

AGENDA ITEM NO. 9:15am B
COUNCIL MEETING 2/11/10

APPROVED BY

John M. Ligon
DEPARTMENT DIRECTOR

CITY MANAGER *[Signature]*

February 11, 2010

FROM: KEITH BERGTHOLD, Assistant Director
Planning and Development Department

BY: CLAUDIA CÁZARES, Manager *Claudia Cázares*
Housing and Community Development Division
Planning and Development Department

SUBJECT: APPROVAL OF A \$160,000 DISPOSITION AND DEVELOPMENT AGREEMENT AND HOME AGREEMENT WITH HABITAT FOR HUMANITY FRESNO, INC., FOR CONSTRUCTION OF TWO AFFORDABLE SINGLE-FAMILY HOMES ON EAST GARRETT AVENUE FOR ASSESSOR'S PARCEL NUMBERS 481-390-46T AND 481-390-47T

RECOMMENDATIONS

Staff recommends City Council approve a \$160,000 Disposition and Development Agreement and HOME Agreement (Exhibit A) with Habitat for Humanity Fresno, Inc., (Habitat) for the construction of two affordable single-family homes on East Garrett Avenue (Exhibit B) for Assessor's Parcel Numbers 481-390-46T and 481-390-47T.

EXECUTIVE SUMMARY

On January 9, 2009, the City issued a Request for Proposals (RFP) from qualified developers to develop affordable housing on surplus City-owned infill properties located at various sites throughout the City. As an incentive, the City offered the initial purchase price of the property as the HOME subsidy to a proposed affordable housing project. In response to the RFP, Habitat submitted a successful proposal to construct two "sweat equity" affordable single-family homes on the East Garrett Avenue sites. The initial purchase price of parcel number 481-390-46T was \$78,400 and \$81,600 for parcel number 481-390-47T. A portion of these amounts will be forgiven to make the home affordable to the low-income homebuyer. The balance (loan portion) will be provided to the homebuyers as mortgage assistance. In addition, the homebuyers will receive "sweat equity" credit toward the purchase of their home, as facilitated through Habitat.

BACKGROUND

In January of 2007, the Housing and Community Development Division purchased two infill lots on East Garrett Avenue (4979 and 4983). The lot purchases were part of a larger neighborhood development at the northwest corner of Jensen and Willow Avenues in southeast Fresno. The neighborhood development consists of a 41-unit single-family subdivision to the west of the project site and a 64-unit

Presented to City Council

Date

2/11/10

Disposition

Fac. approval

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APPROVAL OF A \$160,000 DISPOSITION AND DEVELOPMENT AND HOME AGREEMENT WITH HABITAT FOR HUMANITY FRESNO

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senior housing development to the south. Due to the declining property values, during early 2008, the previous developer cancelled the proposed development of the Garrett Avenue sites.

Therefore, in January of 2009, the City issued an RFP to dispose of the previously acquired East Garrett sites while creating additional affordable housing opportunities at Willow/Jensen location. In response to the RFP, Habitat, a leading non-profit development organization, submitted a successful proposal to construct two "sweat equity" affordable single-family homes on the East Garrett Avenue sites.

Habitat's "sweat equity" method of housing development consists of training families in basic construction so that they may assist in the building of their home. In addition to the basic construction training, Habitat provides workshops and support services in the areas of home maintenance, home improvement, interior design, budgeting, and consumer awareness. Habitat has a 23-year history of partnering with low-income families to ensure their homeownership achievement is a successful and positive experience.

Habitat will acquire the East Garrett Avenue lots through escrow and enter into a 2% interest loan in the amount of \$160,000 (the initial purchase price that the City paid for the two lots), as provided for in the Agreement.

The properties to be purchased and developed by Habitat are as follows:

Location	APN	Size (approx.)	2008 Appraised Value	Purchase Price
4979 E. Garrett	481-390-46T	11,359	\$45,000	\$78,400
4983 E. Garrett	481-390-47T	11,761	\$45,000	\$81,600

Both houses will consist of three-bedrooms and two-bathrooms, solar panels, and Universal Design features. Once the homes are constructed, the City will forgive a portion (\$33,400 for 4979 E. Garrett Avenue and \$36,600 for 4983 E. Garrett Avenue) of the loan to accommodate for the difference between the City's initial purchase price and the 2008 appraised value. The loan forgiveness is the only option to accommodate for the reduction in property value, ensure the City is fully reimbursed for the initial property acquisition cost, and that the home is affordable for a low-income homebuyer.

The balance of the HOME subsidy (loan portion) will be provided as mortgage assistance. In addition to the City's mortgage assistance, the homebuyers will receive "sweat equity" credit toward the purchase of their home from Habitat. Upon conveyance of Habitat's \$160,000 Note to the homebuyers, the Note will convert to two notes (one note for each homebuyer), deferred for a period of 30 years at zero percent interest.

Prior to purchase of the Garrett Avenue properties, the City completed an evaluation of the project, in accordance with the provisions of the California Environmental Quality Act, which resulted in a Mitigated Negative Declaration. Additionally, pursuant to federal regulations, the City completed a review of the project, under the National Environmental Policy Act guidelines, which resulted in a Finding of No Significant Impact.

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HOUSING AND COMMUNITY DEVELOPMENT COMMISSION

The Housing and Community Development Commission considered and recommended this item for approval on September 23, 2009.

FISCAL IMPACT

There will be no fiscal impact to the Planning and Development Department's FY 09-10 Budget. The properties were purchased in FY07 using \$160,000 in City funds. Council approval of the Agreement will allow for the City to be reimbursed with HOME funds for the land cost.

Attachments:

Exhibit A – Disposition and Development Agreement and HOME Agreement

Exhibit B – Project Sites Map

66



RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno
City Clerk's Office
No Fee - Govt. Code 6103
2600 Fresno Street, Room 2133
Fresno, CA 93721

FRESNO County Recorder
Robert C. Werner
DOC- 2010-0028082
Tuesday, MAR 02, 2010 13:51:31
Ttl Pd \$0.00 Nbr-0003169806
JZG/R3/1-66

(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 and 27383.

CITY OF FRESNO

By: 
Bruce Rudd
It's: Assistant City Manager
Date: 2/19/10

DISPOSITION AND DEVELOPMENT AGREEMENT
AND
HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT

by and between

CITY OF FRESNO,
a municipal corporation

and

Habitat for Humanity Fresno, Inc.
a nonprofit corporation

regarding

"4979 E. Garrett Avenue (APN: 481-390-46T) and
4983 E. Garrett Avenue (APN: 481-390-47T)"
Low-Income Single-Family Housing Development

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EXHIBITS

- EXHIBIT A: PROPERTY DESCRIPTION
- EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE
- EXHIBIT C: EXEMPLAR DECLARATION OF RESTRICTIONS
- EXHIBIT D: BUDGET
- EXHIBIT E: EXEMPLAR CERTIFICATE OF COMPLETION
- EXHIBIT F1: EXEMPLAR NOTE - TEMPLATE RIDER TO DEED OF TRUST
- EXHIBIT F2: EXEMPLAR NOTE - TEMPLATE RIDER TO DEED OF TRUST

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

This Development and Disposition and HOME Investment Partnerships Program Agreement (hereinafter referred to as the "Agreement") is entered into this, 2-11, 2010, by and between the CITY OF FRESNO, a municipal corporation, acting through its Planning and Development Department – Housing and Community Development Division (hereinafter referred to as the "CITY"), and Habitat for Humanity Fresno, Inc., a California nonprofit corporation (hereinafter referred to as "DEVELOPER").

RECITALS

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

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

WHEREAS, the Project will be constructed upon two HOME eligible parcels (collectively "Property") located within the boundaries of the City of Fresno, owned by the CITY, as more particularly described in the attached EXHIBIT "A", to be transferred to the DEVELOPER in fee at an agreed upon fair market price through an escrow as provided hereunder; and

WHEREAS, the DEVELOPER desires to construct two (2) separate single-family Affordable Housing Units to be sold as Low-Income Housing and related on-site and off-site improvements, hereinafter referred to as the "Project", as more particularly described in the Project Description and Schedule attached hereto as EXHIBIT "B", incorporated herein; and

WHEREAS, to advance the supply of Affordable Housing within the City of Fresno, the CITY desires to provide assistance to the Project in the total amount of One Hundred Sixty Thousand Dollars and 00/100 (\$160,000.00) in HOME Funding as an assumable and partially forgivable Loan, for eligible HOME Project property acquisition costs, upon the terms and conditions in this Agreement, as further identified in EXHIBIT "D" (Budget), to be secured by the underlying Property and the Affordable Housing covenants, see attached Exhibits "F1" and "F2" Exemplar Notes (Project Loan) and the attached EXHIBIT "C" Declaration of Restrictions, respectively; and

WHEREAS, the CITY will transfer fee title to the Project Property "as is" to the DEVELOPER through Escrow with Chicago Title Company located at 7330 N. Palm, Suite 101, Fresno, CA 93711 (Attention: Cherie Zuniga at [559-451-3700]). The parties acknowledge and agree that the fair market purchase price for the Property is the amount of One Hundred Sixty Thousand Dollars and 00/100 (160,000.00). This Agreement, when

signed by both parties and deposited with the Escrow holder will be the parties' joint escrow instructions. The DEVELOPER and the CITY will sign any other form instructions required by Escrow holder. Parties may submit supplemental escrow instructions. DEVELOPER will deposit all instruments, documents, money, and other items with the Escrow holder that are: (i) identified in this Agreement; or (ii) required by the Escrow holder to effect the closing. The Escrow will be considered closed on the date that the Escrow holder is prepared to issue a standard CLTA/ALTA owner's title insurance policy to DEVELOPER insuring fee title and records the grant deed. It is agreed and confirmed by DEVELOPER and CITY that notwithstanding other provisions in this Agreement, the right of possession and use of the Property by DEVELOPER shall commence only upon close of Escrow; and

WHEREAS, the CITY has conducted an environmental review of the Project pursuant to the National Environmental Policy Act ("NEPA"), resulting in a finding of no significant impact according to the provisions of the NEPA (Environmental Assessment No. 014-06155) and the California Environmental Quality Act ("CEQA"), resulting in an Exempt Status according to the provisions of CEQA (Environmental Assessment No. 014-06155) and CITY has received federal approval for release of HOME Program funds pursuant to 24 CFR Part 58 on January 2, 2007; and

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

WHEREAS, on September 23, 2009, the Housing and Community Development Commission of the City of Fresno reviewed this Agreement and recommended approval.

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

ARTICLE 1. DEFINITIONS

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

- 1.1. Acquisition means vesting of Property in fee title to the Developer.
- 1.2. ADA means the Americans with Disabilities Act of 1990, as most recently amended.

1.3. Affirmative Marketing means a good faith effort to attract eligible persons of all racial, ethnic and gender groups, in the housing market area, to purchase the Housing Unit(s) that are proposed for construction on the eligible Property, as hereinafter defined.

1.4. Affordable Housing means the proposed Affordable Housing Project Units, consisting of two (2) separate single-family homes, each of which will be required to meet the affordability requirements of this Agreement and 24 CFR 92.254 and which affordability requirements shall run with the land for the Affordability Period subject to release as provided in this Agreement.

1.5. Affordability Period means the thirty (30) year period commencing from the date of first sale of each Project Unit following CITY'S issuance and recordation of the Certificate of Completion, as more fully described in the Declaration of Restrictions, attached hereto as EXHIBIT "C" incorporated herein.

1.6. Budget means the pro forma Budget, and any changes thereto, approved by the CITY's Housing and Community Development Division Manager provided the total amount of HOME Funding allocated to the Project shall not be increased without City Council approval, attached hereto as EXHIBIT "D".

1.7. Certificate of Completion means that certificate issued, in the form attached as EXHIBIT "E" ("Certificate of Completion"), to DEVELOPER by the CITY evidencing completion of each Project Unit constructed on the Property for purposes of this Agreement.

1.8. CFR means the Code of Federal Regulations.

1.9. Commencement of Construction means the time DEVELOPER or DEVELOPER'S construction contractor begins substantial physical work of the Project/each Project Unit on the Property, including, without limitation, delivery of materials and any work, beyond maintenance of the Property in its status quo condition, and not later than March 12, 2011.

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

1.11. Deed of Trust means that Deed of trust (including security agreement) given by DEVELOPER as Trustor, to the CITY as beneficiary, through an escrow established by DEVELOPER at its sole cost and expense with Chicago Title Company, and recorded against the Property to ensure the Note, together with the Rider to Deed of Trust attached as Exhibits "F1" and "F2" to the Notes and acceptable to the City Attorney, as well as any amendments to, modifications of and restatements of said Deed of Trust, which Deed of Trust shall be subordinated to the persons or entities that provide financing to the Developer for the Project per the Budget attached as EXHIBIT "D". The terms of any such Deed of Trust are hereby incorporated into this Agreement by this reference.

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

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

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

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

1.16. HOME Investment Partnerships Funds (also referred to in this Agreement as HOME Funds) means the HOME Program monies constituting the Loan, in an amount not to exceed the sum of One Hundred Sixty Thousand Dollars and 00/100 (\$160,000.00) used for HOME Program eligible property acquisition costs.

1.17. Household means one or more persons occupying a Unit in the proposed Affordable Housing Project.

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

1.19. Loan means the assumable Project Loan of HOME Funds, in the total amount not to exceed the lesser of the sum of One Hundred Sixty Thousand Dollars and 00/100 (\$160,000.00) and the aggregate HOME Program per unit cap (24 C.F.R. 92.250) for the two (2) HOME-assisted Units as determined by the CITY made available by the CITY to the Project pursuant to this Agreement, as more specifically described in the Budget and in the Promissory Notes attached hereto as Exhibits "F1" and "F2". The Loan shall be allocated \$78,400.00 to APN: 481-390-46T and \$81,600.00 to APN: 481-390-47T, and shall be payable in accordance with the terms of the Notes, shall be secured by a deed of trust on each parcel constituting the Property, and shall be subject to the Rider to Deed of Trust attached to the Exhibits "F1" and "F2" Exemplar Notes. As to each such Note and Deed of Trust there shall be forgiven from the principal due thereunder the sum of \$33,400.00 (APN: 481-390-46T) and \$36,600.00 (APN: 481-390-47T) upon conveyance of a completed Unit to a Low Income homebuyer through purchase escrow, so long as DEVELOPER is not then in default of this Agreement and confirms said reduction in principal in a writing noticed to the CITY in the manner provided herein.

1.20. 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.

1.21. Low-Income Families means families whose annual income does not exceed sixty percent (60%) of the median income for the Fresno, California area as determined by HUD, except as HUD may establish income ceilings higher or lower than 60% of the median for the area on the basis of HUD findings that such variations are necessary.

1.23. Note or Notes mean(s) the assumable, partially forgivable Project Note on each parcel, substantially in the form attached hereto/incorporated herein as Exhibit "F" in principal amount of \$78,400.00 allocated to APN: 481-390-46T and \$81,600.00 allocated to APN: 481-390-47T, given by DEVELOPER as promissor, 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 creating a 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.

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

1.26. Project means the two (2) single-family low-income Affordable Housing Units to be constructed, marketed, and sold as Low-Income Housing, and related on-site and off-site improvements all as described in the Project Description and Schedule attached hereto and incorporated herein as EXHIBIT "B", upon the Property as more particularly described in EXHIBIT "A".

1.27. Project Completion Date means the date that the CITY shall have determined that the Project has reached completion in accordance with this Agreement. The Project Completion Date for this project is October 1, 2011.

1.28. Project Schedule means the schedule for completion of the Project included within the EXHIBIT "B" Project Description and Schedule, consistent with the above Project Completion Date.

1.29. Property means the vacant, unimproved CITY-owned HOME Program eligible property located at 4979 E. Garrett Avenue (APN: 481-390-46T) and 4983 E. Garrett Avenue (APN: 481-390-47T), Fresno, California, more specifically described in the attached EXHIBIT "A", to be transferred in fee to the DEVELOPER from the CITY prior to Commencement of Project Construction through escrow and developed as a low-income housing project as provided herein.

1.30. Unit means each of the two (2) single-family homes developed upon the Property and preserved as Affordable Housing for the duration of the Affordability Period.

ARTICLE 2. TRANSFER OF AFFORDABLE PROJECT PROPERTY

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

2.2 Purchase Price. The fair market purchase price for the Affordable Project Property shall be One Hundred Sixty Thousand Dollars and 00/100 (\$160,000.00) ("Purchase Price"). DEVELOPER and the CITY agree that the Purchase Price is to be based upon the August 16, 2006 appraised value of the Affordable Project Property. The Purchase Price shall be paid as follows:

A. Within fifteen (15) days after the effective date of this Agreement the parties shall open an escrow (the "Escrow") with Chicago Title Company, 7330 N. Palm, Suite 101, Fresno, CA 93711 (Attention Cherie Zuniga at 559-451-3700). At the close of escrow the DEVELOPER shall deliver two (2) Notes to the City in the full amount of the Purchase Price as payment for each parcel constituting the Property.

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

2.3 Condition of Title. Upon the Closing, CITY shall convey to DEVELOPER marketable and insurable fee simple title to the Affordable Project Property by duly executed and acknowledged standard Title Company form grant deed(s) ("Deed"). Evidence of delivery of marketable and insurable fee simple title shall be the issuance by Chicago Title Company (the "Title Company") to DEVELOPER of CLTA/ALTA Owner's Policy of Title Insurance in the amount of the Purchase Price, insuring fee simple title to the Affordable Project Property, the DEVELOPER will accept title subject to exceptions through 1-4 shown on those certain Preliminary Title Reports prepared by the Title Company under Order No. 09-45025907-B-JAH Dated September 10, 2009 (the "Title Policies").

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

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

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

C. DEVELOPER shall have given written notice to the CITY within fifteen (15) days after the effective date of this Agreement that it has inspected the Affordable Project Property and shall accept the Property in AS IS condition. If DEVELOPER, after its inspection of the Affordable Project Property and review of an environmental reports disapproves of the Affordable Project Property's environmental or other conditions or aspect of the Affordable Project Property or Affordable Project in its sole and absolute discretion, then DEVELOPER may terminate the Agreement by written notice to the CITY and without liability for breach or otherwise.

D. The CITY shall have received all necessary approvals from HUD, received the HOME funds and shall be irrevocably committed to fund the Loan at Closing.

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

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

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

2.7 Escrow Closing. The parties intend for the Closing to take place on a date selected by Developer but in no event later than March 30, 2010 (the "Affordable Project Closing Date").

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

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

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

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

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

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

ARTICLE 3. TERMS

3.1 Loan of HOME funds. The CITY agrees to convey the Property to the DEVELOPER, and to accept two (2) Notes from the DEVELOPER in the full amount of the Purchase Price, all under the terms and conditions provided in this Agreement. The Loan shall be assignable as provided in this Agreement and the Note(s).

3.2 Loan Documents. The DEVELOPER shall execute and deliver to the CITY the Loan Documents including the Note(s), and notarized Deed(s) of Trust, for recordation against the Property.

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

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

3.5 Incorporation of Documents. The DEVELOPER proposal dated February 3, 2009 and the CITY Council approved Minutes of Feb. 11, 2010, approving this Agreement, the Loan Documents, the Act and HUD regulations at 24 CFR Part 92, and all exhibits, attachments, documents and instruments referenced herein, as now in effect and as may be amended from time to time, constitute part of this Agreement and are incorporated herein by reference. All such documents have been provided to the parties herewith or have been otherwise provided to/procured by the parties and reviewed by each of them prior to execution hereof.

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

ARTICLE 4. GENERAL REPRESENTATIONS AND WARRANTIES OF DEVELOPER

4.1 Existence and Qualification. The DEVELOPER represents and warrants as of the date hereof, that DEVELOPER is a duly organized California Corporation. DEVELOPER has the requisite power, right, and legal authority to execute, deliver and

perform its obligations under this Agreement and has taken all actions necessary to authorize the execution, delivery, performance, and observance of its obligations under this Agreement. This Agreement, when executed and delivered, shall constitute the legal, valid and binding obligations of the DEVELOPER enforceable against the DEVELOPER in accordance with its respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws of general applicability affecting the enforcement of creditors' rights generally, and (b) the application of general principles of equity without the joinder of any other party.

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

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

4.4 No Legal Bar. The DEVELOPER represents and warrants as of the date hereof that the execution, delivery, performance, or observance by DEVELOPER of this Agreement will not, to the best of DEVELOPER'S knowledge, materially violate or contravene any provisions of: (a) any existing law or regulation, or any order of decree of any court, governmental authority, bureau, or agency; (b) governing documents and instruments of DEVELOPER; or (c) any mortgage, indenture, security agreement, contract, undertaking, or other agreement or instrument to which DEVELOPER is a party or that is binding on any of its properties or assets, the result of which would materially or substantially impair DEVELOPER'S ability to perform and discharge its obligations or its ability to complete the Project under this Agreement.

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

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

4.7 Assurance of Governmental Approvals and Licenses. DEVELOPER

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

ARTICLE 5. HOME PROGRAM REPRESENTATION AND WARRANTIES BY DEVELOPER

DEVELOPER, for itself and its development team, represents and warrants that:

5.1 Universal Design Ordinance. The design and construction requirements of the CITY Universal Design Ordinance No. 2008-53 requirements:

- i. No step accessible entryway.
- ii. All doorways and passageways at least 34 inches wide.
- iii. One downstairs "flex room" and accessible bathroom with reinforcements for grab bars.
- iv. Six square feet of accessible kitchen counter space.
- v. Hallways at least 42 inches wide.

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

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

5.4 Compliance with Agreement. The DEVELOPER warrants, covenants and agrees that, in accordance with the requirements of 24 CFR 92.254 and 24 CFR Part 85, upon any uncured default by DEVELOPER within the meaning of Article 11 of this Agreement, the CITY may suspend or terminate this Agreement and all other agreements with DEVELOPER without waiver or limitation of rights/remedies otherwise available to the CITY.

5.5 Conflict of Interest. The DEVELOPER warrants, covenants and agrees that it shall comply with the Conflict of Interest requirements of 24 CFR 92.356 including, without limitation, that no officer, employee, agent or consultant of DEVELOPER may occupy a Project Unit. DEVELOPER understands and acknowledges that no employee, agent,

consultant, officer or elected official or appointed official of the CITY, who exercises or has exercised any functions or responsibilities with respect to the Project, or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for anyone with which that person has family or business ties, during his or her tenure or for one year thereafter. To the extent provided at 24 CFR 92.356(f), no owner, developer or sponsor of the Project, or officer, employee, agent or consultant thereof, may occupy a Project Unit.

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

5.7 Covenants and Restrictions to Run with the Land. The CITY and DEVELOPER expressly warrant, covenant and agree to ensure that the covenants and restrictions set forth in this Agreement are recorded and will run with the land, provided, however, that, consistent with the Loan Documents, CITY may release said covenants and restrictions only upon recapture of all HOME funding allocated to the Unit(s) by the CITY. DEVELOPER further warrants, covenants and agrees to ensure that the covenants and restrictions set forth herein shall run in favor of the CITY.

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

B. The DEVELOPER covenants and agrees that it shall cause the two (2) of the Project Units to be sold as Affordable Housing to Low-Income Families.

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

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

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

5.9 Initial Income Certification. The DEVELOPER warrants, covenants and

agrees that it shall comply with the procedures for income determinations at 24 CFR 92.203. DEVELOPER shall obtain, complete and maintain on file, immediately prior to initial occupancy, income certifications from each of the two (2) Affordable Project Unit's Household. 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 prior to the close of escrow and the transfer of title to the low-income homebuyer. DEVELOPER further warrants, covenants and agrees that it shall cooperate with the CITY in the CITY'S income certification/affordability monitoring activities at the time subsequent to initial transfer of the Unit Property.

5.10 Lead-Based Paint. The DEVELOPER warrants, covenants and agrees that it shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 CFR Part 35 including the HUD 1012 Rule, and 24 CFR 982.401(j), including any amendments thereto, in the Affordable Housing Project. These requirements apply to all units and common areas in the Affordable Housing Project. 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.

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

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

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

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

C. The Project requirements, Subpart F of 24 CFR Part 92, as applicable and in accordance with the type of Project assisted, including, but not limited to, the limit on

per-unit subsidy amount at 24 CFR 92.250.

D. The property standards at 24 CFR 92.251.

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

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

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

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

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

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

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

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

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

N. Executive Order 11063 on Equal Opportunity and Housing.

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

P. The Housing and Community Development Act of 1974.

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

R. Civil Rights Requirements, 29 U.S.C. Section 623, 42 U.S.C Section

2000, 42 U.S.C Section 6102, 42 U.S.C. Section 12112, 42 U.S.C Section 12132, 49 U.S.C. Section 5332, 29 CFR Part 1630, 41 CFR Parts 60 et. seq.

5.13 Religious Organizations and Faith Based Activities. DEVELOPER warrants, covenants and agrees that it shall not engage in any prohibited activities described in 24 CFR 92.257.

5.14 Reporting Requirements. The DEVELOPER warrants, covenants and agrees that it shall submit performance reports to the CITY as required hereunder. Furthermore, the DEVELOPER agrees to provide, at the sole cost of the DEVELOPER, annual audited Financial Statements for the Project expenses and ongoing financial transactions which occur as a result of this Agreement as required hereunder. The DEVELOPER agrees to account for the expenditure of HOME Funds using generally accepted accounting principals, which financial documentation shall be made available to the CITY and HUD upon their respective written request(s).

5.15 Housing Affordability. The DEVELOPER warrants, covenants and agrees that the Project will meet the Affordable Housing, income targeting and other requirements of 24 CFR 92.254 upon sale of the two (2) homes to eligible Low-Income homebuyers, except upon foreclosure by a lender or transfer in lieu of foreclosure following default under a Deed of Trust.

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

ARTICLE 6. COVENANTS AND AGREEMENTS OF DEVELOPER.

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

6.1 Adequate Repair and Maintenance. The DEVELOPER during its time on title shall maintain the Projects and Property in compliance with all applicable codes, laws, and ordinances.

6.2 Affordable Housing. The DEVELOPER covenants and agrees that the two (2) Project Units shall be sold only to Low-income families to constitute Affordable Housing, as variously provided at 24 CFR 92.254.

6.3 Compliance With Environmental Laws. 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 will 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.

Additionally, the DEVELOPER agrees:

A. 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;

B. Not to transport to or from the proposed project site(s), or use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, or about the 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;

C. 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.

D. To indemnify, defend, and hold the CITY harmless from any and all claims, actions, causes of action, demands, judgments, damages, injuries, administrative orders, consent agreements, orders, liabilities, penalties, costs, expenses (including attorney's fees and expenses), and disputes of any kind whatsoever arising out of or relating to the DEVELOPER or any other party's use or release of any hazardous or toxic chemicals, materials, substance, or wastes on the eligible Property regardless of cause or origin, including any and all liability arising out of or relating to any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind.

6.4 Compliance With Laws. The DEVELOPER shall promptly and faithfully comply with, conform to and obey all present and future federal, state and local statutes, regulations, rules, ordinances and other legal requirements applicable by reason of this Agreement or otherwise to the Project. The DEVELOPER acknowledges that the use of HOME Funds subjects the Project to extensive federal regulation and covenants and agrees that it shall comply with, conform to and obey (and take such steps as are required

of the DEVELOPER to enable the CITY to comply with, conform to and obey) all federal statutes, regulations, rules and policies applicable to the Program and the Project. The CITY and DEVELOPER acknowledge that (i) pursuant to 24 CFR 92.354 a contract for the construction (new construction) of housing that includes fewer than 12 units assisted with HOME funds need not contain a provision requiring the payment of the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing, or the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), and (ii) pursuant to Cal. Labor Code 1720, the public participation in the Project that would otherwise meet the criteria of a public work for which State prevailing is required under Cal. Lab. Code 1720 et seq. is exempt where the public funding is in the form of below-market interest rate loan for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income. Nonetheless DEVELOPER shall be solely responsible for determining and effectuating compliance. Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall be construed as imposing any independent prevailing wage requirements that are different from those imposed by applicable federal or state law.

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

6.6 Financial Statements and Audits. The DEVELOPER, as a recipient of federal financial assistance, is required to comply with the provisions of the Single Audit Act of 1984 (31 U.S.C. Sections 7501 et seq.), as amended. Annually, within one hundred and eighty (180) days following: 1) the end of fiscal year(s) in which the HOME Funds are disbursed hereunder, and 2) the end of fiscal year(s) in which this contract shall terminate, and otherwise upon the CITY'S, written request during the term of this Agreement, DEVELOPER, at its sole cost and expense shall submit to the CITY:

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

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

6.7 Inspection and Audit of Books, Records and Documents. The DEVELOPER shall be accountable to the CITY for all HOME Funds disbursed for 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 six (6) years after the expiration or termination of this Agreement.

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

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

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

6.8 Inspection of Property. Any duly authorized representative of the CITY, the State, or HUD shall, at all reasonable times, have access and the right to inspect the Property until completion of the Project.

6.9 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 "D" Project Budget, without the prior written consent of the CITY.

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

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

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

been disclosed to the CITY in writing and are being contested in good faith.

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

ARTICLE 7. HOME PROGRAM FUNDS

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

7.1 HOME Program Funds. The DEVELOPER warrants, covenants and agrees that HOME Program Loan Funds shall be applied to pay for HOME eligible Project Property acquisition costs to finance the sale of the Property to DEVELOPER through an escrow account established by with Chicago Title Company as provided herein. The CITY'S obligations shall in no event exceed the HOME Funds amount specified in this Agreement.

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

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

B. The DEVELOPER, by signing this Agreement, commits to construct two (2) Units on the Property and to sell each Unit to a Low Income homebuyer that has submitted evidence to the CITY of a primary home loan sufficient to purchase the Unit. If the CITY determines that said funds are not sufficient to purchase the Unit, the DEVELOPER or the individual homebuyer(s) may satisfy this condition by depositing the amount of the deficiency with the CITY or escrow account, as applicable.

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

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

E. Upon CITY'S reasonable request, the DEVELOPER has provided the CITY copies of Project surety (payment and performance) bonds.

F. The DEVELOPER is current with its compliance of all reporting requirements set forth in this Agreement.

G. Upon CITY'S reasonable request, the DEVELOPER has delivered a Unit construction schedule satisfactory to the CITY.

H. The City has received the Certification required by this Article 7 of this Agreement.

7.3 Request for Credit of HOME Program Funds through Escrow. The DEVELOPER shall request that the CITY convey the Property through escrow as a form of

disbursement of HOME funds. The DEVELOPER shall only request a maximum of One Hundred Sixty Thousand and 00/100 (\$160,000.00) in HOME Program assistance to finance acquisition and sale of the Property, or as otherwise agreed to by CITY. All requests for HOME funds shall be accompanied with the Certification required by this Article 7 of this Agreement.

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

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

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

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

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

ARTICLE 8. DEVELOPMENT AND CONSTRUCTION OF PROJECT

Without waiver of limitation, the parties agree as follows:

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

8.2 Commencement and Completion of Project. The DEVELOPER shall commence and complete construction in accordance with the Project Description and Schedule. All Project Construction shall be completed no later than October 1, 2011.

8.3 Contracts and Subcontracts. Consistent with Article 6, all demolition, hazardous waste abatement, construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise legally authorized to perform the applicable work or service in the State of California and the City of Fresno. The DEVELOPER shall provide the CITY with copies of all agreements with any and all contractors or subcontractors for this Project. The DEVELOPER shall require that each contractor and subcontractor agreement contain a provision whereby the party(ies) to the agreement other than the DEVELOPER agree to (i) notify the CITY immediately of any event of default by the DEVELOPER thereunder; (ii) notify the CITY immediately of the filing of a mechanic's lien, (iii) notify the CITY immediately of termination or cancellation of

the agreement; and (iv) provide the CITY, upon the CITY'S request, an Estoppel Certificate certifying that the agreement is in full force and effect and the DEVELOPER is not in default thereunder. The DEVELOPER agrees to notify the CITY immediately of termination or cancellation of any such agreement(s), notice of filing of a mechanic's lien, or breach or default by other party(ies) thereto.

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

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

8.6 Financing. The DEVELOPER shall promptly inform the CITY of any new or additional financing or funding, and the DEVELOPER shall provide the CITY copies of all agreements with any and all Funding Sources for this Project. The DEVELOPER shall require each agreement with any and all Funding Sources to 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 termination or cancellation of the agreement; and (iii) provide the CITY, upon CITY'S request, an Estoppel Certificate certifying that the agreement is in full force and effect and the DEVELOPER is not in default thereunder. The DEVELOPER agrees to notify the CITY immediately of termination or cancellation of any such agreement(s) or receipt of notice of default thereunder. The DEVELOPER shall comply with all obligations of any such agreement(s) with any and all Funding Sources until the respective expiration of such agreement(s). 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.

8.7 Identification Signage. Before the start of construction, the DEVELOPER shall place a poster or sign, with a minimum four feet by four feet in size, identifying the City of Fresno, Planning and Development Department, Housing and Community Development Division, 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. Font

size shall be a minimum of 4 inches. The poster/sign shall be appropriately placed, and shall be in place throughout the Project construction.

8.8 Inspections. The DEVELOPER shall permit, facilitate, and require its contractors and consultants to permit and facilitate observation and inspection at the job site by the CITY and other public authorities during reasonable business hours, for determining compliance with this Agreement.

8.9 Insurance and Bonds. Upon CITY'S reasonable request, the DEVELOPER shall submit for CITY approval bonds, policies, certificates and applicable endorsements for all insurance and bonds required by this Agreement in accordance with Article 10.

8.10 Mechanic's Liens and Stop Notices. If any claim of lien is filed against the Property or a stop notice affecting any financing, HOME Program Funds or Funding Sources for the Project is served on the CITY or any other third party in connection with the Project, the DEVELOPER shall, within twenty (20) days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the CITY a surety bond in sufficient form and amount, or provide the CITY with other assurance satisfactory to the CITY that the claim of lien or stop notice will be paid or discharged.

A. If the DEVELOPER fails to discharge, bond or otherwise satisfy the CITY with respect to any lien, encumbrance, charge or claim referred to in this Section, then, in addition to any other right or remedy, the CITY may, but shall not be obligated to, discharge such lien, encumbrance, charge, or claim at the DEVELOPER expense. Alternatively, the CITY may require the DEVELOPER to immediately deposit with the CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The CITY may use such deposit to satisfy any claim or lien that is adversely determined against the DEVELOPER. The DEVELOPER hereby agrees to indemnify and hold the CITY harmless from liability for such liens, encumbrances, charges or claims together with all related costs and expenses.

8.11 Permits and Licenses. Upon CITY'S reasonable request, the DEVELOPER shall submit, for CITY approval, all the necessary permits and licenses required for Commencement of Construction. 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 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.

8.12 Plans and Specifications. Before Commencement of Construction, the DEVELOPER shall submit to the CITY, for its review and approval, the final Plans and Specifications for the Project. The DEVELOPER will construct the homes in full conformance with the Plans and Specifications and modifications thereto approved by the

CITY. The DEVELOPER shall obtain the CITY'S prior written approval for any modifications to the Plans and Specifications.

8.13 Project Responsibilities. The DEVELOPER shall be solely responsible for all aspects of the DEVELOPER'S conduct in connection with the Project, including but not limited to, the applicability of and compliance with all local, state and federal laws including, without limitation, as to prevailing wage and public bidding requirements (the CITY'S annual resolution setting out per diem wage rates is available from the CITY'S Construction Management Division), the quality and suitability of the work completed, the supervision of all contracted work, qualifications and financial conditions of and performance of all contractors, subcontractors, consultants and suppliers. Any review or inspection undertaken by the CITY with reference to the Project is solely for the purpose of determining whether the DEVELOPER is properly discharging its obligation to the CITY, and shall not be relied upon by the DEVELOPER or by any third parties as a warranty or representation by the CITY as to the quality of the work completed for the Project. This Project is a public work subject to prevailing wage requirements except as provided in Section 6.4 hereof.

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

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

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

A. From the date of the Commence of the Project, until issuance of the final Certificate of Completion, evidencing the construction of the last Project Unit, the DEVELOPER shall submit a Quarterly Report, in a form approved by the CITY, which will include, at a minimum, the following information: progress of the Project and affirmative marketing efforts (as applicable). The Quarterly Reports are due fifteen (15) days after the end of each March 31st, June 30th, September 30th, and December 31st, during said period.

B. Annually, beginning on the first day of the month following the CITY'S issuance of the final Certificate of Completion, evidencing the construction of the last Project Unit, and continuing until the termination of the Agreement, the DEVELOPER shall submit an Annual Report to the CITY, in a form approved by the CITY. The Annual Report shall include, at a minimum, the following information: the date the occupancy commenced, certification from an officer of the DEVELOPER that the Project is in compliance with the Affordable Housing Requirements, and such other information the CITY may be required

by law to obtain. The DEVELOPER shall provide any additional information reasonably requested by the CITY.

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

8.17 Scheduling and Extension of Time; Unavoidable Delay in Performance. It shall be the responsibility of the DEVELOPER to coordinate and schedule the work to be performed so that the Commencement of the Project and issuance of the Certificate of Completion(s) will take place in accordance with the provisions of the Agreement. The CITY, through its Housing and Community Development Division Manager, may extend such time in writing at its sole and absolute discretion, and upon written request of the DEVELOPER, as follows:

A. The time for performance of provisions of the Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by: war, insurrection, strike or other labor disputes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by third parties concerning or arising out of this Agreement, or unseasonable weather conditions. An extension of time for any of the above specified causes will be granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is accepted by the other party in writing. In any event, the Project must be completed no later than one hundred eighty (180) calendar days after the scheduled completion date specified in this Agreement, notwithstanding any delay caused by that included in this section.

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

8.18 Certificate of Completion. Upon completion of the construction of each Project Unit, the DEVELOPER shall certify, in writing, within thirty (30) days, to the CITY that construction of the Project Unit has been completed in accordance with the plans and specifications approved by the CITY. Upon completion of each Project Unit, the DEVELOPER shall also submit to the CITY a cost-certifying final budget where the DEVELOPER shall identify the actual costs of construction of each Project Unit. This final cost-certification shall identify costs in line-item format, consistent with the Project Budget. Upon a determination by the CITY that the DEVELOPER is in compliance with all of the DEVELOPER'S construction obligations, as specified in this Agreement, for that Project Unit, the CITY shall furnish, within thirty (30) calendar days of a written request by the DEVELOPER, a recordable Certificate of Completion for the Project(s) in the form attached hereto as EXHIBIT "E". The CITY will not unreasonably withhold or delay furnishing the Certificate of Completion. If the CITY fails to provide the Certificate of Completion within the specified time, it shall provide the DEVELOPER with a written statement indicating in what respects the DEVELOPER has failed to complete the Project in conformance with this

Agreement or has otherwise failed to comply with the terms of this Agreement, and what measures the DEVELOPER will need to take or what standards it will need to meet in order to obtain the Certificate of Completion. Upon the DEVELOPER taking the specified measures and meeting the specified standards, the DEVELOPER will certify to the CITY in writing of such compliance and the CITY shall deliver the recordable Certificate of Completion to the DEVELOPER in accordance with the provisions of this section.

ARTICLE 9. PROJECT OPERATIONS

9.1 Operation of the Project. The DEVELOPER shall operate and/or manage the Project in full conformity with the terms of this Agreement.

9.2 Occupancy Requirements. Two (2) Project Unit(s) shall be marketed and sold as principal residence for single-family owner-occupancy by low-income households. The DEVELOPER shall comply with the income targeting and Affordable Housing requirements of 24 CFR 92.217 and 92.254. No homebuyer shall take occupancy of any home prior to the close of escrow vesting title in said homebuyer.

9.3 Fair Marketing Plan. Before marketing any Project Unit and at least sixty (60) calendar days prior to the Completion of Construction of the first Project Unit, the DEVELOPER shall submit to the CITY, for review and approval a plan, for marketing the Unit(s) ("Fair Marketing Plan"). The Fair Marketing Plan shall address in detail how the DEVELOPER or its designated management entity plans to market the availability of Units to prospective low-income purchasers and how the DEVELOPER plans to certify the eligibility of potential buyers. The Final Marketing Plan shall contain detailed descriptions of policies and procedures with respect to buyer selection(s). Topics to be covered in these procedures shall include at a minimum the following:

- Interviewing procedures for prospective buyers;
- Buyer references;
- Credit reports and checks;
- Deposit amounts, purpose, use and refund policy;
- Employment/Income verification;
- Occupancy restrictions;
- Income limits;
- Homebuyer education requirements;
- Equal Housing Opportunity Statement; and
- Restrictions on use of the premises and Program Income.

The Final Marketing Plan shall contain copies of all standardized forms associated with the above listed topics. The DEVELOPER shall abide by the terms of this Final Marketing Plan, approved by the CITY, in marketing, managing and maintaining the Housing.

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

A. Management Responsibilities. The DEVELOPER is specifically responsible for all management functions with respect to the Project including, without

limitation, construction management, affirmative marketing, property disposition and initial certification of household size and income. The DEVELOPER during its time on title shall be responsible for Project maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. The CITY shall have no responsibility for such management of the Project.

9.5 Maintenance and Security. The DEVELOPER shall (i) at its own expense maintain the homes in good condition, in good repair and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of the purchasers, (ii) not commit or permit any waste on or to the homes, and shall prevent and/or rectify any physical deterioration of the homes; and (iii) maintain the homes in conformance with all applicable federal, state and local laws, ordinances, codes and regulations and this Agreement, until such are sold to Low-Income buyers.

9.6 Nondiscrimination. All of the Units shall be available for initial purchase to members of the general public who are income eligible. The DEVELOPER shall not illegally discriminate or segregate in the development, construction, use, enjoyment, occupancy or conveyance of any part of the Affordable 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. The DEVELOPER shall otherwise comply with all applicable local, state and federal laws concerning nondiscrimination in housing. Neither the DEVELOPER nor any person claiming under or through the DEVELOPER, shall establish or permit any such practice or practices of illegal discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants or vendees of any Unit or in connection with employment of persons for the construction of any Unit. All deeds or contracts made or entered into by the DEVELOPER as to the Units or the housing project or portion thereof, shall contain covenants concerning nondiscrimination consistent with this section. The DEVELOPER shall include a statement in all advertisements, notices and signs for availability of Units to the effect that the DEVELOPER is an Equal Housing Opportunity Provider.

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

9.7 Project Home Sale Price. The initial sale price of each home is the total amount paid by the homebuyer for the home conveyance, inclusive of any first lien/loan and exclusive of escrow fees, title insurance costs, broker's commission (if any), loan fees or any other closing or transaction costs. Notwithstanding the foregoing, the sale price of each home shall not exceed ninety five percent (95%) of the median purchase price for the area as applied under 24 CFR 92.254. The CITY shall approve in advance all homebuyers. Homebuyer financing shall be based upon buyer's ability to pay, consistent with this Agreement.

9.10 Affordable Housing. The purpose of this Agreement is to use HOME Loan Funds to ensure the affordability of two (2) Project Units to be sold to Low-Income households. The DEVELOPER, and those taking ownership of the Project Property under

or through it/them, covenant and agree that the Project shall constitute Affordable Housing by ensuring that the homes are sold only to Low-Income households, during the entire Affordability Period.

A. If a Project Unit initially built and sold to a lower-income household is subsequently resold, otherwise transferred and/or is no longer the principal residence of the individual(s) who initially purchased the property as Affordable Housing during the Affordability Period, and without waiver or limitation, the entire HOME-Funded Loan allocated to Unit shall be repaid to/recaptured by the CITY'S HOME Program Trust Fund and thereupon the balance of the Affordability Covenant/Period shall be released.

B. The DEVELOPER shall require that each home buyer assume the Loan. Said Trust Deed Note(s) as assumed shall be security for the provision of HOME Funding for the Project by the CITY. In the event of a failure to comply with the Affordability Restrictions, in addition to any and all other remedies available to it, the CITY shall be entitled to enjoin sale of the Project Units, damages not being an adequate remedy at law for such breach.

C. In the event of a failure to comply with the Affordable requirements, as applicable, the CITY shall be entitled to enjoin selling the Units in the Project, as the parties acknowledge that damages are not an adequate remedy at law for such breach.

ARTICLE 10. INDEMNIFICATION AND INSURANCE.

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

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

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

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

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

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

B. Following issuance of Certificate(s) of Completion, Fire and Extended Coverage Insurance against loss or damage to the project by fire and lightning, with extended coverage for vandalism and malicious mischief and sprinkler system leakage. Such extended coverage insurance will, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the replacement cost (without deduction for depreciation) of the project with no coinsurance penalty provisions. DEVELOPER, or its CITY-approved lender, shall ensure that the required insurance is acquired by the individual homebuyers.

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

2. The CITY shall be named as a loss payee.

3. If at any time during the life of this Agreement or any extension, the DEVELOPER fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, until notice is received by the CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the CITY. Any failure to maintain the required insurance, subject to notice and cure requirements herein, shall be sufficient cause for the CITY to terminate this Agreement.

10.3 Bonds. The DEVELOPER shall obtain, pay for and deliver or cause to be

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

A. The "Faithful Performance Bond" shall be at least equal to 100% of 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.

B. 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 Chapter 7, Title 15, Part 4, Division 3 of the California Civil Code.

C. In lieu of the bonds required above, CITY may accept from DEVELOPER an Irrevocable Standby Letter of Credit issued with the CITY named as the sole beneficiary. The Irrevocable Standby Letter of Credit is to be issued by a bank, and in a form, acceptable to CITY. Throughout the life of this Agreement, DEVELOPER shall pay for and maintain in full force and effect the Irrevocable Standby Letter of Credit in the amount(s) of the bonds required above. This Irrevocable Standby Letter of Credit shall be maintained by DEVELOPER in full force and effect until the Project is completed and shall be subject to and governed by the laws of the State of California.

ARTICLE 11. DEFAULT AND REMEDIES

11.1 Events of Default. The parties agree that each of the following shall constitute an "Event of Default" for purposes of this Agreement:

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

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

C. Except as otherwise provided in this Agreement, the failure of the DEVELOPER to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) the DEVELOPER'S substantial deviation in the Project work specified in the Project Description as identified in this Agreement, without the CITY'S prior written consent; (2) the DEVELOPER'S use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) the DEVELOPER'S failure to commence or complete the Project, as specified in this Agreement, unless delay is permitted under Article 8 of this Agreement; (4) the cessation of the Project for a period of more than fifteen (15) consecutive days (other than as provided in Article 8 of this Agreement) prior to submitting to the CITY, pursuant to Article 8 certification that the Project is complete; (5) any material adverse change in the condition of the DEVELOPER or the Project that gives the CITY reasonable cause to believe that the Project cannot be completed by the scheduled completion date

according to the terms of this Agreement; (6) the DEVELOPER'S failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY'S request; (7) the DEVELOPER'S failure to substantially comply with any federal, state or local laws or applicable CITY restrictions governing the Project, including but not limited to provisions of this Agreement pertaining to equal employment opportunity, nondiscrimination and lead-based paint;

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

E. The DEVELOPER shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within 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;

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

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

H. The failure of the DEVELOPER to cause completion of the Project prior to October 1, 2011;

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

J. Any substantial or continuous breach by the DEVELOPER of any material obligation owed by the DEVELOPER imposed by any other agreement with respect to the financing, development, construction or operation of the Project, whether or not the CITY is a party to such agreement.

11.2 Notice of Default and Opportunity to Cure. The CITY shall give written notice to the DEVELOPER of any Event of Default by specifying (1) the nature of the event or deficiency giving rise to the default, (2) the action required to cure the deficiency, if any action to cure is possible, and (3) a date, which shall not be less than the lesser of any time period provided in this Agreement, any time period provided for in the notice, or thirty (30)

calendar days from the date of the notice, by which such deficiency must be cured, provided that if the specified deficiency or default cannot reasonably be cured within the specified time, with the CITY'S written consent, the DEVELOPER shall have an additional reasonable period to cure so long as it commences cure within the specified time and thereafter diligently pursues the cure in good faith.

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

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

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

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

ARTICLE 12. GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12.14 No Assignment or Succession. Except as may be otherwise expressly provided by this Agreement, neither this Agreement, nor any interest of the DEVELOPER

in, under, or to this Agreement, or the Project, may be assigned or transferred by the DEVELOPER without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed. Any assignment without consent is null and void.

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

12.16 No Waiver. Neither failure nor delay on the part of the CITY in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by the DEVELOPER therefrom shall be effective unless the same shall be in writing, signed on behalf of the CITY by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the DEVELOPER in any case shall entitle the DEVELOPER to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the CITY'S right to take other or further action in any circumstances without notice or demand.

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

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

If to the CITY: City of Fresno
Housing and Community Development Division
2600 Fresno Street, Room 3070
Fresno, CA 93721-3605

If to DEVELOPER: Habitat for Humanity Fresno Inc.
Attn: Anthony Miranda
2219 San Joaquin
Fresno, CA 93721

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

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

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

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

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

CITY OF FRESNO, a Municipal Corporation

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

Date: 2/19/10

ATTEST:
REBECCA E. KLISCH
City Clerk

APPROVED AS TO FORM:
JAMES SANCHEZ
City Attorney

By: *Sherrie A. Badertscher*
Deputy

By: *James Sanchez*
Deputy City Attorney

Date: 3/2/10

Date: 2-02-10

DEVELOPER



Habitat for Humanity Fresno, Inc.
a California Corporation

By: *Anthony J. Miranda*
Anthony J. Miranda, Executive Director
(Attach notary certificate of acknowledgment)

Date: 2.2.10

Attachments:

- EXHIBIT A: PROPERTY DESCRIPTION
- EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE
- EXHIBIT C: EXEMPLAR DECLARATION OF RESTRICTIONS
- EXHIBIT D: BUDGET
- EXHIBIT E: EXEMPLAR CERTIFICATE OF COMPLETION
- EXHIBIT F1: EXEMPLAR NOTE AND TEMPLATE RIDER TO DEED(S) OF TRUST
- EXHIBIT F2: EXEMPLAR NOTE AND TEMPLATE RIDER TO DEED(S) OF TRUST

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On 2-2-10 before me, Erica Castaneda, Notary Public

personally appeared Anthony J. Miranda



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

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

WITNESS my hand and official seal.

Signature [Handwritten Signature]
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: Disposition Development Agreement - Home Investment Partnerships Program Agreement 4974 - 4983 E Garret

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On 2-26-10 before me, Erica Castaneda, Notary Public

personally appeared Bruce Rudd



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

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

WITNESS my hand and official seal.

Signature Erica Castaneda

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: DDA between City of Fresno & Habitat for Humanity

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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



Signer Is Representing: _____

Signer's Name: _____

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



Signer Is Representing: _____

EXHIBIT A: PROPERTY DESCRIPTION

Legal Description:

PARCEL 1: 4979 E. Garrett Avenue, Fresno, CA (APN: 481-390-46T)

PARCEL 2: 4983 E. Garrett Avenue, Fresno, CA (APN: 481-390-47T)

LEGAL DESCRIPTION

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

That portion of Lots 23 and 24 of Newhall Tract, according to the map thereof recorded in Book 2 Page 42 of Record of Surveys, Fresno County Records, situated in the Southeast quarter of the Southwest quarter of Section 18, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, described as follows:

Commencing at the Southeast corner of said Lot 23; thence South $86^{\circ} 44' 05''$ West, along the South line of said Lot 23 and along the North right-of-way line of East Garrett Avenue as dedicated for public street purposes by the map of Tract No. 5210, recorded in Volume 74 Pages 10 and 11 of Plats, Fresno County Records, a distance of 179.07 feet to the beginning of a tangent curve concave Southerly and having a radius of 277.00 feet; thence Westerly, along the arc of said curve and continuing along said North right-of-way line, through a central angle of $32^{\circ} 47' 54''$, an arc length of 158.57 feet to the beginning of a reverse curve concave Northerly and having a radius of 223.00 feet; thence Westerly, along the arc of said reverse curve and continuing along said North right-of-way line, through a central angle of $2^{\circ} 23' 07''$, an arc length of 9.28 feet to the True Point Of Beginning of this description; thence continuing Westerly along the arc of said reverse curve and continuing along said North right-of-way line, through a central angle of $25^{\circ} 34' 46''$, an arc length of 99.56 feet to the Southeast corner of Lot 1 of said Tract No. 5210; thence North $03^{\circ} 15' 55''$ West, along the East line of said Lot 1, non-tangent to last said curve and leaving said North right-of-way line, a distance of 132.05 feet to the centerline of the Central Canal; thence North $74^{\circ} 51' 53''$ East, along said centerline, a distance of 78.59 feet; thence South $11^{\circ} 31' 54''$ East, leaving said centerline, a distance of 119.56 feet to the True Point Of Beginning.

APN: 481-390-46T

LEGAL DESCRIPTION

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

That Real Property being a portion of Lot 23 and Lot 24 of Newhall Tract, according to the map thereof recorded in Volume 2 of Record of Surveys at page 42, Fresno County Records, situated in the Southeast quarter of the Southwest quarter of Section 18, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plats thereof, said Real Property also being a portion of that parcel identified as APN 481-110-44 and 45 and described with other lands in that Grant Deed recorded February 07, 2007 as Document No. 2007-0025257, Official Records of Fresno County, said Real Property being more particularly described as follows:

Commencing at the Southeast corner of said Lot 23; thence South $86^{\circ}44'05''$ West, along the south line of said Lot 23 and along the north right of way line of East Garrett Avenue as dedicated for public street purposes by the map of Tract No. 5210 recorded in Volume 74 of Plats at pages 10 and 11, Fresno County Records, a distance of 179.07 feet to the beginning of a tangent curve concave southerly and having a radius of 277.00 feet; thence westerly, along the arc of said curve and continuing along said north right of way line, through a central angle of $14^{\circ}56'08''$, an arc length of 72.21 feet to the True Point of Beginning of this description; thence continuing westerly, along the arc of said curve and continuing along said north right of way line, through a central angle of $17^{\circ}51'46''$, an arc length of 86.36 feet to the beginning of a reverse curve concave northerly and having a radius of 223.00 feet; thence westerly, along the arc of said reverse curve and continuing along said north right of way line, through a central angle of $02^{\circ}23'07''$, an arc length of 9.28 feet; thence North $11^{\circ}31'54''$ West, non-tangent to least said curve and leaving said north right of way line, a distance of 119.56 feet to the centerline of the Central Canal; thence North $74^{\circ}51'53''$ East, along said centerline, a distance of 44.94 feet; thence North $62^{\circ}17'09''$ East, continuing along said centerline, a distance of 65.62 feet; thence South $03^{\circ}16'59''$ East, leaving said centerline, a distance of 115.06 feet to the True Point of Beginning.

APN: 481-390-47T

EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE

I. PROJECT DESCRIPTION:

The Project consists of Property acquisition and the construction of two (2) single-family homes for occupancy by low-income families to be sold at affordable housing cost. DEVELOPER shall pay for on-site and off-site improvements, construction, marketing, and selling of the homes. Consistent with the attached Budget, the DEVELOPER will fund all non-acquisition pre-construction and construction costs with non-HOME Program Funds. The DEVELOPER, or its CITY-approved lender, will qualify all households. Upon CITY approval and consistent with the Agreement to which this Exhibit "B" is an attachment, the two (2) affordable homes shall be sold to the low-income families. Both of the three-bedroom two-bathroom Units will feature solar panels and Universal Design features.

Maximum HOME funding for the Project is a total of One Hundred Sixty Thousand Dollars and 00/100 (\$160,000.00), for acquisition of both parcels which shall be assumable deed trust notes on the two (2) affordable homes, to be made through the sales escrow or as otherwise directed by CITY for the affordability of the purchase of each home.

II. PROJECT SCHEDULE:

- A. Commencement of Construction: March 12, 2011
- B. Completion of Construction: October 1, 2011
- C. Completion of Home Sales: November 1, 2011

EXHIBIT C: 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
City Clerk's Office
No Fee - Govt. Code 6103
2600 Fresno Street, Room 2133
Fresno, CA 93721

Title Order No. _____ Escrow No. _____

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN: _____

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this _____, by [_____] ("Declarant") 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: _____, which is more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, Pursuant to a certain Disposition and Development Agreement and HOME Investment Partnerships Agreement dated _____, 2010 incorporated herein, ("DDA/HOME Agreement") and instruments referenced therein, Declarant agrees to utilize and City agrees to provide certain HOME Program Funds from the United States Department of Housing and Urban Development (HUD), to Declarant for certain affordable housing (the "Project") upon the Property to be sold and maintained as affordable to low-income families, subject to the terms and conditions set forth in the DDA/HOME Agreement; and

WHEREAS, the HOME Program regulations promulgated by HUD, including without limitation 24 CFR Section 92.254, and the DDA/HOME Agreement impose certain affordability requirements upon property benefited thereby, which affordability restrictions shall be enforceable for a thirty (30) year period; and

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

NOW THEREFORE, Declarant declares that the Project home upon the Property

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is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the plan for the construction, sale and occupancy of the home upon the Property. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Project home upon the Property or any part thereof, will inure to the benefit of the future Owners of the home 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 Home upon the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration for the period of thirty (30) years constituting the Affordability Period.

1. **Declarations.** Declarant hereby declares that the home upon 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 DDA/HOME Agreement Project, 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 DDA/HOME Agreement with Declarant. All terms not otherwise defined herein shall have the meaning ascribed to such term in the DDA/HOME Agreement.

2. **Restrictions.** The following covenants and restrictions on the use and enjoyment of the Project homes upon the 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 home upon the Property and be binding on any future owner's of the Project home upon the Property and inure to the benefit of and be enforceable by City. These covenants and restrictions are as follows:

a. Declarant for itself and its successor(s) on title covenants and agrees that it shall cause the two (2) Project homes upon the Property to be used as Affordable Housing for the duration of the Affordability Period. Declarant further agrees to file a recordable document setting forth the Project Completion Date(s) and the Affordability Period when determined by the City. Unless otherwise provided in the DDA/HOME 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 home constituting the Project upon the Property shall be sold only to natural persons, who shall occupy the home as the purchaser's principal residence. The foregoing requirement that the purchaser of each home constituting the Project Property occupy the home as the purchaser's principal residence does not apply to (i) 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.

Homeowner Income Requirements. The homes constituting the Project upon the Property and each of them may be conveyed only to (a) natural person(s) whose annual household income at the time is not greater than sixty percent (60%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size.

Recapture Requirements. Should each of the two (2) affordable homes upon the Property not continue to be the principal residence of the family purchasing the Property/home as affordable housing for the duration of the period of affordability then the entire financial assistance provided by City and allocated to the Property/home including all HOME Program Funding assistance shall immediately come due and must be repaid to/recaptured by the City's HOME Program Trust Fund and thereupon the balance of the affordability restrictions shall be released. The affordability restrictions also may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD, provided the affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before such termination events obtains an ownership interest in the housing. The City shall be possessed of a first right of refusal to purchase the home before foreclosure to preserve affordability.

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 home upon the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the Covenant and Restrictions. The acceptance of a deed of conveyance to the 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 low-income affordability. However, the requirements with respect to Affordable Housing shall be revived according to their original terms, if during the original Affordability Period, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner or those with whom the former owner has or had formerly, family or business ties, obtains an ownership interest in the Project or the Property, and the Affordability Period shall be revived according to its original terms.

5. Benefit. This Declaration shall run with and bind the two (2) Project homes upon the Property for a term commencing on the date this Declaration is recorded in the Office of the Recorder of the county Fresno, state of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of City or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

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

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

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

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

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

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

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

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

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

///

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

"DECLARANT"

Habitat for Humanity Fresno, Inc.

By: _____
Anthony J. Miranda, Executive Director

Date: _____

DECLARATION OF RESTRICTIONS
Exhibit "A"

LEGAL DESCRIPTION

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

That portion of Lots 23 and 24 of Newhall Tract, according to the map thereof recorded in Book 2 Page 42 of Record of Surveys, Fresno County Records, situated in the Southeast quarter of the Southwest quarter of Section 18, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, described as follows:

Commencing at the Southeast corner of said Lot 23; thence South $86^{\circ} 44' 05''$ West, along the South line of said Lot 23 and along the North right-of-way line of East Garrett Avenue as dedicated for public street purposes by the map of Tract No. 5210, recorded in Volume 74 Pages 10 and 11 of Plats, Fresno County Records, a distance of 179.07 feet to the beginning of a tangent curve concave Southerly and having a radius of 277.00 feet; thence Westerly, along the arc of said curve and continuing along said North right-of-way line, through a central angle of $32^{\circ} 47' 54''$, an arc length of 158.57 feet to the beginning of a reverse curve concave Northerly and having a radius of 223.00 feet; thence Westerly, along the arc of said reverse curve and continuing along said North right-of-way line, through a central angle of $2^{\circ} 23' 07''$, an arc length of 9.28 feet to the True Point Of Beginning of this description; thence continuing Westerly along the arc of said reverse curve and continuing along said North right-of-way line, through a central angle of $25^{\circ} 34' 46''$, an arc length of 99.56 feet to the Southeast corner of Lot 1 of said Tract No. 5210; thence North $03^{\circ} 15' 55''$ West, along the East line of said Lot 1, non-tangent to last said curve and leaving said North right-of-way line, a distance of 132.05 feet to the centerline of the Central Canal; thence North $74^{\circ} 51' 53''$ East, along said centerline, a distance of 78.59 feet; thence South $11^{\circ} 31' 54''$ East, leaving said centerline, a distance of 119.56 feet to the True Point Of Beginning.

APN: 481-390-46T

LEGAL DESCRIPTION

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

That Real Property being a portion of Lot 23 and Lot 24 of Newhall Tract, according to the map thereof recorded in Volume 2 of Record of Surveys at page 42, Fresno County Records, situated in the Southeast quarter of the Southwest quarter of Section 18, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plats thereof, said Real Property also being a portion of that parcel identified as APN 481-110-44 and 45 and described with other lands in that Grant Deed recorded February 07, 2007 as Document No. 2007-0025257, Official Records of Fresno County, said Real Property being more particularly described as follows:

Commencing at the Southeast corner of said Lot 23; thence South $86^{\circ}44'05''$ West, along the south line of said Lot 23 and along the north right of way line of East Garrett Avenue as dedicated for public street purposes by the map of Tract No. 5210 recorded in Volume 74 of Plats at pages 10 and 11, Fresno County Records, a distance of 179.07 feet to the beginning of a tangent curve concave southerly and having a radius of 277.00 feet; thence westerly, along the arc of said curve and continuing along said north right of way line, through a central angle of $14^{\circ}56'08''$, an arc length of 72.21 feet to the True Point of Beginning of this description; thence continuing westerly, along the arc of said curve and continuing along said north right of way line, through a central angle of $17^{\circ}51'46''$, an arc length of 86.36 feet to the beginning of a reverse curve concave northerly and having a radius of 223.00 feet; thence westerly, along the arc of said reverse curve and continuing along said north right of way line, through a central angle of $02^{\circ}23'07''$, an arc length of 9.28 feet; thence North $11^{\circ}31'54''$ West, non-tangent to least said curve and leaving said north right of way line, a distance of 119.56 feet to the centerline of the Central Canal; thence North $74^{\circ}51'53''$ East, along said centerline, a distance of 44.94 feet; thence North $62^{\circ}17'09''$ East, continuing along said centerline, a distance of 65.62 feet; thence South $03^{\circ}16'59''$ East, leaving said centerline, a distance of 115.06 feet to the True Point of Beginning.

APN: 481-390-47T

EXHIBIT D: BUDGET

	Total	Habitat Reserves	HOME Funds
LAND			
Property #1	\$78,400	\$-0-	\$78,400
Property #2	\$81,600	\$-0-	\$81,600
SOFT COSTS			
Permit and Fees	\$23,200	\$23,200	\$-0-
Architecture and Engineering	\$10,000	\$10,000	\$-0-
Legal	\$-0-	\$-0-	\$-0-
Taxes/Insurance	\$3,000	\$3,000	\$-0-
Other	\$-0-	\$-0-	\$-0-
Total Soft Costs	\$36,200	\$36,200	\$00
HARD COSTS			
Site Prep/Grading	\$-0-	\$-0-	\$-0-
Off Site Improvements	\$-0-	\$-0-	\$-0-
On Site Improvements	\$-0-	\$-0-	\$-0-
Direct Construction	\$152,000	\$152,000	\$-0-
Contingencies	\$-0-	\$-0-	\$-0-
Contractor Overhead	\$54,000	\$54,000	\$-0-
Other	\$-0-	\$-0-	\$-0-
Total Hard Costs	\$206,000	\$206,000	\$-0-
DEVELOPER FEE	\$-0-	\$-0-	\$-0-
CONSTRUCTION FINANCING FEES	\$-0-	\$-0-	\$-0-
OTHER			
Subdivision/Title/Consulting Fees	\$-0-	\$-0-	\$-0-
Marketing and Sales	\$-0-	\$-0-	\$-0-
Total Other Costs	\$-0-	\$-0-	\$-0-
TOTAL EXPENSES	\$402,200	\$242,200	\$160,000

EXHIBIT E: EXEMPLAR CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno
City Clerk's Office
No Fee - Govt. Code 6103
2600 Fresno Street, Room 2133
Fresno, CA 93721

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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: _____

City of Fresno

By: _____
John M. Dugan, Director
Planning and Development Department

Date: _____

CERTIFICATE OF COMPLETION

APN: _____

Recitals:

- A. By a Disposition and Development Agreement and HOME Investment Partnerships Program Agreement ("DDA/HOME Agreement") dated _____, 20__ between the City of Fresno, a municipal corporation ("CITY"), and Habitat for Humanity Fresno, Inc, a California Corporation, ("DEVELOPER"), the DEVELOPER agreed to develop two (2) affordable single-family homes ("Project"), upon the premises legally described in EXHIBIT "A" attached to the DDA/HOME Agreement as amended from time to time, made a part hereof by this reference, (the "Property") for the sale of the Affordable Units to/occupancy by two (2) low-income homebuyers, with the assistance of HOME funds while meeting the affordable housing, income targeting and other requirements of 24 CFR 92 according to the terms and conditions of the DDA/HOME Agreement and the Loan Documents and other document/instruments referenced therein.
- B. The DDA/HOME Agreement or a memorandum of it was recorded on _____, 20__ as Instrument No. _____ in the Official Records of Fresno County, California.
- C. Under the terms of the DDA/HOME Agreement, after the DEVELOPER completes the construction of a Project Affordable Unit, 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 the Project/Project Unit as set forth in the DDA/HOME Agreement.

NOW THEREFORE:

1. CITY certifies that the DEVELOPER commenced the construction of the Project Unit on _____, 20__ and completed the construction work on the Project Unit on _____, 20__, and has done so in full compliance with the DDA/HOME Agreement.
2. This Certificate of Completion is not evidence of the DEVELOPER compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project.
3. This Certificate of Completion is not a notice of completion as referred to in California Civil Code Section 3093.
4. Nothing contained herein modifies any provision of the DDA/HOME Agreement.

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

CITY OF FRESNO

By: _____
John M. Dugan, Director
Planning and Development Department

ATTEST:
CITY CLERK

APPROVED AS TO FORM:
JAMES C. SANCHEZ

By: _____
Deputy

By: _____
_____, Deputy City Attorney

Date: _____

Date: _____

CONSENT OF OWNER/DEVELOPER

Owner/Developer Name: Habitat for Humanity, Fresno, Inc.

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 F1: EXEMPLAR NOTE

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

PROMISSORY NOTE

\$78,400.00

_____, 2010

APN: 481-390-46T

Fresno, California

Promise to Pay. For value received, the undersigned, Habitat for Humanity Fresno, Inc., a California nonprofit corporation ("Developer" or "Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation, ("Lender"), the sum of Seventy Eight Thousand Four Hundred Dollars and 00/100 (\$78,400.00) along with interest on unpaid principal at the rate of 2% per annum, all due and payable on or before October 30, 2011, (the "Developer Loan Maturity Date") pursuant to the parties' Disposition and Development Agreement and HOME Investment Partnerships Program Agreement dated _____, 2010 ("DDA/HOME 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, along with attorney's fees and costs of collection, without relief from valuation and appraisal laws; provided that, in the event the Developer is not then in default of the DDA/HOME Agreement, the Developer may at any time prior to the Developer Maturity Date convey the completed Unit securing the Note to a Low Income buyer through a purchase escrow (Escrow) that conforms to the DDA/HOME Agreement and concurrent therewith assign this Note to the Low Income Buyer, who shall assume such Note at 0% interest with lump sum principal only payment due and payable from the Low Income Buyer on or before _____ ("Low Income Homebuyer Loan Maturity Date".) In that event and concurrent therewith the City shall forgive from principal due thereunder the sum of Thirty Three Thousand Four Hundred and 00/100 (\$33,400.00) (provided the Developer confirms said reduction in a writing noticed to the Escrow Officer and the City in the manner provided in the DDA/HOME Agreement), and the Developer shall be released from any further liability to the Lender under this Note, including as to any interest accrued prior to assumption of the Note by the Low Income Homebuyer. 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 DDA/HOME Agreement.

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

Security. This Note, and any extensions or renewals hereof, is secured by a Deed of

Trust, Security Agreement and Fixture Filing with Assignment of Rents executed by Borrower and recorded against the Property in Fresno County, California, as Document No. _____ on _____, that provides for acceleration upon stated events, and executed in favor of the Lender ("Deed of Trust"), creating and insured as a not worse than 2nd position lien on the Property, subordinated only to a lien created by Borrower to insure payment of monies borrowed to pay for the construction of a completed Unit on the Property. Said Deed of Trust shall be subject to the terms of the Template Rider to the Deed of Trust attached hereto, and such shall automatically be incorporated in the terms of the Deed of Trust that secures this Note. Said Deed of Trust is insured by CLTA Lender's policy in the principal amount of, and endorsed for this Note.

Time is of the Essence. It will be a default under this Note if Borrower defaults under the DDA/HOME Agreement, defaults under any other Loan Documents, or if Borrower fails to pay when due any sum payable under this Note. In the event of a default by Borrower, the Borrower shall pay a late charge equal to the lesser of 2% of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest 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 Loan Documents and then to the interest 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
Accounts Receivable
2600 Fresno Street, Suite 2156
Fresno, CA 93721

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

will pay to Lender all attorney fees and other costs referred to in this paragraph on demand.

Any notice, demand, or request relating to any matter set forth herein shall be in writing and shall be given as provided in the DDA/HOME Agreement. No delay or omission of Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as acquiescence, nor will any single or partial exercise preclude any further exercise. Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note and not in modification. No waiver of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

Terms of Security Instruments. The Deed of Trust securing this note provides 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, other than a sale to a Low Income homebuyer as provided in the DDA/HOME Agreement, without the Beneficiary's prior consent. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of land interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

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

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

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

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

Habitat for Humanity Fresno Inc., Borrower

By: _____ Date: _____

Name: Anthony J. Miranda

Title: Executive Director

(Attach notary certificate of acknowledgment)

[TEMPLATE RIDER TO DEED(S) OF TRUST]

The Trustor (herein "Borrower") understands and agrees that the Note secured by this Deed of Trust is made for the sole purpose of assisting in the purchase of the Borrower's home as their principal place of residence. Therefore, the Borrower understands and agrees that said Note secured by this Deed of Trust shall be immediately due and payable upon the earlier of (1) upon any change in residency of the Borrower from the Borrower's home used as security for the Note described above, unless having obtained the written consent of the Beneficiary (herein "Lender"); (2) upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Property, or any interest in the Property. 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, 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.

Borrower also assigns to Lender all rents, issues and profits from said real property reserving, however, the right to collect and use the same so long as there is no existing default hereunder, and does hereby authorize Lender to collect and recover the same in the name of Borrower or his successor in interest by use of any lawful means.

The Lender and Borrower acknowledge and agree that this security instrument is second and subordinate in all respects to the liens, terms, covenants and conditions of the first Deed of Trust and shall not impair the rights of any institutional lender which is the maker of a loan secured by such first deed of trust, or such lender's assignee or successor in interest, to exercise its remedies under the deed of trust in the event of default by the Borrower. These remedies include the right to foreclosure or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. The terms and provisions of the first Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the first Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the property to low income households or otherwise restricting the Borrower's ability to sell the property shall have no further force or effect on subsequent owners or purchasers of the property. Any person, including his successors or assigns (other than the Borrower or a related entity of the Borrower), receiving title to the property through a foreclosure or deed in lieu of foreclosure of the first Deed of Trust shall receive title to the property free and clear from such restrictions.

In the event of a catastrophic occurrence that results in the property having to be sold, the portion of this existing second mortgage lien that results in the combined loan-to-value ratio being more than 100% of the value of the property will be released with no forgiveness of that portion of the debt, and the contemporaneous execution of an unsecured promissory note equal to the amount released from the second mortgage, and a modification agreement that reduces the secured debt of the existing second mortgage by the amount of the new unsecured promissory note.

Period of Affordability: The HOME Investment Partnerships Program sets periods of affordability as provided in 24 CFR 92.254 based on the amount of HOME funds provided. The minimum period of affordability for this program is thirty years (30 years.) Year one shall be the 12-month period following date of first sale after issuance of the Certificate of Completion of the home which is the subject hereof, with each succeeding year beginning on the anniversary thereof and ending 12 month hence. There will be no partial years.

Recapture of HOME Funds: Pursuant to 24 CFR 92.254(a)(5)(ii), the City of Fresno requires that HOME funds be recaptured if the home does not continue to be the Borrower's principal residence or if all or any part of the property or any interest in it is sold, rented, conveyed or transferred for the duration of the Period of Affordability. If the net proceeds are not sufficient to recapture the full HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the City of Fresno may share the net proceeds. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

$$\frac{\text{HOME investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{HOME amount to be recaptured}$$

$$\frac{\text{Homeowner investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$$

In the event of foreclosure, the amount subject to recapture is based on the amount of net proceeds (if any) from the foreclosure sale.

THIS DEED OF TRUST IS SECOND AND SUBORDINATE TO THAT CERTAIN DEED OF TRUST RECORDED [_____].

EXHIBIT F2: EXEMPLAR NOTE

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

PROMISSORY NOTE

\$81,600.00

_____, 2010

APN: 481-390-47T

Fresno, California

Promise to Pay. For value received, the undersigned, Habitat for Humanity Fresno, Inc., a California nonprofit corporation ("Developer" or "Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation, ("Lender"), the sum of Eighty One Thousand Six Hundred Dollars and 00/100 (\$81,600.00) along with interest on unpaid principal at the rate of 2% per annum, all due and payable on or before October 30, 2011, (the "Developer Loan Maturity Date") pursuant to the parties' Disposition and Development Agreement and HOME Investment Partnerships Program Agreement dated _____, ("DDA/HOME 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, along with attorney's fees and costs of collection, without relief from valuation and appraisal laws; provided that, in the event the Developer is not then in default of the DDA/HOME Agreement, the Developer may at any time prior to the Developer Maturity Date convey the completed Unit securing the Note to a Low Income buyer through a purchase escrow (Escrow) that conforms to the DDA/HOME Agreement and concurrent therewith assign this Note to the Low Income Buyer, who shall assume such Note at 0% interest with lump sum principal only payment due and payable from the Low Income Buyer on or before _____ ("Low Income Homebuyer Loan Maturity Date"). In that event and concurrent therewith the City shall forgive from principal due thereunder the sum of Thirty Six Thousand Six Hundred and 00/100 (\$36,600.00) (provided the Developer confirms said reduction in a writing noticed to the Escrow Officer and the City in the manner provided in the DDA/HOME Agreement), and the Developer shall be released from any further liability to the Lender under this Note, including as to any interest accrued prior to assumption of the Note by the Low Income Homebuyer. 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 DDA/HOME Agreement.

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

Security. This Note, and any extensions or renewals hereof, is secured by a Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents executed by Borrower and recorded against the Property in Fresno County, California, as Document No. _____ on _____, that provides for acceleration upon stated events, and executed in favor of the Lender ("Deed of Trust"), creating and insured as a not worse than 2nd position lien on the Property, subordinated only to a lien created by Borrower to insure payment of monies borrowed to pay for the construction of a completed Unit on the Property. Said Deed of Trust shall be subject to the terms of the Template Rider to the Deed of Trust attached hereto, and such shall automatically be incorporated in the terms of the Deed of Trust that secures this Note. Said Deed of Trust is insured by CLTA Lender's policy in the principal amount of, and endorsed for this Note.

Time is of the Essence. It will be a default under this Note if Borrower defaults under the DDA/HOME Agreement, defaults under any other Loan Documents, or if Borrower fails to pay when due any sum payable under this Note. In the event of a default by Borrower, the Borrower shall pay a late charge equal to the lesser of 2% of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest 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 Loan Documents and then to the interest 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
Accounts Receivable
2600 Fresno Street, Suite 2156
Fresno, CA 93721

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

are specifically included in those costs and expenses to be paid by Borrower. Borrower will pay to Lender all attorney fees and other costs referred to in this paragraph on demand. Any notice, demand, or request relating to any matter set forth herein shall be in writing and shall be given as provided in the HOME Agreement. No delay or omission of Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as acquiescence, nor will any single or partial exercise preclude any further exercise. Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note and not in modification. No waiver of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

Terms of Security Instruments. The Deed of Trust securing this note provides 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, other than a sale to a Low Income homebuyer as provided in the DDA/HOME Agreement, without the Beneficiary's prior consent. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of land interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

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

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

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

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

Habitat for Humanity Fresno Inc., Borrower

By: _____ Date: _____

Name: Anthony J. Miranda

Title: Executive Director

(Attach notary certificate of acknowledgment)

[TEMPLATE RIDER TO DEED(S) OF TRUST]

The Trustor (herein "Borrower") understands and agrees that the Note secured by this Deed of Trust is made for the sole purpose of assisting in the purchase of the Borrower's home as their principal place of residence. Therefore, the Borrower understands and agrees that said Note secured by this Deed of Trust shall be immediately due and payable upon the earlier of (1) upon any change in residency of the Borrower from the Borrower's home used as security for the Note described above, unless having obtained the written consent of the Beneficiary (herein "Lender"); (2) upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Property, or any interest in the Property. 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, 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.

Borrower also assigns to Lender all rents, issues and profits from said real property reserving, however, the right to collect and use the same so long as there is no existing default hereunder, and does hereby authorize Lender to collect and recover the same in the name of Borrower or his successor in interest by use of any lawful means.

The Lender and Borrower acknowledge and agree that this security instrument is second and subordinate in all respects to the liens, terms, covenants and conditions of the first Deed of Trust and shall not impair the rights of any institutional lender which is the maker of a loan secured by such first deed of trust, or such lender's assignee or successor in interest, to exercise its remedies under the deed of trust in the event of default by the Borrower. These remedies include the right to foreclosure or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. The terms and provisions of the first Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the first Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the property to low income households or otherwise restricting the Borrower's ability to sell the property shall have no further force or effect on subsequent owners or purchasers of the property. Any person, including his successors or assigns (other than the Borrower or a related entity of the Borrower), receiving title to the property through a foreclosure or deed in lieu of foreclosure of the first Deed of Trust shall receive title to the property free and clear from such restrictions.

In the event of a catastrophic occurrence that results in the property having to be sold, the portion of this existing second mortgage lien that results in the combined loan-to-value ratio being more than 100% of the value of the property will be released with no forgiveness of that portion of the debt, and the contemporaneous execution of an unsecured promissory note equal to the amount released from the second mortgage, and a modification agreement that reduces the secured debt of the existing second mortgage by the amount of the new unsecured promissory note.

Period of Affordability: The HOME Investment Partnerships Program sets periods of affordability as provided in 24 CFR 92.254 based on the amount of HOME funds provided. The minimum period of affordability for this program is thirty years (30 years.) Year one shall be the 12-month period following date of first sale after issuance of the Certificate of Completion of the home which is the subject hereof, with each succeeding year beginning on the anniversary thereof and ending 12 month hence. There will be no partial years.

Recapture of HOME Funds: Pursuant to 24 CFR 92.254(a)(5)(ii), the City of Fresno requires that HOME funds be recaptured if the home does not continue to be the Borrower's principal residence or if all or any part of the property or any interest in it is sold, rented, conveyed or transferred for the duration of the Period of Affordability. If the net proceeds are not sufficient to recapture the full HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the City of Fresno may share the net proceeds. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

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$$\frac{\text{Homeowner investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$$

In the event of foreclosure, the amount subject to recapture is based on the amount of net proceeds (if any) from the foreclosure sale.

THIS DEED OF TRUST IS SECOND AND SUBORDINATE TO THAT CERTAIN DEED OF TRUST RECORDED [_____].

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