby waives and releases any and all claims or causes of action against CITY it possesses or may possess arising out of or related to this Amendment No. Three.

3. In the event of a conflict between the body of this Amendment No. Three and any Exhibit or Attachment hereto, the terms and conditions of the body of this Amendment No. Three shall control and take precedence over the Exhibit/Attachment.

4. Except as expressly modified and amended hereby, the HOME Agreement shall remain in full force and effect. From and after the effective date of this Amendment, references in the Agreement to "this Agreement" shall mean the HOME Agreement as hereby amended.

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IN WITNESS WHEREOF, the parties have executed this Amendment No. Three to HOME Agreement in Fresno, California, the day and year first above written.

CITY OF FRESNO
a Municipal Corporation

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

Date: 10/8/10

HABITAT FOR HUMANITY FRESNO INC.,
a non-profit Public Benefit Corporation

By: _____
(Attach notary certificate of acknowledgment)
Anthony Miranda,
Executive Officer

Date: 9-29-10

APPROVED AS TO FORM:
JAMES SANCHEZ
City Attorney

By: _____
Robert Coyle, Senior Deputy City Attorney

Date: 10-6-10

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Sherri L Bodutcher
Deputy

Date: 10/11/10

Attachment:
Exhibit A: Revised Project Schedule

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On 9-29-2010 (Date) before me, Erica Castaneda, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Anthony Miranda (Name(s) of Signer(s))

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

ERICA CASTANEDA
Commission # 1837909
Notary Public - California
Fresno County
My Comm. Expires Mar 22, 2013

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

WITNESS my hand and official seal.

Signature: Erica Castaneda (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Amendment No. 3 Home Agreement - South Clara Estates

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name:	Signer's Name:
☐ Corporate Officer — Title(s):	☐ Corporate Officer — Title(s):
☐ Individual	☐ Individual
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other:	☐ Other:
Signer Is Representing:	Signer Is Representing:
RIGHT THUMBPRINT OF SIGNER — Top of thumb here	RIGHT THUMBPRINT OF SIGNER — Top of thumb here

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Item #5907

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CLERK'S CERTIFICATION

State of California)
County of Fresno)

On October 11, 2010 before me, Sherrie L. Badertscher, Deputy City Clerk, personally appeared, Bruce Rudd, Assistant City Manager, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

REBECCA E. KLISCH, CMC
City Clerk, City of Fresno

By Sherrie L. Badertscher
Deputy

EXHIBIT A

Habitat for Humanity®
Fresno County

2219 San Joaquin
Fresno, California 93721
559-237-4102
559-237-1451 fax
www.habitatfresno.org

July 26, 2010

Revised Project Schedule

Description	Projected Date	Actual Date
Original HOME Agreement Signed		6/16/2005
Original Promissory Note (FWCED named only)		1/27/2006
Time Extension Granted to FWCED		6/6/2007
Amendment to Original HOME Agreement Recorded		7/19/2007
Title Report		12/28/2007
Project is brought before HCDC for approval of project extension.		6/25/2008
Project is brought before City Council for approval of project extension.		7/15/2008
Sale and Purchase Agreement between FWCED & Habitat Signed		8/20/2008
Assignment/Assumption of HOME Agreement – Assigned to Habitat from FWCED	8/5/2008	11/4/2008
Assignment, Assumption & Amendment of Owner Participation Agreement – Assigned to Habitat from FWCED		11/28/2008
Improvements Contract – CA Utility Consultants for project management on the installation of improvements		12/3/2008
Improvements Contract – Graham Concrete for Concrete & Flatwork		12/12/2008
Grant Deed recorded between FWCED and Habitat		12/17/2008
Improvements Contract – Yamabe & Horn for Staking		1/20/2009
Improvements Contract – ALW Enterprises for Grubbing		2/18/2009
Improvements Contract – Tri-County Grading & Paving for Grading & Paving		2/20/2009
Completed – ALW Enterprises Grubbing		2/24/2009
Improvements Contract – Browning Construction for Wet Utilities (sewer, water, & storm drain)		3/12/2009
Updated Title Report		3/30/2009
Purchase of CD's to meet Improvement Security Requirements according to Subdivision Agreement	8/6/2008	4/2/2009
Payment of remaining Subdivision Fees (Impact Fees) per Subdivision agreement		4/9/2009
Worker's Compensation Insurance effective		4/14/2009
Certificate of Liability Insurance effective		4/15/2009
City Council Approved Final Tract Map	9/19/2008	4/23/2009
Auto Policy Provided		4/30/2009
Subdivision Agreement Insurance Approved		5/12/2009

Improvements Contract – Browning Contractors for Dry Utilities (street lights & wire pull)		7/17/2009
Improvements Contract - PG&E for Dry Utilities		8/25/2009
Completed - Tri-County Grading & Paving for Grading & Paving	10/1/2008	9/16/2009
Completed – Browning Contractors installation of Wet Utilities (sewer, water, storm drain & street lights)		9/16/2009
Improvements Contract – AT&T California for Dry Utilities (trench only)		10/6/2009
Completed – Yamabe & Horn Grading		10/7/2009
Completed - PG&E for Dry Utilities		10/28/2009
Completed – Yamabe & Horn Staking		11/5/2009
Completed – AT&T California for Dry Utilities (trench only)		11/18/2009
First Four Slabs are poured.	1/6/2009	1/2010
Construction on the first home begins.	2/7/2009	1/9/2010
Completed - Browning Contractors for Dry Utilities (street lights & wire pull)		1/20/2010
Completed – Bill's Striping Company for Street Signs and Striping		2/17/2010
Construction on second home begins.	3/2009	2/20/2010
Completed – Graham Concrete for Concrete & Flatwork		2/26/2010
Construction on third home begins.	4/2009	4/10/2010
Promissory Note Restated		4/22/2010
Completed - CA Utility Consultants for project management on the installation of improvements		5/10/2010
Completed – Torres Fence Company for Ponding Basin Fence		5/19/2010
Construction on fourth home begins.	6/2009	5/22/2010
Construction on first home is completed.	5/2009	6/5/2010
Majority of contracted improvements completed. Partial release of Performance Securities by City of Fresno. Remaining CD's held by City of Fresno pending the completion of landscaping and block wall. Submitted fees for the extension of the subdivision agreement for an additional year.		6/10/2010
Completed – Friant Masonary Inc. for Block Wall		6/18/2010
Off-Site Improvements are completed.	12/19/2008	
Construction on fifth home begins.	7/2009	7/17/2010
Construction on second home is completed.	7/2009	7/24/2010
Construction on sixth home begins.	8/28/2010	
Construction on third home is completed.	9/11/2010	
Escrow on first home closes.	10/5/2010	
Construction on fourth home is completed.	10/23/2010	
Escrow on second home closes.	11/24/2010	
Construction on fifth home is completed.	12/11/2010	
Escrow on third home closes.	1/11/2011	
Construction on sixth home is completed.	2/5/2011	
Escrow on fourth home closes.	2/23/2011	
Escrow on fifth home closes.	4/11/2011	
Escrow on sixth home closes.	6/5/2011	
Construction on seventh home begins.	7/9/2011	

Construction on eighth home begins.	8/20/2011	
Construction on ninth home begins.	10/8/2011	
Construction on tenth home begins.	11/19/2011	
Construction on seventh home completed.	12/3/2011	
Construction on eighth home completed.	1/28/2012	
Construction on eleventh home begins.	2/21/2012	
Construction on ninth home completed.	3/10/2012	
Escrow on seventh home closes.	4/3/2012	
Construction on tenth home completed.	4/28/2012	
Escrow on eighth home closes.	5/28/2012	
Construction on eleventh home completed.	6/16/2012	
Escrow on ninth home closes.	7/10/2012	
Escrow on tenth home closes.	8/28/2012	
Escrow on eleventh home closes.	10/16/2012	

City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO. 9:30am C
COUNCIL MEETING September 16, 2010
APPROVED BY
DEPARTMENT DIRECTOR
CITY MANAGER

September 16, 2010

FROM: Craig Scharton, Director
Downtown and Community Revitalization Department

Claudia Cázares, Division Manager
Housing and Community Development Division

By: John Robertson, Management Analyst III
Housing and Community Development Division

SUBJECT: APPROVE AND AUTHORIZE THE CITY MANAGER OR HIS DESIGNEE TO SIGN ALL NECESSARY DOCUMENTS FOR AMENDMENT NO. 3 TO HOME PROGRAM COMMUNITY HOUSING DEVELOPMENT ORGANIZATION AGREEMENT BETWEEN CITY OF FRESNO AND HABITAT FOR HUMANITY – FRESNO, GRANTING A TIME EXTENSION FROM SEPTEMBER 30, 2010 TO DECEMBER 31, 2012 FOR COMPLETION OF SOUTH CLARA ESTATES AN AFFORDABLE SINGLE FAMILY HOME SUBDIVISION LOCATED IN SOUTHWEST FRESNO. COUNCIL APPROVED THE HOME PROGRAM COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) AGREEMENT IN THE AMOUNT OF $550,000 ON MAY 3, 2005.

RECOMMENDATIONS

Staff recommends that City Council approve the HOME Investment Partnerships Program Community Housing Development Organization (CHDO) Agreement Amendment No. 3 (Exhibit I – Amendment No. 3) granting a time extension from September 30, 2010 to December 31, 2012, subject to City Attorney approval as to form, to Habitat for Humanity Fresno Inc. (Habitat) for the completion of construction on 10 affordable single-family homes located at the southeast corner of North and Clara Avenues in southwest Fresno.

EXECUTIVE SUMMARY

On December 7, 2004, City Council approved the sale of City-owned land, and selection of Fresno West Coalition for Economic Development (FWCED) to develop affordable single-family homes on vacant land located in southwest Fresno (see Exhibit II – Project Location Map). Subsequently, on May 3, 2005, Council approved a HOME CHDO agreement for $550,000 in development financing. The project's original completion date was December 29, 2006 and was extended once to June 30, 2008 to re-engineer the site plan. On July 15, 2008, staff requested, and Council approved, an amendment to the Agreement to allow reassignment of the project to Habitat and extend the completion date to September 30, 2010. This was necessary because the previous completion date was no longer viable and FWCED was unable to continue with development of the project. Since that time, Habitat has aggressively worked to meet the September 30, 2010 deadline. However, the contractual assignment to Habitat took significantly longer than expected and subsequently delayed the start of construction. Additionally, bonding requirements, completion of site improvements, and current market conditions have caused further delays. Habitat has, therefore, requested an extension of time to December 31, 2012, to allow for project completion.

Presented to City Council
Date 9/16/10
Disposition Rec approval

BACKGROUND

In June 2004, the Public Works Department and the Housing and Community Development Division issued a Request for Proposals (RFP) for the sale of a City-owned 2.5-acre vacant parcel and construction of affordable housing on the site. City staff recommended, and City Council approved on December 7, 2004, the selection of the FWCED development team. FWCED purchased the property on April 12, 2005. On May 5, 2005 Council approved the award of a HOME CHDO funding agreement in the amount of $550,000, to construct 10 affordable single-family homes on the site. Redevelopment Agency Home Set Aside funding was also approved for the project in the amount of $240,128.

In 2005, during the tentative map preparation process, it was identified that the subdivision would require an on-site ponding basin. Because of this condition, FWCED had to re-engineer their site plan, changing the subdivision from 10 to 12 lots. One lot allows for an additional home, and the other lot accommodates the ponding basin. This process caused a significant delay in FWCED's project schedule and thus required an initial time extension.

FWCED was granted a temporary extension by the former Housing and Community Development Manager for 180 days extending their timeline to June 29, 2007, as allowed in the original contract. However, due to the extent of the changes required in their subdivision, the 180 day extension was not sufficient time to complete the project. Therefore, City Council approved an extension to June 30, 2008.

When the tract map was finalized and approved, FWCED was required to post performance securities and make fee payments. At that time, FWCED advised the City that it did not have the financial capability to meet the performance securities as required by the subdivision map act. Therefore, the Housing and Community Development Division and the Redevelopment Agency jointly negotiated with FWCED and Habitat to assign the project to Habitat. Habitat was able to demonstrate they have the capability to meet performance securities and complete the project.

On July 15, 2008 City Council approved Amendment No. 2 to the project contract which assigned the HOME CHDO Program Agreement from FWCED to Habitat and provided an extension of time until September 30, 2010. The Assignment/Assumption agreement was executed on November 4, 2008.

Since that time, Habitat has encountered significant delays. The length of time required for the execution of the Assignment/Assumption Agreement caused a four month delay to the start of the project. Habitat also experienced an economic set back in securing bonding in late 2008 and early 2009 due to the economic downturn. Additionaly, substantial site improvements were needed for the project, which Habitat constructed in 2009.

Currently, Habitat is experiencing delays in securing construction financing due to current market conditions. The current market conditions placed substantial strain on Habitat's fund-raising efforts, furthering the need to request a time extension to complete the project. If approved by Council, the recommended action will provide Habitat an additional 27 months to complete the project.

Habitat is implementing unprecedented measures to improve their financial situation. For the first time in Habitat's history, they are selling mortgages to raise capital. Habitat is also planning a large fund-raising event in September 2010 and has been reaching out to corporate and individual donors to request additional assistance.

Habitat started construction work on the homes on January 9, 2010. Two homes have been completed. Habitat is completing finish work on one home, another home is in the final finishing stages, and one home is in the rough framing stage. Habitat and the City have pre-approved nine families for home purchase, all of whom have started their required 500 hours of sweat equity. The homes will range from 1,350 to 1,607 square feet and contain three to five bedrooms. HOME CHDO funds were proposed to be used as construction and permanent financing. To date, Habitat has expended $539,354.10 of the $550,000 of HOME CHDO funds approved for the project, and is utilizing private financing to finish construction.

The Housing and Community Development Commission recommended approval of this item on August 25, 2010.

FISCAL IMPACT

There is no fiscal impact associated with this recommendation. Council previously approved $550,000 in HOME Program CHDO funds, which, as of September 1, 2010, a total of $539,354.10 have been expended. Habitat expects to expend this balance in September 2010.

Attachments: Exhibit I – Amendment No. 3
Exhibit II – Project Location Map