



REPORT TO THE CITY COUNCIL

REPORT TO THE REDEVELOPMENT AGENCY

October 16, 2007

FROM: ANDREW T. SOUZA, CITY MANAGER  
City Manager's Office

MARLENE MURPHEY, Executive Director  
Redevelopment Agency

SUBJECT: APPROVE A JOINT RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, AND THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO (AGENCY) APPROVING THE MATERIAL TERMS OF A DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) WITH LREG PARTNERS, L.P. (DEVELOPER) TO DEVELOP A MIXED USE PROJECT (THE PROJECT), AUTHORIZING THE CITY MANAGER, EXECUTIVE DIRECTOR OF AGENCY, AND CITY ATTORNEY'S OFFICE TO COMPLETE AN AGREEMENT, AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE AGREEMENT, AND RELATED DOCUMENTS, AND TAKING ALL NECESSARY ACTION RELATED TO THE TRANSACTION, CONSISTENT WITH THIS RESOLUTION

AGENDA ITEM NO.:	11:00am "A"
COUNCIL MEETING:	October 16, 2007
APPROVED BY	
EXECUTIVE DIRECTOR	
CITY MANAGER	

KEY RESULT AREA

Economic Development

Presented to ~~City Council~~ RDA  
 Date 10/16/07  
 Disposition Approved  
Res. 2007-337/1710  
adopted

RECOMMENDATION

Staff recommends that the City Council approve the terms of a deal with LREG Partners, L.P. (Developer), which includes a Disposition and Development Agreement (DDA) between the City, Redevelopment Agency and Developer for the development of a mixed use project. The Housing and Community Development Commission approved the project on September 26, 2007.

EXECUTIVE SUMMARY

The Developer is proposing a mixed use project for the Selland Arena parking lot. The project will include an ice rink, offices, retail, restaurant space, and apartments. The project will also include solar panels. This would allow for the Developer to move forward with the required environmental impact analysis as well as the documents and architectural/engineering work needed to develop the actual site.

BACKGROUND

The Developer is proposing a DDA for the purpose of developing a \$43 million mixed use project east of Selland Arena, currently a parking lot. The proposal includes 225,000 square foot development consisting of a 40,000 square foot ice rink. The project will also include 160 urban designed apartment units, a public ice rink and over 73,000 square feet of retail, restaurant and office space. The project developers foresee high end restaurants, boutique retailers, dry cleaning services, nightclubs, deli/markets and various other tenants. The project will also include solar panels to offset the utility costs. The property to be developed

REPORT TO COUNCIL

RE: APPROVAL OF DDA FOR MIXED USE HOUSING PROJECT

October 16, 2007

Page 2

is currently under a single APN with the Convention Center. The developer proposes to lease the property as a separate legal parcel. It is anticipated that the parking structure east of the Saroyan Theatre has the capacity to provide the parking lost to this project.

The apartments would be rented to the public, baseball club employees, the Grizzlies baseball players and the Falcons hockey players. The apartment units will also include 22 low income housing units. The project is not anticipated to create a parking shortage. Parking is available at the parking structure which is located next to the development.

The Redevelopment Agency will provide the use of housing set aside funds for an amount up to \$750,000 following receipt of an equivalent amount from the City. For purposes of affordable housing, the Agency will participate by making available up to 50% of the net tax increment generated by the Legacy project until the earlier of 13 years or until the project receives \$1.8 million in net present value. The Agency will receive affordability covenants for 55 years for a minimum number of residential units affordable to low income families. The Developer will also use New Market Tax Credits. According to the Developer, these incentives do not trigger prevailing wage. Developer will indemnify the City and Agency in the event prevailing wages will apply.

The DDA is subject to approval as to legal form by the City Attorney. CEQA compliance is a condition precedent on any obligation of the City to the DDA. The DDA is also conditioned upon Developer agreeing to implement all CEQA mitigation and tax and/or bond counsel opinion that the final DDA terms are in compliance with existing bond covenants and documents.

### **FISCAL IMPACT**

As referenced above, the Developer intends to mitigate costs of the project with a combination of new market tax credits, and RDA participation. An agreement with the Parks and Recreation Department for use of ice rink for \$84,000 per year for 30 years is included as part of the financial plan.

### **Attachments**

Resolution

Disposition and Development Agreement

Financial Analysis (Financial Gap without Federal, RDA and City Assistance)

11:00am "A"  
10/16/07

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

City of Fresno  
2600 Fresno Street  
Fresno, CA 93721  
Attention: City Manager

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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.

CITY OF FRESNO

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

DISPOSITION AND DEVELOPMENT AGREEMENT

by and among

THE CITY OF FRESNO,  
a municipal corporation

and

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

and

LREG PARTNERS, L.P.,  
a California limited partnership

CONVENTION CENTER  
REDEVELOPMENT PROJECT AREA

## ATTACHMENTS

Exhibit A	Site Map
Exhibit A-1	Legal Description
Exhibit B	Scope of Development
Exhibit C	Development Schedule
Exhibit D	Ground Lease
Exhibit E	Release of Construction Covenants
Exhibit F	Certificate of Completion
Exhibit G	Basic Design
Exhibit H	Affordability Restrictions Running with Land
Exhibit I	Budget

## **DISPOSITION AND DEVELOPMENT AGREEMENT**

This Disposition and Development Agreement ("DDA" or "Agreement") is entered into as of the Effective Date (defined below), between THE CITY OF FRESNO, a municipal corporation (the "City"), THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic (the "Agency"), and LREG PARTNERS, L.P., a California limited partnership (the "Developer").

### **RECITALS**

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

A. The City owns certain real property adjacent to Selland Arena at the corner of Ventura Avenue and O Street, Fresno, California, currently improved as a flat surface parking lot, more particularly described in Exhibits "A" (Site Map) and "A-1," (legal description) attached (the "Property").

B. Developer proposes to lease the Property as a separate legal parcel with an option to purchase, and develop it privately with mixed uses consisting of 160 multi-family residential units (Twenty-Two (22) of the residential units ("Affordable Units") are to be rented and preserved as Affordable Rental Housing.), office space, retail space and an approximate 40,000 square foot ice rink/recreational facility, as more particularly described in the Scope of Development, attached as Exhibit "B" (the "Project").

C. On October 16, 2007, the Council of the City of Fresno (the "Council") considered the Project and this Agreement at a noticed public hearing, as required by applicable law.

D. The Housing and Community Development Commission reviewed the Project and this Agreement on September 26, 2007, and recommended that Council approve it.

E. The Project has not yet been environmentally assessed as required by the California Environmental Quality Act ("CEQA"). CEQA compliance is a condition precedent to any obligation of the City, Agency or Developer under this Agreement.

F. This Agreement is in the best interests of, and will materially contribute to, Redevelopment Plan implementation. Further, the Project does the following: (a) will have a positive influence in the Project Area, and surrounding environs, (b) is in the vital and best interests of the City, and the health, safety, and welfare of City and Project Area residents, (c) complies with applicable federal, state, and local laws and requirements, (d) will help eliminate blight, (e) will improve and preserve the community's supply of low income housing available at affordable rent, as defined by Cal. H. & S.C. Sections 50052.5 and 50053, to persons of low or moderate income, as defined in Cal. H. & S.C. Section 50093, (f) will be able to meet the replacement housing provisions in Cal. H. & S.C. Section 33413, and (g) all planning and administrative expenses incurred in pursuit

hereof are necessary for the production, improvement, or preservation of low and moderate income housing.

G. By authority granted under California Redevelopment Law (the "Law"), the Agency has prepared and is responsible for carrying out the redevelopment plan for the Convention Center Redevelopment Project Area (the "Plan").

H. To the extent provided in or allowed by the Law including Cal. H. & S.C. Sections 33334.2 and 33449, as provided by joint resolutions of the Fresno City Council and the Agency, findings and determinations pursuant to Health and Safety Code Section 33334.2.(g), the Plan and limited to the terms and conditions therein, the Agency may make improvements upon and/or construct and improve structures in order to provide housing for persons and families of low or moderate income, including related on-site and off-site improvements.

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

J. Developer agrees to undertake improvements in accordance with the combined Development Schedule described in Exhibit "C" attached hereto and incorporated herein (the "Development Schedule").

K. To the extent Housing Set Aside Funds will exceed fifty (50) percent of the cost of producing the Affordable Units, the Agency has determined based on substantial evidence, that the use of the Funds is necessary because the Agency or Developer of the Affordable Units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity. The Project is not feasible and cannot be completed and restricted to the affordable rental housing purposes and uses provided under Law and this Agreement absent the financial support of the Agency.

L. The Property and associated on site and off site improvements are collectively referred to in this Agreement as the "Improvements" or the "Project," all of which will directly benefit the Property and the Plan area, cannot otherwise be reasonably paid for or financed, and are necessary to eliminate blight.

M. Agency is willing to assist Developer's construction of the Affordable Units by making available to Developer as a grant certain Housing Set Aside (Tax Increment) Funds in the amount of \$750,000 (the "Grant") upon the terms and conditions specified this Agreement.

N. Agency is also willing to assist Developer's construction of the Affordable Units by making available to Developer, as additional redevelopment funding, 50% of the net tax increment generated from the Project and actually received by the Agency after completion of the Project until the earlier of 13 years from the Effective Date of this Agreement or until the project receives \$1.8 million in net present value in net present value discounted at a rate of six percent (6%) from increment generated ("Supplemental Funding").

O. The Grant and the Supplemental Funding shall be paid in accordance with the provisions set forth in Section 5.7. The Grant, Supplemental Funding and performance of the

affordability and other covenants and restrictions set forth in this Agreement shall be evidenced by this Agreement which shall be recorded against and run with the Property.

## AGREEMENT

In consideration of the mutual promises and covenants and upon the terms and conditions set forth in this Agreement, the parties agree as follows:

1. Definitions. Besides definitions contained elsewhere in this Agreement, the following definitions will govern the construction, meaning, application and interpretation of the defined terms, as used in this Agreement.

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

1.2 Affordability Period. "Affordability Period" means a period of fifty-five (55) years commencing from the date Agency records the Certificate of Completion.

1.3 Affordable Rental Housing. "Affordable Rental Housing" or "Affordable Units" means the Units available at affordable rent, as defined by Cal. H. & S.C. Section 50052.5(4), to persons and families of low and moderate income, as defined in Cal. H. & S.C. Section 50093 of Code, consistent with Recital F above which requirements shall be enforceable by covenants running with the land.

1.4 Agency. "Agency" means the Redevelopment Agency of the City of Fresno, a public body, corporate and politic, organized and existing under the Law, and any assignee of or successor to its rights, powers and responsibilities.

1.5 Agreement. "Agreement" means this Disposition and Development Agreement between the City and Developer.

1.6 Budget. "Budget" means the Budget/Financial Plan for the Project attached hereto and incorporated herein as Exhibit "I" (the "Budget").

1.7 Certificate of Completion. "Certificate of Completion" means that Certificate issued in the form attached as Exhibit "F" to Developer by Agency evidencing completion of the Project for purposes of this Agreement.

1.8 City. "City" means the City of Fresno, a municipal corporation, having its offices at 2600 Fresno Street, Fresno, California 93721-3605, and operating through its Council and its various departments.

1.9 Closing, Close or Close of Escrow. "Closing," "Close" or "Close of Escrow" means the closing of the escrow in which the City conveys a leasehold interest in the Property to Developer, as evidenced by the Ground Lease and the recorded Memorandum of Lease and Option to Purchase.

1.10 Day. “Day,” whether or not capitalized, means a calendar day, unless otherwise stated.

1.11 Default. “Default” means a party’s failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.

1.12 Developer. “Developer” means LREG Partners, L.P., a California Limited Partnership.

1.13 Development Schedule. “Development Schedule” means the schedule attached as Exhibit “C,” setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may revise the Schedule from time to time on mutual written agreement of Developer and the City, but any delay or extension of the completion date is subject to the requirements in this Agreement.

1.14 Executive Director. “Executive Director” means the Executive Director of Agency.

1.15 Effective Date. “Effective Date” means the date that the City signs this Agreement, after Developer signs it, and the Council approves it by resolution, following a public hearing.

1.16 Environmental Laws. “Environmental Laws” means any federal, state, or local law, statute, ordinance or regulation concerning environmental regulation, contamination or cleanup of any Hazardous Materials or Waste including, without limitation, any state or federal lien or “superlien” law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.

1.17 Escrow. “Escrow” means the escrow opened with Escrow Holder for the City to convey a leasehold interest in the Property to Developer.

1.18 Escrow Holder. “Escrow Holder” means Chicago Title, or another title company mutually satisfactory to both parties.

1.19 Financing Plan. “Financing Plan” means (a) a binding contractual loan commitment that Developer has accepted in writing, from a qualified commercial lender for construction and permanent (take-out) financing providing sufficient funds, when combined with Developer cash financing, for Developer to complete the Project, (b) a pro forma construction budget, (c) evidence of any required cash equity, and (d) New Markets Tax Credits approval in an amount sufficient to complete the Project.

1.20 Funding Source. “Funding Source” means the Grant, Supplemental Funding and other funding sources secured by Developer to construct the Improvements.

1.21 Grant. “Grant” means the principal sum of \$750,000 provided by Agency to Developer upon the terms and conditions set forth in this Agreement.

1.22 Grant Documents. "Grant Documents" are collectively this Agreement and all exhibits and attachments thereto as they may be amended, modified or restated from time to time.

1.23 Ground Lease. "Ground Lease" means the ground lease, substantially in the form of Exhibit "D," by which the City conveys a leasehold interest in the Property to Developer and grants Developer an option to purchase the Property. The Grant Deed will contain all conditions, covenants, and restrictions required by applicable laws and regulations and this Agreement.

1.24 Hazardous Materials. "Hazardous Materials" means any substance, material, or waste, which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance, which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated byphenyls, (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (i) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), or (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.*).

1.25 Household. "Household" means one or more persons occupying an Affordable Unit.

1.26 Housing Set-Aside Funds. "Housing Set-Aside Funds" means those California Health and Safety Code Section 33334.2 monies held and administered by Agency, a portion of which shall be made available as the Grant to Developer for eligible costs and expenses incurred by Developer in constructing the Improvements in such amounts, and upon such terms and conditions specified in this Agreement.

1.27 Improvements. "Improvements" means the construction of the Affordable Units and other units that Developer will complete on the Property, including associated fencing and landscaping improvements, as well as the ice rink, offices, retail and restaurant space.

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

1.29 Material Change. "Material Change" means a change, modification, revision or alteration to the basic design, the design development drawings, the Financing Plan, or to other documents or plans that substantially deviates from those previously approved by the City.

1.30 Memorandum of Lease and Option to Purchase. "Memorandum of Lease and Option to Purchase" means a short form of the Ground Lease in a form suitable for recordation and describing the parties to the Ground Lease, setting forth a description of the Property, specifying the term of the Ground Lease, describing Developer's option to purchase the Property, incorporating the Ground Lease by reference and including any other provisions required by a lender under a Security Financing Interest.

1.31 Outside Date. "Outside Date" means September 30, 2008, the last date on which the parties are willing to Close the Escrow.

1.32 Plan. "Plan" means the Redevelopment Plan for the Convention Center Redevelopment Project Area.

1.33 Project. "Project" means the development that Developer is to complete on the Property and any off-site improvements, as more particularly described in the Scope of Development, attached as Exhibit "B." The Project includes, without limitation, mixed uses consisting of multi-family residential units, office space, retail space and an approximate 40,000 square foot ice rink/recreational facility, and the associated landscaping, parking improvements, on-site improvements, and any off-site improvements that the City may require as a condition to approving the Project.

1.34 Project Area. "Project Area" means the Property.

1.35 Project Completion Date. "Project Completion Date" means the date that Agency shall have determined the Project has reached completion in accordance with the plans and specifications in the Development Schedule, as evidenced by Agency's issuance of a Certificate of Completion.

1.36 Property. "Property" means the real property described in Exhibits "A" and "A-1."

1.37 Release of Construction Covenants. "Release of Construction Covenants" means a document, substantially in the form of Exhibit "E," attached, which evidences Developer's satisfactory development of the Project.

1.38 Release of Restrictions. "Release of Restrictions" means a release of those covenants, conditions and restrictions contained in this Agreement, as set forth in Section 1.39.

1.39 Restrictions. "Restrictions" means the affordability restrictions contained in this Agreement and Exhibit "H" thereto, containing all conditions, covenants, and restrictions required by the Law, any other applicable laws and regulations, the Plan, and this Agreement, running with the Property and the Affordable Units thereon and burdening such for the Affordability Period.

1.40 Security Financing Interest. "Security Financing Interest" means a security interest, which Developer grants in its leasehold interest in the Property, before the City issues and records a Release of Construction Covenants, to secure a debt, the proceeds of which

Developer uses to construct the Project. The term may include, without limitation, a mortgage, deed of trust, or any other reasonable security interest securing a debt that the City approved as part of Developer's Financing Plan.

1.41 Supplemental Funding. "Supplemental Funding" means additional redevelopment funding of 50% of the net tax increment generated from the Project and received by the Agency after completion of the Project until the earlier of 13 years from the Effective Date of this Agreement or until the Project receives \$1.8 million in net present value discounted at a rate of six percent (6%).

1.42 Unit. "Unit" means a residential or commercial unit constituting the Project.

2. Conditions Precedent to City and Agency Obligations. The following are conditions precedent to the obligations of the City to convey a leasehold interest in the Property to Developer and the Agency to provide the Grant and Supplemental Funding. These conditions must be satisfied by the time stated or, if no time is stated, then within 75 days after the approval of both the New Markets Tax Credits and CEQA. The City or Agency, in writing, may waive any condition or agree to extend the time for satisfaction. It may terminate this Agreement as provided herein for the failure of a condition.

2.1 Loan Commitments and Financing Plan. Within 30 days after the approval of both the New Markets Tax Credits and CEQA, Developer will submit its Financing Plan to the City and Agency for review and approval. Within 15 business days after receiving the Financing Plan, the City, through its City Manager, and the Agency, through its Executive Director, will review the plan, and acting in a commercially reasonable manner, will approve it or disapprove it. If the City or Agency disapproves the Plan, it will specify the reason for disapproval and ask Developer to provide any additional information the City or Agency may need to approve the Plan. If the City or Agency fails to either approve or disapprove the Financing Plan within the 15-day period, the City or Agency shall be deemed to have approved the Financing Plan. If the City, Agency, and Developer are unable to resolve the City's or Agency's objections to the Financing Plan within 15 business days after Developer has received notice of the disapproval, any of these parties thereafter can terminate this Agreement immediately by giving notice to the other parties.

The Financing Plan will include construction and permanent loan commitments from one or more qualified commercial lenders in sufficient amounts, combined with any other Developer financing, for Developer to complete the Project. Any conditions to the loan commitments must be reasonably acceptable to the City and Agency. The lenders and Developer must have signed the commitments, and the commitments must evidence Developer's payment of any commitment fees. The construction loan, when combined with any other evidence of immediately available funds irrevocably committed to the Project, must be sufficient to cover Developer's construction costs, as shown in the approved Financing Plan. Total liens or Security Financing Interests against the Property shall not exceed Developer's estimated construction budget, as presented in the Financing Plan.

The City and Agency will review Developer's Financing Plan to confirm that Developer has sufficient funds available to complete the Project, and to use and maintain the Project as this Agreement requires. After the City and Agency approve the Financing Plan, Developer will not make any Material Change in the Financing Plan without first submitting the change to the City Manager and the Executive Director for review and approval.

2.2 Existence and Authority of Developer. Before the City and Agency sign this Agreement, and as a condition of the City's and Agency's signature, Developer shall have delivered the following to the City and Agency: (i) a copy of the certificate of limited partnership with a certification or other evidence from the California Secretary of State showing that the Certificate has been filed and Developer is a limited partnership duly and legally formed under California law; (ii) a certificate of Developers general partner (A) confirming that the purpose of the entity is to construct and operate the Project, (B) authorizing Developer to enter into and perform this Agreement, and (C) authorizing the general partner of Developer to execute this Agreement and any and all documents necessary to carry out the purposes of this Agreement; and (iii) a tax identification number for Developer.

2.3 Conditions to Effectiveness. The effectiveness of this Agreement is expressly conditioned upon completion of necessary planning and CEQA review and approval of an appropriate CEQA document. The Developer will agree to implement all mitigation measures required as a result of the CEQA process as a condition to the further effectiveness of this Agreement. Execution of this Agreement is not intended to be approval of a definite course of action concerning the Project. Effectiveness is further conditioned upon obtaining, where appropriate, opinions from tax and/or bond counsel that this Agreement and all related agreements are not in violation of the law or in conflict with the terms of existing bond documents. The City Attorney shall have the authority to approve or reject all related documents as to legality and conformance to the delegation of authority in the Council/Agency Resolution(s).

3. Developer's Predisposition Activities and Due Diligence. Before the City conveys the leasehold interest in the Property to Developer, and as conditions precedent to the City's conveyance, Developer will do the following:

3.1 Construction Documents. Within 60 days after the Effective Date, Developer will submit to the City and the Agency the following documents (the "Construction Documents"), each in form and substance reasonably satisfactory to the City Manager and Executive Director:

3.1.1 Contract with General Contractor. A copy of a signed contract between Developer and a general contractor for constructing the Project, (the "General Contractor"), with written evidence that the General Contractor is a general contractor, licensed under California law to perform all its duties under the contract. The contract may be conditioned on the City's lease of the Property to Developer.

3.1.2 Performance or Completion Bonds. Copies of the performance or completion bonds for the General Contractor and each contractor and subcontractor

referenced above. Each bond will be in a penal sum of at least 100 percent of the applicable contract price.

3.1.3 Receipts for Permits. Copies of receipts showing that Developer has paid for and pulled all necessary construction permits from the City's Development Department.

3.1.4 Approval Process. Within 15 business days after receiving the Construction Documents, the City, through its City Manager, and the Agency, through its Executive Director, will review the documents, and acting in a commercially reasonable manner, will determine whether or not they are satisfactory to the City and Agency. If the City or Agency determines the Construction Documents are not satisfactory, it will specify the reasons for that determination and ask Developer to provide any additional information the City or Agency may need to determine that the Construction Documents are satisfactory to the City and Agency. If the City or Agency fails to make a determination within the 15-day period, the City or Agency shall be deemed to have determined that the Construction Documents are satisfactory to it. If the City, Agency, and Developer are unable to resolve the City's or Agency's objections to the Construction Documents within 15 business days after Developer has received notice of the City or Agency determination that the Contract Documents are not satisfactory, any of these parties thereafter can terminate this Agreement immediately by giving notice to the other parties.

3.2 Due Diligence Inspection. Because the City will convey the leasehold interest in the Property to Developer "AS IS," with all faults, except as specifically provided herein, for a period of 60 days after approval of both the New Markets Tax Credits and CEQA (the "Review Period"), Developer or its designated representatives may conduct tests, investigations and inspections of the Property in all matters relating to the Property, including, but not limited to, the physical condition or state of the Property and improvements thereon, environmental conditions, including Phase I and Phase II environmental assessments, and all other matters relating to the Property or any improvements thereon or affecting Developer or the feasibility of the Property for the Project ("Due Diligence Investigation"), except for title matters which shall be governed by Section 4.4 below. Developer has the right to enter the Property to conduct the Due Diligence Investigation on the following conditions: (a) the tests, investigations and inspections are conducted without cost or expense to the City, (b) the tests, investigations and inspections do not unreasonably interfere with the City's possession or use of the Property, and (c) Developer will assume responsibility for any loss or liability and for any damage to the Property to the extent resulting from conducting the tests, investigations or inspections.

Within ten days from the Effective Date, the City shall deliver to Developer any and all then-existing plans, engineering reports, surveys, maps, soil or seismic reports, grading plans, environmental reports and assessments, and other studies, reports, correspondence or materials concerning the Property or any improvements thereon (the "Materials"). The Materials may include, without limitation, the following: (i) copies of any environmental reports or environmental site assessments or any other report relating to toxic or hazardous materials or the environmental condition of the Property or improvements; (ii) engineering studies, maps and cost reports (sewer, water, hydrology, storm drain, flood control, FEMA, utilities, traffic and noise); (iii) soils, geology and seismic reports; (iv) covenants, conditions and restrictions, if any, regarding the

Property; (v) archaeological studies and reports; (vi) to the extent not described above, grading, erosion control, water, sewer, storm drain, street improvement, landscape and utility improvement plans; (vii) any other documents or materials which the City possesses or which are reasonably available to the City and which Developer requests in writing or the City determines, in its reasonable judgment, are significant to the evaluation or use of the Property.

The City makes no representation or warranty concerning, and will have no liability or responsibility for, the materials or the information contained therein.

3.3 Developer's Responsibility for Property Conditions. Developer shall be solely responsible, at its expense, to conduct the Due Diligence Investigation and determine the condition of the Property and its suitability for the Project. Developer's responsibility includes, without limitation, reviewing or determining to its satisfaction, all zoning regulations, other governmental requirements, all soil, seismic and other surface and subsurface conditions of the Property, and its suitability for the Project. Developer's due diligence includes, without limitation, determining the presence of Hazardous Materials based on environmental assessments obtained by the City as provided in Section 4.12 and such other information as Developer may consider. Unless otherwise expressly provided in this Agreement or a separate amendment or agreement, Developer shall be solely responsible, at Developer's expense, for putting the Property in a condition suitable for developing the Project.

3.4 Access to Property. City will grant Developer access to the Property during reasonable daylight hours. Developer will give the City reasonable advance notice of its intention to enter the Property.

3.5 Environmental Remediation; Other Conditions. Should inspection reveal any Hazardous Materials or environmental conditions requiring remediation, or if Developer disapproves of any other condition of the Property, Developer will promptly notify the City. The parties will have 30 days after that to discuss any environmental remediation costs, or the manner of curing any other condition to which Developer objects, as applicable. If the parties cannot agree upon remediation measures within the 30 days, either party may terminate this Agreement by 30 days' notice to the other; however, City may terminate only if costs to remediate are material. Any remediation will be pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction. Notwithstanding the foregoing, City shall be obligated to complete environmental remediation if the costs of doing so are not material. The work will be performed according to applicable Environmental Laws and any governmental requirements. Either party may terminate this Agreement as allowed by this Section 3.5, even if Developer has given an Approval Notice or otherwise accepted the Property under Section 3.7.

3.6 Natural Hazards Disclosure Statement. The City shall deliver to Developer a "Natural Hazards Disclosure Statement" executed by the City.

3.7 Approval of Investigation. If Developer disapproves of any results of the Due Diligence Investigation, including review of the Materials, Developer may terminate this Agreement without any liability whatsoever by providing written notice thereof (a "Disapproval Notice") to the City and the Escrow Holder before the end of the Review Period. On such

termination, the Escrow Holder will return any documents and money deposited into escrow to the depositor, after deducting any escrow cancellation fees or charges. If, however, on or before the expiration of the Review Period, Developer determines that the results of the Due Diligence Investigation, including review of the materials, are acceptable and that it intends to proceed with the acquisition of the Property, then Developer may give written notice of such determination (an "Approval Notice") to the City and the Escrow Holder. Developer's failure to deliver a Disapproval Notice or Developer's delivery of an Approval Notice, as applicable, on or before the end of the Review Period shall constitute Developer's acceptance of the Property, and all other improvements thereon and all conditions in, on, under and about the Property, except as otherwise expressly provided in this Agreement.

3.8 Governmental Actions. The matters specified below, each requiring governmental action, shall have been completed or approved. These matters are in addition to and without limitation on any other governmental permits, entitlements or approvals required for development of the Project. Governmental action may be legislative, quasi-judicial or otherwise discretionary in nature. Neither the Agency nor the City can take action before environmental assessment of the Project on the Property under CEQA is completed. Neither the Agency nor the City can commit in advance to approve any matter. Neither the Agency, the City nor any other public or governmental entity will be liable to the Developer or any other person if it fails to grant any discretionary approval.

3.8.1 CEQA Review. The EIR shall have been completed and certified in accordance with the California Environmental Quality Act.

3.8.2 Environmental Clearances. Environmental clearances shall have been received from regulating agencies for any area within the Property that is found to be contaminated with Hazardous Materials.

3.9 Evidence of Insurance. The Developer shall have on file with the City current certificates of insurance for all insurance which this Agreement requires the Developer to maintain, evidencing that all required insurance is in effect.

3.10 Default. Developer shall not be in default of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

3.10.1 Delivery of Documents. Developer will have signed and delivered all documents required hereunder.

3.10.2 Land Use and Development Approvals. Developer will have received all land use and development approvals, variances, permits and the like required by this Agreement.

3.11 Recording. This Agreement shall have been recorded with the Fresno County Recorder's Office.

4. Lease of Property. The City will lease to Developer, and Developer will lease

from the City, the Property pursuant to the terms and conditions set forth in the Ground Lease attached hereto as Exhibit "D", and incorporated herein by this reference. Further, in the Ground Lease the City will grant to Developer the option to purchase the Property at any time during the term of the Ground Lease, provided Developer is not in default under this Agreement, the Ground Lease, or any related Agreement with the City or Agency.

4.1 Escrow. Within fifteen (15) days after the Effective Date, the City and Developer will open the Escrow with the Escrow Holder, and deposit a signed copy of this Agreement as their initial joint escrow instructions. The City and Developer will sign any supplemental escrow instructions, consistent with this Agreement that the Escrow Holder deems necessary or appropriate. This Agreement will control any inconsistency that may exist between this Agreement and the supplemental escrow instructions. The parties authorize the Escrow Holder to act under the escrow instructions and, after the Escrow City accepts the instructions in writing, it will carry out its duties as Escrow Holder under this Agreement.

4.2 Creation of Separate Legal Parcel. Prior to the date for Close of Escrow, the City shall (i) complete all steps necessary to establish the Property as a separate legal parcel, and (ii) prepare a legal description of the Property sufficient for the Escrow Holder to record the Memorandum of Lease and Option to Purchase and issue the title insurance policy described in Section 4.14.1. When the City has prepared the legal description of the Property, the legal description shall be attached to and automatically incorporated into this Agreement as Exhibit A-1.

4.3 Conditions Precedent to Closing Escrow. The following are conditions precedent to the City's obligations to close the Escrow and convey the leasehold interest in the Property to Developer. These conditions must be satisfied by the time stated or, if no time is stated, then by the Outside Date set for the Closing. The City, in writing, may waive any condition or agree to extend the time for satisfaction. It may terminate the Escrow and this Agreement as provided herein for the failure of a condition.

4.3.1 Insurance. Developer has delivered to the City, and the City's Risk Management has approved the form and content of, certificates of insurance for all insurance and performance bonds that this Agreement requires Developer to obtain and maintain.

4.3.2 Section 2 Conditions. All conditions precedent set forth in Section 2 have been satisfied.

4.3.3 Acceptance of Property Condition. Developer has either given written Notice of Approval that it has inspected the Property and accepts the Property in **AS IS** condition, except as specifically provided in this Agreement, or has failed to give a written Disapproval Notice before the end of the Review Period, as provided in Section 3.7.

4.3.4 Construction Loan. If the approved Financing Plan includes a construction loan, the construction lender will have approved the construction loan and directed that the loan close concurrently with the Closing of the Escrow. Aggregate liens against the Property securing construction loans shall not exceed the amount approved in Developer's Financing Plan. Developer and, as necessary, the lender will have signed the loan documents. The documents

will include, without limitation and as applicable, the loan agreement, the promissory note, the trust deed, any other security instruments. The parties understand that the loan proceeds will not fund in full at the loan closing, but will be paid in increments pursuant to the loan documents as construction of the Improvements proceeds.

4.3.5 No Default. Developer is not in default of this Agreement and all representations and warranties of Developer contained herein are true and correct in all material respects.

4.3.6 Design Approvals Developer will have obtained the City's approval of the design development drawings. Within 15 business days after receiving the design development drawings, the City, through its City Manager, and the Agency, through its Executive Director, will review the drawings, and acting in a commercially reasonable manner, will approve it or disapprove it. If the City or Agency disapproves the drawings, it will specify the reason for disapproval and ask Developer to provide any additional information the City or Agency may need to approve the drawings. If the City or Agency fails to either approve or disapprove the design and development drawings within the 15-day period, the City or Agency, respectively, shall be deemed to have approved the design and development drawings. The parties intend this process to occur concurrently with the approval process by the Planning Department of the City.

4.3.7 Land Use Approvals. Developer will have received all land use approvals and permits required by this Agreement. Within 15 business days after receiving the land use approvals and permits, the City, through its City Manager, and the Agency, through its Executive Director, will review the land use approvals and permits, and acting in a commercially reasonable manner, will approve them or disapprove them. If the City or Agency disapproves the land use approvals and permits, it will specify the reason for disapproval and ask Developer to provide any additional information the City or Agency may need to approve them. If the City or Agency fails to either approve or disapprove the land use approvals and permits within the 15-day period, the City or Agency, respectively, shall be deemed to have approved the land use approvals and permits.

4.3.8 Financing. The City will have approved Developer's Financing Plan as provided in Section 2.1.

4.3.9 Recording this Agreement. Escrow Holder is prepared to record this Agreement or, at the City's sole option, to record a memorandum of it at the Closing.

4.4 Condition of Title. The City will convey the leasehold interest in the Property to Developer free of all monetary liens and encumbrances, and rights of occupancy or possession, real property taxes and assessments not yet due, and other easements, rights of way, and matters of record. The City will obtain and give Developer a preliminary title report within ten (10) days from the Effective Date. Developer will have thirty (30) days following receipt of the title report to notify the City whether it approves the condition of title. Developer's failure to give the City notice within the thirty (30) days will be deemed approval of title. Developer may not object, however, to utility easements.

If Developer notifies the City that it disapproves any title exception, the City may, but is not obligated to, remove that title exception within sixty (60) business days after receiving Developer's written notice. Instead, the City may give Developer other assurances that the title exception will be removed on or before the Closing. If the City cannot or does not elect to remove any disapproved title exception within that period, Developer will have ten (10) business days after the expiration of the sixty (60) business days to either give the City written notice that Developer elects to purchase the Property subject to the disapproved title exceptions or to terminate this Agreement. Despite any contrary provisions in this Agreement, the City shall remove any defects in title resulting from liens or encumbrances in liquidated amounts that can be removed by paying them.

4.5 Execution of Documents. Developer and the City shall sign the Ground Lease and the Memorandum of Lease and Option to Purchase and execute any other documents required hereunder and deliver such documents into Escrow.

4.6 Payment of Closing Costs. Before the Close of Escrow, the City and Developer shall each deposited its share of all Escrow, title, and Closing costs into the Escrow.

4.7 Escrow and Title Costs. The City will pay the escrow fees, recording fees, and documentary stamp taxes, if any, to convey the Property to Developer. The City will pay the premium for a CLTA owner's policy of title insurance, not exceeding the value of Developer's leasehold interest in the Property, insuring the title to the Property as described herein. Any other costs associated with the Escrow shall be paid by the City or Developer according to the custom and practice in Fresno County.

4.8 Prorations. The Escrow Holder will prorate all ad valorem taxes and assessments, if any, as of Closing, between the City and Developer. If the then-current taxes and assessments are not ascertainable, the Escrow Holder will apportion the taxes and assessments based on the most recent statement of taxes and assessments. Escrow Holder will adjust the proration, if necessary, within thirty (30) days after the actual taxes and assessments are available. Developer will be solely responsible for ad valorem taxes or assessments on the Property, or any taxes on this Agreement or any rights hereunder, which may be levied, assessed or imposed for any period after the Closing.

4.9 Form of Conveyance. The City will convey the leasehold interest in the Property to Developer by the Ground Lease, substantially in the form attached as Exhibit D and the recorded Memorandum of Lease and Option to Purchase. The conveyance and Developer's leasehold title will be subject to all conditions, covenants, restrictions and requirements set forth in this Agreement and the Ground Lease.

4.10 Nonmerger. The provisions of this Agreement will not merge with the Ground Lease. The Ground Lease will not affect, impair or limit the provisions, covenants, conditions or agreements of this Agreement.

4.11 Possession. The City will deliver possession of the Property to Developer at or immediately following the Closing.

4.12 Environmental Assessment Reports. Within thirty (30) days after the Effective Date the City shall obtain a Phase I environmental assessment on the Property, and will deliver a copy to Developer promptly following receipt. If the Phase I report recommends that further environmental assessment is necessary, the City shall immediately proceed to cause a Phase II environmental assessment to be conducted on the Property, and promptly after receiving the report shall deliver a copy to Developer. Buyer shall have a period of 30 days after receiving the report for the last assessment conducted under this Section 4.12 in which to review the report(s). The Review Period set forth in Section 3.2 will be extended to the date on which such 30-day period ends, if that date is later than the date on which the Review Period would otherwise end.

4.13 Close of Escrow. The Escrow will close within ten (10) days after the parties' satisfy all the conditions precedent to Closing as set forth in this Agreement, but not later than the "Outside Date," unless the parties mutually agree to extend the time for Closing.

4.14 Authority of Escrow Holder. The parties authorize the Escrow Holder to, and the Escrow Holder will do the following:

4.14.1 Title Policy Premium. Pay and charge the City for the premium of a CLTA owner's title policy, giving Developer title coverage to the extent of the purchase price.

4.14.2 Pay Fees. Pay and charge the City the escrow fees and closing costs, excluding any costs to correct title exceptions or cure property conditions. The City and Developer must agree in a separate writing or instructions to the Escrow Holder to the allocation of costs to cure title exceptions or property conditions.

4.14.3 Record Memorandum of Lease and Option to Purchase and Disburse Funds. Disburse funds, and record and deliver the Memorandum of Lease and Option to Purchase when the conditions precedent to Closing are satisfied or waived.

4.14.4 Actions to Fulfill Obligations. Take any other actions necessary to fulfill its obligations under this Agreement.

4.14.5 FIRPTA, and More. Direct the parties to deliver any instrument, or to perform any act, necessary to comply with FIRPTA or any similar state act and regulation promulgated thereunder. The City will sign a Certificate of Non-foreign Status, or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as the Escrow Holder may require.

4.14.6 Closing and Other Statements. Prepare, deliver to the City and Developer, and file with all appropriate governmental or taxing authorities a uniform settlement statement and closing statement.

4.14.7 Closing Statements. Escrow Holder will forward to both Developer and the City a separate accounting of all funds received and disbursed for each party, and copies of all signed and recorded documents deposited into Escrow, with the recording and filing date and information endorsed thereon.

4.15 Termination Without Close. If the Escrow is not in condition to close by the Outside Date, or any later date to which the parties may have agreed in writing, then any party that is not in default of this Agreement, may demand the return of money or property and terminate this Agreement and the Escrow. If either party makes a written demand for return of documents or properties, this Agreement will not terminate until five (5) days after Escrow Holder has delivered copies of the demand to the other party at the respective addresses shown in this Agreement. If the other party objects within the five (5) day period, the parties authorize the Escrow Holder to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of this Agreement will be without prejudice to whatever legal rights either party may have against the other arising from this Agreement. If no party demands that the Escrow terminate, the Escrow Holder will proceed to Closing as soon as possible.

4.16 Authority to Sign Instructions. The City Manager is authorized to execute any supplemental escrow instructions for the City that are consistent with the terms of this Agreement. The City Manager may make minor modifications to this Agreement, or to the documents referenced herein, to effect the opening and Closing of the Escrow.

5. Redevelopment Agency Participation.

5.1 Developer Responsibility. Except as set forth in this Agreement, before Developer begins constructing the Improvements or undertakes any other work of improvement on the Property, Developer, at its own cost and expense, will secure all land use and other entitlements, permits, and approvals that Agency or any other governmental agency with jurisdiction over the Project requires for construction of the Project. Without waiver or limitation, Developer will secure and pay all costs, charges and fees associated with, the following:

5.1.1 Permits and Fees. All permits and fees that the City, County of Fresno, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.

5.1.2 ADA/Barriers to the Disabled. The Project shall comply with all applicable federal, state and local accessibility requirements. For purposes of this Agreement the number of accessible dwelling units shall be zero (0) unless a greater number of units shall be required by law, whereupon such greater number of units shall apply.

5.2 Basic Design. Developer has submitted a general or basic concept drawing to Agency, which Agency has approved, and a copy of which is attached as Exhibit "G" (the "Basic Design"). Developer will complete the Improvements on the Property in one phase, according to the Basic Design, and the plans, drawings, and documents that Developer submits to Agency. Developer shall carry out construction of the Project including the Improvements in accordance with all applicable local, state and federal laws, codes, ordinances and regulations, including without limitation all applicable state and federal labor standards.

5.3 Books and Records. Developer shall make available for examination at reasonable intervals and during normal business hours, all books, accounts, reports, files and other papers or property with respect to the Affordable Units, and shall permit Agency to audit, examine

and make excerpts or transcripts from such records. Agency may audit any conditions relating to the Affordable Units at Agency's expense, unless such audit shows a materially significant discrepancy in information reported by Developer to Agency in which case Developer shall bear the cost of such audit. Developer shall also reasonably cooperate with and assist the Agency in Agency's compliance with any applicable audit requirements of the California Redevelopment Law including California Health and Safety Code Sections 33080 and 33080.1. This section shall survive for a period of four (4) years after the expiration or termination of this Agreement.

5.4 Audit. Developer shall be accountable to Agency for all Grant funds and Supplemental Funding disbursed to Developer pursuant to this Agreement. Developer will cooperate fully with Agency, the State, or other governmental entity in connection with any interim or final audit relating to the Project that may be performed. Developer will maintain accurate and current books and records for the Project using generally accepted accounting principles. Developer agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with Grant funds and Supplemental Funding and to keep all invoices, receipts and other documents related to expenditures financed with Grant funds and Supplemental Funding for not less than four (4) years after the fiscal year in which such expenditures are incurred. For purposes of this section, "books, records and documents" include, without limitation, plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda and electronically stored versions of the foregoing. This section shall survive for a period of four years after the expiration or termination of this Agreement.

5.5 Project Start. Developer shall cause the issuance of all necessary discretionary governmental permits, approvals and entitlements, close any implicated funding or other escrow and begin/complete construction of the Improvements according to the Development Schedule.

5.5.1 Project Completion. Agency, acting through and in the discretion of its Executive Director, shall extend the completion date of the Project for that period of time that Agency, in its reasonable discretion, determines necessary to overcome any delay if and to the extent such delay is due to a cause which is beyond Developer's reasonable control, and if Developer could not, with reasonable diligence, have foreseen and avoided such cause for delay. Such causes include, without limitation, failure of City to meet deadlines required of it under this Agreement, acts of God, inclement weather, flood, war, terrorism, riot or act of the public enemy, labor disputes, unavoidable inability to secure labor, materials, supplies, tools or transportation, acts of public utilities, or acts or omissions of any governmental authority (including inspectors) having jurisdiction. Agency will not extend the completion date for acts or omissions occurring through the fault of Developer, or for acts of Agency permitted or contemplated by this Agreement. An extension of time as provided in this subsection will be Developer's sole remedy for any delays in the Development Schedule the Project completion date.

As a condition precedent to any extension requested by Developer, Developer will give the Agency notice within ten (10) days after any cause for delay occurs, stating the cause and the additional time Developer anticipates needed to complete the Project. Any extension by Agency

must be in writing and signed by the Executive Director or the Executive Director's designee, which approval shall not be unreasonably withheld, delayed or conditioned.

5.6 Advance of Funds by City. City shall advance to the Agency no later than thirty (30) days prior to the estimated completion date for the Project, a grant of \$750,000.

5.7 Disbursement of Agency Funding.

5.7.1 Grant. Agency shall pay to Developer a Grant of \$750,000 solely from Agency's Low and Moderate Housing Fund within sixty (60) days after the later of (i) receipt of \$750,000 grant from the City or (ii) receipt of a Certificate of Occupancy for the Project.

5.7.2 Supplemental Funding. After completion of the Project, Agency shall disburse to Developer, solely from Agency's Low and Moderate Housing Fund, within sixty (60) days of receipt, 50% of the net tax increment received and generated from the Project until the earlier of 13 years from the Effective Date of this Agreement or until the Project receives \$1.8 million in net present value discounted at a rate of six percent (6%).

5.7.3 Use of Funds. All Grant funds and Supplemental Funding shall be used solely for costs of the Project and Improvements.

5.8 Certificate of Completion. The Certificate of Completion shall be issued after Developer provides a Certificate of Occupancy for the Project to Agency.

5.8.1 Conditions Precedent of Certificate of Completion. The following are conditions precedent to Agency issuing the Certificate of Completion, and each submission will be in form and substance satisfactory to the Executive Director: Evidence that the time to file all mechanics' liens or material men's liens has expired and any such liens recorded against the Property or Improvements have been released or, if not released, sufficiently bonded (i.e. 150%) against as required by law.

5.9 Damage or Destruction. To the extent economically feasible, consistent with the requirements of any permitted encumbrance, or as otherwise approved by Agency or provided in the Agreement, if any building or improvement on the Property is damaged or destroyed by an insurable cause, Developer shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the Basic Design for the Project. Such work or repair shall commence within ninety (90) days after the insurance proceeds are made available to Developer and shall be complete within one (1) year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Developer shall make up the deficiency.

5.10 Inspections. Developer shall permit, facilitate and require its contractors to permit and facilitate observation and inspection of the Project by Agency during reasonable business hours and upon reasonable notice for the purpose of determining compliance with this Agreement.

5.11 Displacement. If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners or businesses, 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. 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. For purposes of this Section 5.11 the parties acknowledge that as of the Effective Date the Project Property is vacant and unoccupied.

5.12 Reporting Requirements. Developer shall submit to Agency the following reports:

5.12.1 Annual Reports. Annually, beginning in the year following Agency's issuance of the Certificate of Completion, and continuing until the expiration of this Agreement, on such dates as are agreeable between the parties and consistent with all federal and state reporting requirements applicable to the Project, Developer shall submit an annual report to Agency, in a form approved by Agency. Such annual report shall include for each of the Affordable Units: the rent, the annual income and the family size of the Household occupying the Affordable Unit. Such annual report shall also state the date the tenancy commenced for each Affordable Unit, certification from an officer of Developer that the Affordable Unit is in compliance with the Affordable Rental Housing requirements, and such other information the Agency may be required by Law to obtain. Developer shall provide any additional information reasonably requested by the Agency provided such information is directly related to Developer's compliance with this Agreement.

5.12.2 Annual Proof of Insurance. Annually, beginning in the year following Agency's issuance of the Certificate of Completion, and continuing until the expiration of the Agreement, Developer shall submit proof of insurance as required by this Agreement.

5.13 Leases. All Leases used to rent the Affordable Units are subject to the following

5.13.1 Annual Income Certification and Reporting. Developer shall include in leases for all Affordable Units provisions which authorize Developer to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as a household for low income family. Each such lease shall also provide that the household is subject to annual certification, and that, if the household's annual income increases above the applicable limits for low income family such household's rent may be subject to increase to the amount payable by tenant under federal, state or local law.

5.14 Affordable Units of the Project. With respect to the Project, Developer shall comply with the following:

5.14.1 Management Functions. Except to any extent otherwise provided in this Agreement, Developer is specifically responsible for all management functions with respect to the Affordable Units including, without limitation, the selection of tenants, certification

and re-certification of Household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. Agency shall have no responsibility for management of the Affordable Units of the Project.

5.15 Affordability Period. Developer covenants and agrees the Affordable Units shall constitute Affordable Rental Housing during the entire Affordability Period. If Developer fails to comply with the requirement to lease the Affordable Units only to qualified Households during the Affordability period, Agency shall be entitled to enjoin Developer from leasing the Affordable Units in the Project, as Developer acknowledges that damages are not an adequate remedy at law for such breach.

## 6. Project Construction.

6.1 Private Development Project. Developer will complete the Project as described in the Scope of Development using contractors licensed to do business in California. Developer shall diligently pursue completion of the Project according to the Development Schedule, the City-approved final construction plans, all permits and approvals approved or issued by the City, subject to any approved modifications. Except for any work associated with its Due Diligence Investigation, Developer shall not begin construction or perform any other work on the Property until after the Closing.

6.2 Developer Responsible for All Development Related Fees, Charges, and Permits. Developer will pay all permit and permit processing costs, all fees and charges relating to the Project, and the costs to construct any Project specific offsite improvements or improvements that the City may require to approve the Project.

6.3 City Review of Development Related Items. Solely to assure the City that the Project will further the goals, requirements, and expectations of the City and this Agreement, Developer will submit certain development related items to the City for review and written approval which approval shall not be unreasonably withheld. These development-related items include, without limitation, building permits, conditional use permits, site plans, building plans, basic concept drawings, elevation and other drawings showing architectural style, design and features, landscaping plans (prepared by a professional landscape architect), and finish grading plans (prepared by a licensed civil engineer).

City review and approval shall be conducted by the City Manager or the City Manager's designee. The City's review will be in addition to review by any other governmental entity of Project-related matters, required by any law, code, regulation, or rule. The City shall not require Developer to take any action or inaction that conflicts with City requirements. The parties intend this process to occur concurrently with the approval process by the Planning Department of the City

6.4 Approval of Material Changes. Any Material Change to matters approved by the City shall be submitted to the City for written approval which approval shall not be unreasonably withheld.

6.5 City and Other Governmental Approvals. Developer shall apply for, and diligently pursue until obtained, any City or other governmental permits or approvals necessary to complete the Project. The Council approval, and the City's execution, of this Agreement does not limit the City's discretion in the permit and approval process necessary to complete the Project. Discretionary approvals include, without limitation, the City's review and approval of final construction plans and specifications. The City shall use best efforts to help Developer obtain any necessary City and other discretionary governmental permits or approvals.

6.6 Incorporation and Ownership of Approved Documents; Material Change. After the City approves each development-related document, the Developer will provide a duplicate copy of each approved document to the City; after that, the document will become a part of this Agreement as though fully set forth herein. The duplicate document will belong to the City for use as it may deem advisable including, but not limited to, completion of the Project or any Developer Improvements upon any Default of the Developer. The Developer may not make any Material Change to a City-approved development-related document without first submitting the change to the City for review and approval according to the process provided herein. Until the City approves a Material Change, the previously approved document will be the controlling document.

6.7 Construction Contracts. The Developer's construction contracts with contractors, appropriately licensed and qualified for construction of the Developer Improvements on the Property and approved by the City, are in effect. Each construction contract will provide that the contractor will complete construction for some fixed or specified maximum amounts pursuant to the approved final construction plans and the approved Financing Plan.

Within fifteen (15) business days after the City issues a building permit for construction on the Property, the Developer shall submit copies of the construction contract(s) for the Property to the City's City Manager or a designee, for the sole and limited purposes of determining: (i) that the costs of work have been clearly fixed and are consistent with the approved Financing Plan, (ii) that no contract contains Material Changes, not already approved by the City, to the Financing Plan or any development-related document, and (iii) that the contract(s) contain the required equal opportunity covenants.

6.8 Discretionary Governmental Actions. Certain planning, land use, zoning and other permits and public actions required for the Project are discretionary governmental actions. These include, without limitation, the approval of this Agreement, conveyance of the Property, and other transactions contemplated by this Agreement. 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 and do not commit to approve any matter. The City shall not be liable, in law or equity, to 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.

6.9 Time for Completion of the Project; Costs. Developer will begin

construction by the date provided in the Development Schedule, and will diligently complete the Project according to the Schedule, or by any other date as the parties may agree in a written extension signed by the parties.

6.10 Progress Reports. Until the Developer completes the Developer Improvements on the Property and the City issues a Release of Construction Covenants, the Developer will provide monthly written reports to the City of its construction progress. The reports will be in such form and detail as the City may require.

6.11 Rights of Access. The City's representatives will have the right to enter the Property during construction, without charge or fee, during normal construction hours to assure compliance with this Agreement. Entry by City representatives will not interfere with the construction of the Developer Improvements.

6.12 Extension of Time for Completion. Developer shall be excused for any delay in completion, and the City shall extend the completion date in writing for a period reasonably necessary to overcome any delay, to the extent the delay is due to a cause that is beyond Developer's reasonable control and could not, with reasonable diligence, have been foreseen and avoided by Developer. Such causes include, for example, failure of the City to meet deadlines required of it under this Agreement; acts of God; inclement weather; flood; war, riot or act of the public enemy; labor dispute; unavoidable inability to secure labor, materials, supplies, tools or transportation; acts of public utilities; or acts or omissions of any governmental authority (including its inspectors) having jurisdiction (other than acts of the City permitted by or contemplated by this Agreement). Developer's lack of funds or Developer's inability to obtain financing for construction of the Project shall not be construed as unforeseen or unavoidable. As a condition precedent to any extension, Developer shall give the City notice of any delay-causing event within ten (10) days after its onset, stating the cause of the delay and the extension Developer reasonably expects is needed, and asking the City to extend the completion date. An extension under this Section shall be noted in writing as modifying this Agreement and the Performance Schedule. Obtaining an extension shall be Developer's sole means of avoiding potential breach of the Construction Covenants herein when a delaying event occurs.

6.13 Release of Construction Covenants. After Developer has satisfactorily completed the Project according to the construction covenants in this Agreement (including the required beginning and completion dates), Developer may ask the City to record a release from those covenants. Subject to the satisfaction of the conditions to its issuance (see Section 6.14), the City will provide an instrument certifying Developer's completion by preparing and recording a Release of Construction Covenants, substantially in the form attached as Exhibit "E." This release, when recorded, will evidence the City's conclusive determination that Developer has satisfied the construction covenants in this Agreement. The release will not be evidence that Developer has complied with or satisfied any obligation to any person holding a deed of trust or Security Financing Interest. The release shall not terminate Developer's indemnification or other obligations, which by their nature are intended to survive Project completion.

After the release is recorded in the Official Records of Fresno County, any party then owning or after that purchasing, leasing, or otherwise acquiring any interest in the

Property shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement regarding the construction requirements or Project development.

6.14 Conditions to Issuing the Release of Construction Covenants. The following are conditions precedent to the City issuing the Release of Construction Covenants, and each submission will be in form and substance satisfactory to the City Manager:

6.14.1 Release of Mechanic's Liens. Evidence that all mechanics' liens or material men's liens recorded against the Property and Project improvements have been released or, if not released, sufficiently bonded against as required by law.

6.14.2 Liens. Evidence that the aggregate liens against the Property do not exceed the permitted Security Financing Interests approved in the Financing Plan.

6.15 Liens and Stop Notices. Developer will not permit any lien or stop notice to be filed against the Property. If a claim of lien or stop notice is recorded against the Property or any Project improvements, Developer, within thirty (30) days after that, or within ten (10) days after the City's demand whichever first occurs, will do the following:

6.15.1 Pay and Discharge. Pay and discharge the same; or

6.15.2 Surety Bond. Effect the release of it by recording and delivering to the City a surety bond in sufficient form and amount, or otherwise; or

6.15.3 Protection Assurance. Give the City other assurance that the City, in its sole discretion, deems satisfactory to protect the City from the effect of the lien or bonded stop notice.

6.16 Developer's Construction Costs. Except for obligations and fees expressly assumed by City in this Agreement, the Developer will be responsible for all costs and fees associated with developing the Property and Improvements, without limitation, all fees and costs associated with obtaining governmental permits and approvals

6.17 Compliance With Laws. The Developer shall comply with all applicable laws, regulations and rules of the governmental agencies having jurisdiction over the Property, the Project or the Developer, including, but not limited to, applicable federal and state labor standards and environmental laws and regulations.

The Developer, not the City, is responsible for determining applicability of, and compliance with, all local, state and federal laws to the Developer's activities on the Property including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, Government Code, the City charter, and the City's municipal code. The City makes no representations as to the applicability or inapplicability of any such laws to this Agreement, the Developer, the Developer Improvements, or the parties' respective rights or obligations hereunder including, but not limited to, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. The City will not be liable or responsible in law or equity for any failure of the Developer to comply with any such laws, even if

the City knew or should have known of the need for such compliance or failed to notify the Developer of the need for such compliance.

6.18 Equal Opportunity; Anti-Discrimination. Neither the Developer nor any of the Developer's contractors, subcontractors or employees will discriminate based on race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in the construction work or activities undertaken pursuant to this Agreement. The Developer and each of its construction contractors will give employment preference, to the extent practicable, to individuals residing within the Project Area.

6.19 Defects in Plans. The City will not be responsible to Developer or to third parties for any of the following: (a) defects in the design of the Project improvements, or (b) any structural or other defects in any work that Developer, or its agents, employees or contractors do according to the approved plans and specifications, or (c) any delays caused by the City's review and approval, or by any other governmental review and approval processes. Developer will hold harmless, indemnify, and defend the City, and its officers, employees, agents and representatives from any claims, suits for damages to property or injuries to persons arising out of or relating to defects in the design including, without limitation, the violation of any laws, and for defects in any work Developer or its representatives, employees, or agents performs according to any City-reviewed and approved design or drawings or other construction items.

6.20 Utilities. 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.

6.21 Access. Until the City issues the Release of Construction Covenants, and solely to assure compliance with this Agreement, City and City representatives may access the Property, during normal construction hours, free of any charge or fee, provided that the representatives comply with all safety rules. Other than during emergencies, the City representatives shall notify Developer at least twenty four (24) hours before accessing the Property. This provision shall not be construed as limiting the City's rights, under all applicable law, ordinances, and regulations, to carry out code enforcement and to administratively inspect the Property.

6.22 Hiring Preferences to Project Area Residents. A fundamental purpose of redevelopment is to expand the employment opportunities for jobless, underemployed, and low-income persons. Developer, through its construction contractor, shall give preference for employment to those qualified individuals, if available, residing within the Project Area governed by the Redevelopment Plan.

## 7. Indemnity; Insurance.

7.1 Indemnity. Developer shall indemnify, hold harmless and defend, with qualified counsel of Developer's choice, the City and Agency, and the City shall indemnify, hold harmless and defend, with qualified counsel of the City's choice, the Agency, and each of its officers, officials, employees and agents from any loss, liability, fines, penalties, forfeitures, costs and

damages (whether in contract, tort or strict liability including, without limitation, personal injury, death at any time and property damage) incurred by the City and/or Agency, Developer or any other person, and from any claims, demands and actions in law or equity, including reasonable attorneys' fees and litigation expenses, arising or alleged to have arisen directly or indirectly out of performance of this Agreement (collectively, "Claims"). The preceding sentence shall not apply to any Claims caused by the negligent acts or omissions, or by the willful misconduct, of the City or Agency or any of its officers, officials, employees and agents.

**This indemnity shall also cover, without limitation the following: (i) any act, error or omission of Developer as to both the City and Agency and the City as to the Agency or any of their officers, employees, contractors, subcontractors, invitees, agents or representatives in connection with this Agreement, the Project or the Property; (ii) any use of the Property, the Project by Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives, successors or assigns; (iii) the design, construction, operation or maintenance of the Project, or (iv) failure of Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives to comply with any Federal, State or local law, code, ordinance or regulation applicable to this Agreement or the Project, including, but not limited to, claims based upon failure to comply fully with prevailing wage laws as may be determined by any court or agency of the State of California or United States Government; with respect to any and all claims related to prevailing wage, Developer, as provided herein and otherwise in this Agreement, assumes all responsibility for payment of prevailing wage and complying with prevailing wage laws, if required, and specifically waives any and all rights against the City and Agency, as well as City and Agency agents, employees, agencies, and consultants, pursuant to California Labor Code section 1726(c) and analogous federal law, if any, and agrees to defend and fully indemnify the City and Agency, as well as City and Agency agents, employees, agencies, and consultants, for any claims based upon failure to pay prevailing wage, including, without limitation, claims for damages, fines, penalties, litigation expenses, costs, attorneys' fees, and interest. Developer, City and/or Agency have the right to contest or challenge any finding that prevailing wage applies.**

If Developer contracts or subcontracts any of the work to be performed under this Agreement, Developer shall require each contractor or subcontractor to indemnify, hold harmless and defend the City and Agency and each of its respective officers, officials, employees, agents and volunteers in accordance with the preceding paragraph.

A party's indemnity obligation under this Section shall be limited to the sum that exceeds the amount of insurance proceeds, if any, received by the party being indemnified, if this provision violates the terms of an insurance policy; this provision does not apply to any self insured program.

This section shall survive termination or expiration of this Agreement and the potential recordation of the Grant Deed.

7.1.1 Indemnification by Contractors or Subcontractors. The Developer shall require each contractor and subcontractor to indemnify, hold harmless and defend

the Agency, the City, the State and each of their respective officers, officials, employees, agents, boards, and volunteers according to the terms of paragraph 7.1.

7.1.2 Action Arising Out of Approval of This Agreement. The Developer shall indemnify, defend and hold the Agency, the City and each of their respective officers, officials, employees, agents, boards and volunteers harmless from any judicial action filed against the Agency or the City by any third party arising out of the Agency's or the City's approval of this Agreement or any permit, entitlement or other action required to implement this Agreement, including without limitation approvals under the Law, CEQA or the City's Municipal Code. The City will promptly notify the Developer of the action. Within fifteen (15) days after receipt of the notice, the Developer shall take all steps necessary and appropriate to assume defense of the action. The City will cooperate with the Developer in the defense of the action (at no cost to the Agency or the City). Neither the Developer nor the City will compromise the defense of such action or permit a default judgment to be taken against Agency or the City without the prior written approval of the other party(ies).

7.1.3 Survival of Indemnification Provisions. Except as otherwise specifically stated herein, the indemnification provisions in this subsection and every other indemnification in this Agreement will survive any termination of this Agreement, will survive any Closing, will survive the expiration of any covenant herein and will not merge with any Ground Lease or other document evidencing an interest in real property.

7.2 Insurance. Until the City issues the Release of Construction Covenants and the Release is recorded in the Official Records of Fresno County, Developer shall pay for and maintain, or cause to be paid and maintained, in effect all insurance policies required hereunder with insurance companies either (i) 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 (ii) authorized by the City's Risk Manager and Agency's Executive Director. The following policies of insurance are required, and Developer will deliver proof of these policies before starting construction:

7.2.1 Commercial General Liability Insurance. Commercial general liability Insurance that shall include contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than one million dollars (\$1,000,000) per occurrence.

7.2.2 Commercial Automobile Liability Insurance. Commercial automobile liability insurance, endorsed for "any auto" with combined single limits of liability of not less than one million dollars (\$1,000,000) per occurrence.

7.2.3 Workers' Compensation Insurance. Workers' compensation insurance, as required under the California Labor Code.

7.2.4 Fire and Extended Coverage Insurance. Fire and extended coverage insurance for at least the full replacement cost of the Developer Improvements on the

Property, excluding foundations, footings and excavations and tenant improvements, fixtures and personal property.

7.2.5 Builders Risk Insurance. Builders risk insurance sufficient to cover one hundred (100) percent of the replacement value of all improvements made on the Property including, without limitation, terms of labor and materials in place or to be used as part of the permanent construction (including, without limitation, surplus miscellaneous materials and supplies incidental to the work, and scaffolding, staging, towers, forms and equipment not owned or rented by Developer, the cost of which is not included in the cost of work).

The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of the City and Agency, of policy cancellation, change or reduction of coverage, except the Workers' Compensation policy that shall provide a ten (10) day written notice of such cancellation, change or reduction of coverage. If any policy is due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing policy renewal not less than fifteen (15) days before the expiration date of the policy. When an insurer, broker, or agent issues a notice of cancellation, change or reduction in coverage, Developer shall immediately obtain and file a certified copy of a new or renewal policy and certificates for such policy with the City and Agency.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City, the Agency, and the officers, officials, agents and employees of each as an additional insured. Each policy shall be endorsed so that Developer's insurance is primary and no contribution is required of the City and Agency. Developer shall furnish the City and Agency with copies of the actual policies upon the request of the Agency's Executive Director, the Executive Director's designee, or the City's Risk Manager.

If Developer fails to maintain the required insurance in full force and effect, Developer shall immediately discontinue all work under this Agreement until the City and Agency receive notice that the required insurance has been restored to full effect and that the premiums for the insurance have been paid for a period satisfactory to City and Agency. Developer's failure to maintain any required insurance shall be sufficient cause for the City and Agency to terminate this Agreement after notice and the right to cure as provided in Section 11.3.

If Developer subcontracts all or any portion of the work under this Agreement, Developer shall require each subcontractor to provide insurance protection in favor of Developer and the City and Agency, and their officers, officials, employees, agents and volunteers according to the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Developer, City and Agency before the subcontractor begins any work.

7.2.6 Insurance for Project Design Work. Developer shall maintain for its Project design work, or if Developer subcontracts any of the Project design work Developer shall require each design subcontractor to maintain, professional liability insurance (errors and omissions) with a limit of not less than one million dollars (\$1,000,000) per occurrence.

If claims made forms are used for any Professional Liability Coverage, either (i) the policy shall be endorsed to provide not less than a five (5) year discovery period, or (ii) the coverage shall be maintained for a minimum of five (5) years after the Release of Construction Covenants is recorded. The requirements of this section relating to such coverage shall survive termination or expiration of this Agreement.

7.2.7 Performance and Payment Bonds. Developer will obtain and deliver labor and material bonds, payment, and performance bonds, issued by an insurance company meeting the criteria for Developer's other insurance under this Agreement. The bonds will each contain a penal sum at least equal to one hundred (100) percent of Developer's estimated construction costs. The bonds will name the City and Agency as co-obligee. The City, at the City Manager's option, and the Agency, at the Executive Director's option, instead of requiring performance and payment bonds, may consider and accept other evidence, satisfactory to the City Manager and/or Executive Director, of Developer's ability to complete the Project.

## 8. Security Financing Interests and Rights of Holders.

8.1 Encumbrances Only for Development Purposes. Despite any other provision of this Agreement to the contrary, Developer may not grant a security interest in the Property before the City issues and records a Release of Construction Covenants and the Agency issues and records a Certificate of Completion. This prohibition does not apply to a Security Financing Interest securing the construction and permanent financing shown in the approved Financing Plan.

8.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest is not obligated to perform Developer's construction obligations, or to guarantee construction of the Project, whether under this Agreement, the Ground Lease or any Grant Deed. However, any holder of a Security Financing may not devote the Property to any use, and may not construct any improvements on the Property, except as authorized by this Agreement.

8.3 Notice of Default to Holder, and Right to Cure. If a holder or Developer gives the holder's address to the City and asks the City to notify the holder, the City will give a duplicate notice to the holder of any notice or demand that it gives to Developer of any Default. Within thirty (30) days after the receipt of the notice, each such holder of record will have the right, but not the obligation, to cure Developer's default or breach.

Except as necessary to conserve or protect improvements already constructed, a holder of a Security Financing Interest may not undertake to complete the Project, without first expressly assuming Developer's obligations hereunder in a writing satisfactory to the City. Under any assumption agreement, the holder must agree to complete the Project as provided in this Agreement. It must also submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform the obligations. Any holder properly completing the Project will be entitled, upon written request, to a Release of Construction Covenants from the City.

8.4 Failure of Holder to Complete Project. If a holder of a Security

Financing Interest assumes Developer's construction obligations but, within six (6) months after Developer's Default, does not proceed diligently with construction, the City will have the same rights against the holder as it would otherwise have against Developer. The City's rights against the holder will be to the extent the events producing the rights occur after the holder assumes control of the Property, unless otherwise provided in the assumption agreement between the City and the holder.

8.5 Right of City to Cure. If (a) Developer defaults under a Security Financing Interest before completing the Project, and (b) the holder does not assume Developer's construction obligations, then the City may cure the default before foreclosure. If the City cures the default, Developer will reimburse the City on demand for all costs and expenses it incurs to cure the default. The City may lien the Property to the extent of such costs and expenses. Any lien will be subordinate to any Security Financing Interest created to secure a debt, the proceeds of which Developer uses solely to purchase and develop the Property, as authorized in this Agreement.

8.6 Right of City to Satisfy Other Liens. Until Developer completes the Project and the City records the Release of Construction Covenants, the City may cure Developer's default of other liens. The City will not exercise the right until Developer has had a reasonable time to challenge, cure, or satisfy the liens or encumbrances. This provision does not prevent Developer from contesting the validity or amount of a tax, assessment, lien or charge. In doing so, Developer must act in good faith, and the payment delay must not subject the Property to forfeiture or sale. Before the tax, assessment, lien or charge is due and payable, Developer must give reasonable security to the City for the lien or charge, and notify the City that it will appeal any property tax assessment.

8.7 Holder to be Notified of Provisions. Before Developer grants any Security Financing Interest in any parcel, Developer will cause the holder of a Security Financing Interest to insert or incorporate the provisions of this Section 8 into the documents evidencing the Security Financing Interest, or to acknowledge the provisions in writing.

9. Developer's Continuing Obligations. The following obligations of Developer will run with the land and survive the Closing, the recording of the Ground Lease and this Agreement, and shall expire on the recording of the Release of Construction Covenants, unless otherwise specifically provided in this Section 9:

9.1 Taxes and Assessments. The Developer will pay before delinquency all ad valorem real estate or possessory use taxes and assessments on the Property conveyed to it, subject to a right to contest the amounts of taxes in good faith. The Developer will remove any levy or attachment made on the Property, or assure the satisfaction thereof within a reasonable time.

9.2 Maintenance. The Developer will, at its expense, maintain all walkways, lighting and other improvements, structures and landscaping on the Property in good repair and first class condition. All landscaping shall be kept sufficiently irrigated and in a healthy, weed-free condition.

9.3 Discrimination. In its performance of this Agreement, Developer

covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person, including contractors, subcontractors, bidders and vendors, on account of race, color, religion, ancestry, national origin, sex, sexual preference, age, pregnancy, childbirth or related medical condition, medical condition (e.g., cancer related) or physical or mental disability, and in compliance with all applicable federal, state and local laws, regulations and rules including without limitation Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, California Government Code Section 12900, et seq., the California Equal Pay Law, California Labor Code Section 1197.5, California Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Developer will allow Agency representatives access to its employment records related to this Agreement during regular business hours and upon reasonable notice to verify compliance with these provisions when so requested by the Agency.

9.4 Environmental. After Closing, Developer will take all necessary precautions to prevent the release into the environment of any Hazardous Materials in, on or under the Property. Developer will comply with all governmental requirements with respect to Hazardous Materials.

9.5 Disclosures After Closing. After Closing and until the Release of Construction Covenants is recorded, Developer will notify the City, and give the City a copy or copies of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Property including, without limitation, notices of violation, notices to comply, citations, inquiries, cleanup or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. Immediately after each incident, Developer will report any unusual or potentially important incidents respecting the environmental condition of the Property to the City.

If a release of any Hazardous Materials into the environment occurs, Developer will, as soon as possible after the release, furnish the City with a copy of any reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Developer will furnish the City with a copy of any other environmental entitlements or inquiries relating to or affecting the Property including, without limitation, all permit applications, permits and reports, including reports and other matters, which may be characterized as confidential.

9.6 Developer Indemnity. From and after the date Developer first takes possession of the Property, Developer will indemnify, defend, and hold the City harmless from any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), arising out of (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property, or (ii)

the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to any use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property, by Developer or Developer's employees, agents, representatives or contractors. This indemnity will include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination leak, spill, release or other adverse effect on the environment. The indemnity covers, without limitation, (a) all foreseeable and unforeseeable consequential damages, (b) the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, and (c) costs of legal proceedings and attorneys fees. This indemnification shall survive the termination of this Agreement.

9.7 Release of City. Developer releases City from all claims Developer may have against City resulting from or connected with the environmental condition of the Property occurring after Developer accepts possession of the Property. Such claims include, without limitation, all claims Developer may have against City under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), or any other federal, state, or local law, whether statutory or common law, ordinance, or regulation concerning the release of Hazardous Materials or substances into the environment from or at the Property, and the presence of such materials in, on, under, or about the Property.

Developer's obligations under this indemnity and release shall survive the Closing, recording of the Grant Deed, and recording of the Release of Construction Covenants.

9.8 Developer and Assignment.

9.8.1 Representations and Warranties of Developer. The following representations and warranties shall survive the recording of the Memorandum of Lease and Option to Purchase and shall continue in full force and effect thereafter. The City shall rely on these representations and warranties throughout the term of the Agreement, until the City has been notified of any substantial change affecting the representations and warranties. Developer and each person executing this Agreement for Developer represents and warrants that:

9.8.1.1 Limited Partnership. Developer is a limited partnership duly formed and existing under the laws of the State of California, in good standing, and authorized to do business in the State of California, County of Fresno, and City of Fresno.

9.8.1.2 Power and Authority. Developer has all requisite power and authority to carry out its business as now and hereafter conducted and to enter and perform its obligations under this Agreement.

9.8.1.3 Authority to Execute and Deliver. By proper action of Developer's general partner, the person or persons signing this Agreement for Developer have been duly authorized to execute and deliver this Agreement and to legally bind Developer to its

terms and conditions.

9.8.1.4 Other Agreements. Developer's execution and performance of this Agreement does not violate any provision of any other agreement to which Developer is a party.

9.8.1.5 Approvals or Consents. Except as may be specifically set forth in this Agreement, no approvals or consents not heretofore obtained by Developer are necessary to Developer's execution of this Agreement or Developer's performance of the obligations under this Agreement.

9.8.1.6 Sufficient Funds. Developer has or will have sufficient funds available to fund the Project and to pay all costs assumed by Developer hereunder.

9.8.1.7 Enforceability. This Agreement is valid, binding, and enforceable against Developer in accordance with its terms, except as such enforceability may be limited by principals of public policy and subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors, and rules of law governing specific performance, injunctive relief or other equitable remedies.

9.8.2 Prohibition Against Transfer of Property and Assignment of Agreement. The purpose of this Section is to prevent land speculation. Until the City has recorded the Release of Construction Covenants, Developer shall not do or attempt to do the following without first obtaining the City's consent: (a) sell, transfer, convey, assign, or lease, any of the Property, or the improvements on it, or (b) sell, transfer, convey, or assign any rights and obligations under this Agreement. City consent shall be conditioned on the proposed transferee's written agreement to be bound by the continuing indemnity provisions and continuing covenants of this Agreement.

9.8.3 Permitted Transfers. Notwithstanding the foregoing, the following events ("Permitted Transfers") shall not be deemed a transfer for the purposes of requiring the City's consent:

9.8.3.1 Creation of Security Financing Interests.;

9.8.3.2 Foreclosure. A sale, conveyance, or transfer of the Property at foreclosure (or a deed in lieu of foreclosure) resulting from a Security Financing Interest;

9.8.3.3 Conveyance or Grants of Easements. The conveyance or dedication of parts of the Property to the City or any other governmental City, or the grant of easements or permits to facilitate the development of the Property;

9.8.3.4 Temporary Easements or Permits. The grant of temporary easements or permits to facilitate the development of the Property before the Release of Construction Covenants is recorded; or

9.8.3.5 Additional Partners to Developer. The admission of

additional partners to Developer, as long as the current general partner of Developer continues as the majority general partner of Developer.

9.8.4 Approval or Consent of City. When a request for transfer or assignment is submitted to the City for consideration, approval will be conditioned, without limitation, on the following:

9.8.4.1 Financial Strength and Business Experience. The proposed transferee will demonstrate to the City's satisfaction that the proposed transferee has sufficient financial strength and the business experience in planning, financing, development, ownership, and operation of similar projects to complete the Project competently.

9.8.4.2 Assumption Agreement. Any transferee, by recordable instrument acceptable to the City, shall expressly assume all the unfulfilled or ongoing obligations of Developer under this Agreement, and agree to be subject to all the conditions and restrictions to which Developer is subject with respect to the Property.

9.8.4.3 Transfer Documents. Developer or its successors shall submit all documents, proposed to effect any the transfer or assignment, to the City for review.

9.8.4.4 Other Information. Developer or its successors shall deliver all information to the City that the City may reasonably request to enable it to evaluate the proposed transfer or assignment. City shall approve, conditionally approve, or disapprove a request for assignment within sixty (60) days after receiving the request and all supporting documentation. City may require Developer to reimburse City for its actual, reasonable, out-of-pocket expenses (including attorneys' fees) incurred in investigating a proposed assignee's qualifications as a permitted assignee hereunder.

9.8.5 Developer's Release. The City's approval of any transfer, assignment, or sale will not relieve Developer or any successor from any unfulfilled or ongoing obligations of Developer under this Agreement, unless the City specifically releases Developer or any successor. **The provisions of this Agreement are intended to discourage land speculation, and these provisions shall be liberally interpreted to accomplish that end.**

9.9 Insurance and Indemnity. Developer will comply with the insurance and indemnity requirements in this Agreement.

9.10 Taxes and Assessments. Developer will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to Developer's right to contest any taxes or assessments in good faith. Developer will remove any levy or attachment on the Property or any part of it, or assure the satisfaction of the levy or attachment within a reasonable time. Developer will not apply for or receive any exemption from the payment of property taxes or assessments on any interest in or to the Property including, without limitation, the on-site Project improvements.

9.11 Compliance with Laws. In performing its obligations hereunder, Developer shall comply with all applicable laws, regulations, and rules of the governmental agencies

having jurisdiction including, without limitation, applicable federal and state labor standards and environmental laws and regulations. Developer, not the City, is responsible for determining applicability of and compliance with all local, state, and federal laws including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, Government Code, the City Charter, and Fresno Municipal Code. The City makes no representations regarding the applicability of any such laws to this Agreement, the Project, or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. City shall not be liable or responsible, in law or equity, to any person for Developer's failure to comply with any such laws, whether the City knew or should have known of the need for Developer to comply, or whether the City failed to notify Developer of the need to comply.

**Further, with respect to prevailing wage, Developer represents, warrants, and affirms that neither the City, nor the Agency, nor any of its officials, agents, employees, agencies, or attorneys has made any representation that the work to be covered by this Agreement, bid or contract was or was not a "public work," as defined in state or federal law, and to the best of Developer's knowledge neither the Developer nor the City, nor any of its officials, agents, employees, agencies, or attorneys has received actual written notice from the Department of Industrial Relations or other government agency that the work to be covered by this Agreement, bid or contract is or is not a "public work," as defined in state or federal law.**

9.12 Covenants. The covenants set forth in the Grant Deed are, by incorporation of the Grant Deed into this Agreement, made a part of this Agreement as though fully set forth in this Agreement. Developer shall keep the covenants in the manner and for the times set forth in the Grant Deed.

10. Covenants and Restrictions Running With The Land. The following covenants shall run with the land and shall bind Developer, and Developer's successors in interest to the Property for the periods stated, and shall be fully binding for the benefit of the Plan community and Agency without regard to technical classification or designation, legal or otherwise.

10.1 Uses of Affordable Units. Developer covenants for itself, its successors, assigns, and every successor in interest to the Property or any part of it that, during the term of the lease, after closing of any applicable escrow, during construction, and after completing the Improvements, the Developer shall devote the Affordable Units on the Property to the uses specified in this Agreement for the Affordability Period. All uses of the Affordable Units including, without limitation, all activities Developer undertakes pursuant to this Agreement, shall conform with this Agreement and the Law. Without waiver or limitation, each of the Affordable Units to be constructed pursuant to this Agreement shall be maintained as Affordable Rental Housing pursuant to this Agreement and the Restrictions.

10.2 Maintenance of Property. During the term of a lease with the City, or as long as Developer is receiving Supplemental Funding from Agency, Developer and those taking under Developer will maintain all exterior areas of the Property and Improvements on site in reasonably good condition and repair (and, as to landscaping, if any, in a healthy condition), all according to the Basic Design and related plans, as amended from time to time. Developer and those

taking under Developer shall: (i) maintain all on-site Improvements according to all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the exterior Improvements free from graffiti, (iii) keep the exterior of the Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to the on-site Improvements; and (v) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials.

Agency will give Developer written notice of any breach of this Section 10.2. Within ten (10) days from receipt of such notice, Agency and Developer will meet and confer, and agree to corrective actions and a schedule of performance for such corrective actions. Developer must cure the default within the agreed schedule or within (a) ten (10) days after the Agency's notice for any default involving landscaping, graffiti, debris, waste material, or general maintenance on the Property, (b) thirty (30) days after Agency's notice for any default involving the Improvements. If Developer does not cure the default within the agreed schedule, Agency, without obligation to, may enter the Property, cure the default, and protect, maintain, and preserve the Improvements and landscaping.

Agency may lien or assess the Property for the Agency's expenses in protecting, maintaining, and preserving the on-site Improvements and aesthetics of the Property, including any lawful administrative charge in the manner used by the Agency in the abatement of public nuisances. The notice and opportunity to cure provided for herein will substitute for the noticing, hearing, and nuisance abatement order used by Agency. Developer will promptly pay all such amounts to Agency upon demand.

10.3 Use During Affordability Period. During the Affordability Period Developer covenants to use and operate the Affordable Units on the Property as Affordable Rental Housing pursuant to this Agreement.

10.4 No Discrimination. Developer covenants for itself and any successors in interest and all persons claiming by, through or under them, in perpetuity, that there shall be no discrimination against or segregation of any person or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Affordable Units, nor shall Developer itself or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Affordable Units.

10.5 Affordable Unit Deeds, Leases or Contracts. All deeds, leases, or contracts concerning the Affordable Units shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons because of race, color, creed, religion, sex, sexual

preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein, conveyed. The foregoing covenants shall run with the land."

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

"That there shall be no discrimination against or segregation of any person or group of persons, because of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

10.6 Agency as Beneficiary. Agency is the beneficiary of the covenants running with the land for itself and for protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants are provided, without regard to whether Agency has been, remains, or is an Developer of any land or interest in the Affordable Units on the Property. Agency may exercise all rights and remedies, and maintain any actions or suits at law or in equity or other proceedings to enforce the covenants for itself or any other beneficiaries.

11. Default, Remedies and Termination. Failure or delay by either party to perform any material term of this Agreement shall be a default under this Agreement. Any failure or delay by a party in asserting any right or remedy will not constitute a waiver, and will not deprive the party of its right to institute and maintain any action or proceeding necessary to protect or enforce any right or remedy.

11.1 Legal Actions. A party may institute a legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent

with the purposes of this Agreement. Such legal action shall be brought in the Fresno County Courts, or the Fresno Division of the Federal District Court for the Eastern District of California. Service of process shall be made on the City by personal service on the City Clerk or in any other manner permitted by law. Service of process shall be made on Developer by personal service on Developer or its designated agent for service of process, or in any other manner permitted by law, whether service is made in or out of California.

11.2 Rights and Remedies are Cumulative. Except as may be expressly stated otherwise in this Agreement, the rights and remedies of the parties are cumulative. The exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other rights or remedies for the same default or any other default. In addition to the specific rights and remedies herein, the parties may resort to any other rights or remedies available at law or in equity including, without limitation, specific performance.

11.3 Notice and Cure Periods. If either party fails to perform under any provision of this Agreement, the nondefaulting party shall serve written notice of the default on the defaulting party, describing the default, and reciting the time for cure. A defaulting party will have thirty (30) days from the date of the notice to cure the breach or failure. However, if the default cannot be reasonably cured within the thirty (30) day notice period, the party to whom notice is given shall not be considered to be in default as a result of such failure, so long as that party is diligently and expeditiously attempting to cure such default and such default is curable within a reasonable period of time following the expiration of such thirty (30) day notice period. Failure of the defaulting party to cure within these times shall entitle the nondefaulting party to enforce any right or remedy provided in this Agreement, at law, or in equity. This provision is not intended to modify or extend any other notice or cure period specifically provided for in this Agreement. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

#### 11.4 Right to Terminate Agreement.

11.4.1 Developer's Right to Terminate. If the City does not tender conveyance of the Property to Developer within the time specified, or is otherwise in default of this Agreement, Developer may terminate the Agreement after notice of default and time to cure, and subsequent written notice to the City and Escrow Holder. The City shall return to Developer any consideration that it has paid for the Property. After that neither the City nor Developer shall have any further rights against or liability to the other party under this Agreement.

11.4.2 City's Right to Terminate. If, before the City records the Release of Construction Covenants, any of the following occurs, the City may terminate this Agreement:

11.4.2.1 Assignment, Sale, Transfer or Conveyance of Property. Developer, without complying with this Agreement, assigns any rights or obligations under this Agreement, or sells, transfers, or conveys any of the Property or the Project; or,

11.4.2.2 Change in Identity of Developer. Any significant

change in the identity of Developer, or any assignee, not permitted by this Agreement occurs; or,

11.4.2.3 Failure to Submit Documents. Developer does not submit drawings, plans or other documents or submittals as required by this Agreement within the times specified in this Agreement or the Development Schedule, as such times may be extended as provided in this Agreement; or,

11.4.2.4 Failure to Take Title. Developer does not take title to the Property when the City tenders conveyance pursuant to this Agreement; and

11.4.2.5 Default. Developer defaults under this Agreement and does not cure the default following demand notice and opportunity to cure as provided in this Agreement.

11.5 Right of Re-Entry (Power of Termination). The City may reenter and take possession of the Property, or part of it, and all improvements on it, terminate the estate conveyed to Developer by the Ground Lease, and revert the estate in the City if, before recording the Release of Construction Covenants, any of the following occurs:

11.5.1 Failure to Begin or Complete Construction. Developer does not begin or complete construction of the Project within the time specified in the Development Schedule or this Agreement, as such times may be extended as provided in this Agreement; or,

11.5.2 Abandonment or Suspension of Construction. Developer abandons or substantially suspends construction of the Project for 30 days after the City gives written notice of the abandonment or suspension; or,

11.5.3 Assignment or Transfer of Obligations. Developer assigns or transfers, or suffers an involuntary transfer of, any rights or obligations under this Agreement, or in the Property, in violation of the assignment provision of this Agreement.

11.6 Effect on Security Holders. Such right to reenter, repossess, terminate and revert shall be subject to, limited by, and shall not defeat, render invalid, or limit: (i) any Security Financing Interest permitted by this Agreement; or (ii) any provision of this Agreement protecting the holder's Security Financing Interests.

11.7 Recognition of City Right. The Ground Lease, and any subsequent deed for an approved Property transfer or conveyance occurring prior to the recording of the Release of Construction Covenants shall contain appropriate provisions to giving effect to the City's right under Section 11.5 to reenter and take possession of the Property, or any part of it, and all improvements thereon, and to terminate the estate conveyed to Developer, and revert it in the City.

11.8 Resale of Property. When title to the Property reverts in the City, the City shall use its best efforts to resell the Property, consistent with the objectives of the City for the Project, to a qualified and responsible party (as determined by the City). The transferee will assume the obligation of completing the Project or constructing improvements other than the Project, satisfactory to the City and according to the uses specified in the Plan. Upon any resale of the

Property, or part of it, the proceeds shall be applied as follows:

11.8.1 Reimbursement to City. First, to reimburse the City for (a) all costs and expenses incurred (including, without limitation, salaries of personnel) in connection with the recapture, management, and resale of the Property, or part of it, less any income the City derived from the property in connection with the management; (b) all taxes, assessments, and water and sewer charges respecting the Property (or, any of the Property is exempt from taxation or assessment or such charges during the City's ownership, then such taxes, assessments or charges as would have been payable if the Property were not so exempt); (c) any payments necessary to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees from attaching or being made; (d) any expenditures made or obligations incurred to complete the Project or other improvements on the Property; and any amounts otherwise owing to the City from Developer or by its successor or transferee; and

11.8.2 Reimbursement to Developer. Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (a) the purchase price paid to the City for the Property; and (b) the out-of-pocket costs incurred to develop and improve the Property, less (c) any gains or income to Developer from the Property, the Project or other improvements on it. Notwithstanding the foregoing, the amount calculated pursuant to this Section shall not exceed the price that Developer paid the City for the Property, and the fair market value of the improvements on it when the default or failure occurred, which led to the City's exercise of the right of reverter.

11.8.3 Remaining Balance. Any balance remaining after such reimbursements shall be retained by the City.

11.9 No Speculation in Land. The rights established in this Section 10 shall be interpreted considering the City's intent to convey the Property to Developer for development of the Project, and not for speculation in undeveloped land or any other purpose.

## 12. General Provisions.

12.1 Notice, Demands and Communication. All notices, elections, requests, acceptances, demands, instructions or other communications ("notice" or "notices") to be given to any party under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if personally served on the party to whom notice is to be given; (ii) within forty-eight (48) hours after mailing, if mailed to the party to whom notice is to be given, by first class mail which is either registered or certified, postage prepaid, return receipt requested; (iii) within twenty-four (24) hours after being deposited with a recognized private courier service (e.g. Federal Express), if delivered by a private courier service to the party to whom notice is to be given, all charges prepaid; or (iv) when sent, if given by electronic format that provides verification of successful transmission. All notices shall be properly addressed to the party receiving notice as follows:

**CITY:**

City of Fresno  
Attention: City Manager  
2600 Fresno Street  
Fresno, CA 93721  
Facsimile No.: (559) 498-1870

**AGENCY:**

Redevelopment Agency of the City of Fresno  
Attention: Executive Director  
2344 Tulare Street, Suite 200  
Fresno, CA 93721  
Facsimile No.: (559) 498-1870

**WITH COPIES TO:**

City Attorney  
2600 Fresno Street  
Fresno CA 93721-3602  
Facsimile No.: (559) 498-1815

**DEVELOPER:**

12623 Auberry Rd.  
Clovis, CA 93619

A party may change its address by notice given according to this subsection.

12.2 Conflict of Interests. No member, official, officer or employee of the City shall have any direct or indirect interest in this Agreement, or shall participate in any decision relating to this Agreement where such interest or participation is prohibited by law. No officer, employee, or agent of City who exercises any function or responsibility concerning the planning and carrying out of the Project, or any other person who exercises any function or responsibility concerning any aspect of this Agreement or the Project, shall have any personal financial interest, direct or indirect, in this Agreement or the Project.

12.3 Unavoidable Delay. Neither Party will be in default where delays or defaults are due to war, insurrection, strikes, lock outs, riots, acts of the public enemy, acts of domestic or foreign terrorism, floods, earthquakes, fires, freight embargoes, court order, or any other similar cause beyond the control and without the fault of the Party claiming an extension of time to perform. A Party claiming an unavoidable delay must give notice to the other Party within 10 days after the delay begins. After that, the Parties may extend the time for performance by a writing signed by both Parties. This provision does not apply to delays in the Developer's construction obligations which this Agreement specifically covers elsewhere.

12.4 Provision Not Merged with Deeds. The provisions of this Agreement

will not merge into any Grant Deed upon recording

12.5 Provision of Approvals and Actions. Whenever this Agreement references an action or approval required or permitted by the City, the City Manager or his or her designee is authorized to act for the City unless this Agreement, the law, or City bylaws, resolutions or procedures provide otherwise, or the context otherwise requires.

12.6 Nonliability of Officials, Employees and Holders. No member, official, officer, employee or agent of the City shall be personally liable to Developer, or any successor in interest, for any default or breach by the City.

12.7 Counterparts. This Agreement may be executed in counterparts, and together each executed counterpart shall constitute one Agreement.

12.8 Waiver. A party's waiver of the other's breach of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement. No provision of this Agreement may be waived except in a writing signed by all parties. Waiver of any provision shall not be deemed to be a waiver of any other provision herein.

12.9 Attorneys' Fees. If a party initiates or defends litigation or any legal proceeding regarding the enforcement of this Agreement, the prevailing party in such litigation or proceeding, in addition to any other relief that may be granted, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal. A party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating the action, retaining expert witnesses, taking depositions and discovery, and all other necessary costs incurred with respect to the action. All such fees shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not such action is prosecuted to judgment.

12.10 Governing Law and Venue. The provisions of this Agreement shall be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties hereunder shall be determined, according to California law.

Venue and jurisdiction (personal and subject matter) for any lawsuit commenced by either Party in connection with this Agreement shall be in the Superior Court of Fresno County or in the United States District Court for the Eastern District located in Fresno County.

12.11 Further Assurances. Each party will take any further acts and will sign and deliver any further instruments required to carry out the intent and purposes of this Agreement.

12.12 Entire Understanding of the Parties. The parties will execute three duplicate originals of this Agreement. The exhibits referenced as attached are by such references incorporated into this Agreement. This Agreement, including the exhibits, is the entire understanding and agreement of the parties. All prior discussions, understandings, and written agreements are superseded by this Agreement. This Agreement shall not be modified except by written instrument duly approved as required by law and executed by authorized representatives of

the parties. Should the terms of any exhibit conflict with the body of this Agreement, the body of this Agreement shall govern.

12.13 Broker. The Developer and the City each represent and warrant it has not engaged any broker or finder with respect to this Agreement, the Property or the Project. Each Party will indemnify, defend, protect and hold the other Party and its officers, officials, employees, agents and representatives harmless against any claim by any person or entity for any broker's or finder's (or similar) fee or commission arising out of any act or agreement of the indemnifying Party concerning this Agreement, the Property or the Project.

12.14 City Approvals and Actions. Whenever this Agreement requires action or approval by the City, the City Manager is authorized to act for the City unless specifically provided otherwise.

12.15 Consent, Reasonableness. Unless this Agreement specifically authorizes a party to withhold its approval, consent, or satisfaction in its sole discretion, any consent, or approval, or satisfaction to be requested or required of a party, shall not be unreasonably withheld, conditioned, or delayed.

12.16 Partial Invalidity. If any part of this Agreement is held to be invalid, void, or unenforceable in any legal, equitable or arbitration proceeding, the remainder of the Agreement shall continue in effect, unless not giving effect to the invalid or unenforceable part would prevent effecting the redevelopment purposes of the Project and this Agreement.

12.17 Ambiguity. This Agreement is the result of the combined efforts of the parties. Should any provision of this Agreement be found ambiguous, the ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but by construing the terms according to their generally accepted meaning, considering the objective of the Agreement.

12.18 Number and Gender. Masculine, feminine or neuter gender terms and singular or plural numbers will include others when the context so indicates.

12.19 Headings. All headings are for convenience only, are not a part of this Agreement, and are not to be used in construing this Agreement.

12.20 Binding Upon Successors. This Agreement shall bind and inure to the benefit of the successors in interest, personal representatives, and assigns of each party, subject to the limitation on transfer and assignment contained in this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor, representative, or assign of the party who has acquired an interest in compliance with the terms of this Agreement, or under law.

12.21 Relationship of the Parties. The relationship between the City and Developer is solely that of a California municipal corporation and an independent, private developer of property in a redevelopment project area. Nothing in this Agreement, the Grant Deed, or any other document executed in connection with this Agreement shall be construed as creating a partnership, joint venture, agency, employment relationship or similar relationship between the City

and Developer or any of Developer's contractors, subcontractors, employees, agents, representatives, transferees, successors-in-interest or assigns. Nothing in this Agreement establishes a principal and agent relationship between the parties.

12.22 Nature of the Project. The Project is a private undertaking of Developer. After the City conveys title or possession of the Property to Developer, Developer shall have exclusive control over the Property, subject to the terms of this Agreement and all applicable Federal, State and local laws, ordinances, codes, regulations, standards and policies. By entering and performing this Agreement, the City does not approve or endorse the Project except to implement the redevelopment purposes, goals, policies, and objectives of the City.

12.23 Time of Essence. Time is of the essence of each term, condition, and covenant contained in this Agreement.

12.24 Survival of indemnification Provisions. Unless otherwise specifically stated herein, each indemnification provision set forth in this Agreement shall survive the termination of this Agreement shall survive the Closing, and shall not merge with the Grant Deed or other document evidencing any interest in real property.

12.25 Amendments or Modifications. This Agreement may be amended or modified only by the written mutual consent of the parties, and the approval of the City.

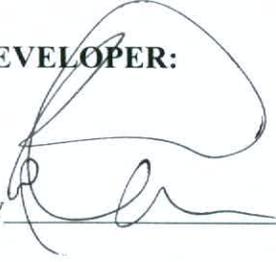
12.26 Exhibits. Each exhibit referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes. However, the provisions in the body of this Agreement will prevail over any inconsistent provisions or references in any exhibit.

12.27 Legal Advice. Each Party, in signing this Agreement, does so with knowledge of its legal rights. Each has received independent legal advice from its own legal counsel, or has chosen not to consult legal counsel. Each Party will be solely responsible for its own attorneys' fees in negotiating, reviewing, drafting, and obtaining the approval of this Agreement and all related agreements or documents.

12.28 Counterparts. The Parties may sign this Agreement in counterparts. Each counterpart, when executed and delivered, will be one instrument with the other counterparts. The Parties will sign at least four duplicate originals of this Agreement.

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

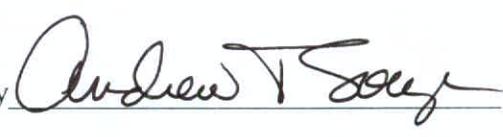
**DEVELOPER:**

By  \_\_\_\_\_

By Brian Robert Conrad Linder

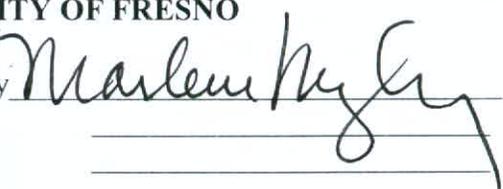
Dated: 11, 29, 07

**CITY OF FRESNO**

By  \_\_\_\_\_  
\_\_\_\_\_

Dated: 11-28-07

**REDEVELOPMENT AGENCY OF THE CITY OF FRESNO**

By  \_\_\_\_\_  
\_\_\_\_\_

Dated: 11-29-07

*The above persons to execute this agreement before a Notary Public and attach the notary acknowledgments.*

ATTEST:  
REBECCA E. KLISCH  
City Clerk

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
City Attorney

By Rebecca E. Klisch  
(Deputy) 11-29-07

By Sammy A. Frediana  
(Deputy/Assistant)

LAA:cs[42354cs/agt]-9/25/07, 2:35pm

Attachments:	Exhibit A	Site Map
	Exhibit A-1	Legal Description
	Exhibit B	Scope of Development
	Exhibit C	Development Schedule
	Exhibit D	Ground Lease
	Exhibit E	Release of Construction Covenants
	Exhibit F	Certificate of Completion
	Exhibit G	Basic Design
	Exhibit H	Affordability Restrictions Running With Land
	Exhibit I	Budget

LAA:cs;42354cs/agt; 11/28/07; 12:45 pm

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**SITE MAP**

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**EXHIBIT A**

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**LEGAL DESCRIPTION**

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Property in the City of Fresno, County of Fresno, California, more particularly described as follows:

Lot 12 and the southeasterly 22 feet 10 inches of Lot 11 in Block 82 of the Town (now City) of Fresno, in the County of Fresno, State of California according to the map thereof recorded in Book 4, Page 2 of Plats, in the records of said County.

**EXHIBIT A-1**

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**SCOPE OF DEVELOPMENT**

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**EXHIBIT B**

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**DEVELOPMENT SCHEDULE**

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<b><u>DEVELOPMENT EVENT</u></b>	<b><u>TIMING</u></b>
Submit Site Plan	60 days after submitting Financing Plan
Submit Building Plans	60 days after submitting Site Plan
Begin construction	90 days after submitting Building Plans
Complete Construction	730 days after Beginning Construction

**EXHIBIT C**

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**GROUND LEASE**

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**EXHIBIT D**

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**RELEASE OF CONSTRUCTION  
COVENANTS**

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**EXHIBIT E**

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**CERTIFICATE OF COMPLETION**

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CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

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

---

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

Redevelopment Agency

By: \_\_\_\_\_

[Marlene Murphey]

Its: Executive Director of Redevelopment

Dated: \_\_\_\_\_

Certificate of Completion

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Recitals:

- A. By a Disposition and Development Agreement (the "Agreement") dated \_\_\_\_\_, 2007 between LREG Partners, L.P., a California limited partnership ("Owner") and the Redevelopment Agency of the City of Fresno, a public body corporate and politic ("Agency"), Owner agreed to construct certain residential units, commercial units and an ice rink on the premises legally described in Attachment "A" hereto (the "Property") and preserve the Affordable Units, as defined in the Agreement as rental housing for Low -Income Families with the assistance of Agency housing set aside funds while meeting the Affordable Housing, income targeting and other requirements of the Community Redevelopment Law set forth at California Health and Safety Code Sections 33000 et seq. for a fifty-five (55) year Affordability Period according to the terms and conditions of the Agreement.
- B. The Agreement was recorded on \_\_\_\_\_, 2007 in the Official Records of Fresno County, California as Instrument No. \_\_\_\_\_.
- C. Under the terms of the Agreement, after Owner completes the construction on the Property, Owner may ask Agency to record a Certificate of Completion.
- D. Owner has asked Agency to furnish Owner with a recordable Certificate of Completion.
- E. Agency's issuance of this Certificate of Completion is conclusive evidence that Owner has completed the construction on the Property as set forth in the Agreement.

NOW THEREFORE:

1. Agency certifies that Owner commenced the construction work on the Project on \_\_\_\_\_, 2007, and completed the construction work on the Project on \_\_\_\_\_, 200\_, and has done so in full compliance with the Agreement.
2. This Certificate of Completion is not evidence of Owner's compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project.

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

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

IN WITNESS WHEREOF, the Agency has executed this Certificate of Completion as of this \_\_\_\_ day of \_\_\_\_\_, 200\_.

Redevelopment Agency of the City of Fresno

By: \_\_\_\_\_

Marlene Murphey  
Executive Director

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

Dated: \_\_\_\_\_, 200\_

LREG Partners, L.P.,  
a California limited partnership

By:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

ATTEST:  
CITY CLERK

APPROVED AS TO FORM:  
CITY ATTORNEY

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
Deputy

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT F**

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**BASIC DESIGN**

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[INSERT/ATTACH]

**EXHIBIT G**

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**AFFORDABILITY RESTRICTIONS  
RUNNING WITH LAND**

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In addition to the covenants and conditions contained in the Agreement, the following California Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.) affordability requirements shall be imposed upon the 22 Affordable Units on the Property funded under the Agreement and shall bind the Owner and all purchasers of the Property and their successors for a fifty-five (55) year period.

The Affordable Units on the Property are held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Exhibit, all of which are in furtherance of the Project, the Agency's Community Redevelopment Law and Plan Area obligations including Agency's obligations set forth at California Health & Safety Code sections 33334.2 et seq and 33413 (a) with respect to Housing Set Aside Funds and replacement dwelling units at affordable rent within the jurisdiction of the Agency. 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 Affordable Units upon the Property or any part thereof, will inure to the benefit of the Agency, and will be enforceable by it. Any purchaser under a contract of sale or other transferee of an interest covering any right, title or interest in any part of the Affordable Units 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, covenants, and limitations set forth in this Exhibit for the period of fifty-five (55) years running from and after recordation of Agency's Certificate of Completion constituting the Affordability Period.

1. Restrictions. The following covenants and restrictions ("Restrictions") on the use and enjoyment of the Affordable Units upon the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of the Agency and shall run with the Affordable Units upon the Property and be binding on any future owners of the Property and inure to the benefit of and be enforceable by the Agency. These covenants and restrictions are as follows:

a. From the date of recordation of the Agency's Certificate of Completion until the expiration of the Affordability Period the 22 Affordable Units funded under the Agreement are to be

used as Affordable Rental Housing and affordable replacement dwellings as provided for in the Agreement. Owner agrees to file a recordable document setting forth the project Completion Date and the Affordability Period as and when determined by the Agency. Unless otherwise provided in the Agreement, the term affordable rental 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 Property, nor shall Owner or any person claiming under the Owner, establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Property.

Principal Residence. Each of the Affordable Units upon the Property shall be leased only to natural persons, who shall occupy such as a principal residence.

Income Requirements. Each of the 22 Units constituting Affordable Rental Housing upon the Property may be leased only to (a) natural person(s) whose annual household income at the time of initial occupancy qualifies as a low income household as calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent with the applicable California Redevelopment Law.

Injunctive Relief and Recapture. Should any of the 22 Affordable Units constituting Affordable Rental Housing upon the Property not continue to be, at the time of initial occupancy, the principal residence of a Household that qualifies as a low-income or moderate-income Household, during the period of Affordability, such Unit(s) shall be made available for subsequent lease only to Households that qualify as a low-income or very low-income for use as the Household's principal residence.

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

3. Acceptance and Ratification. All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the above Restrictions.

The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Restrictions, as such may be amended or supplemented from time to time, is accepted and ratified by such future owners, tenant or occupant, and such Restrictions shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

4. Benefit. This Exhibit and the Restrictions therein shall run with and bind the Property for a term commencing on the date the Agreement to which this Exhibit is attached 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 Agency and/or any other person entitled to enforce these 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. Costs and Attorney's Fees. In any proceeding arising because of failure of Owner or any future owner of the Property to comply with the Restrictions required by this Exhibit, as may be amended from time to time, Agency shall be entitled to recover its respective costs and reasonable attorney's fees incurred in connection with such default or failure.

6. Waiver. Neither Owner nor any future owner of the Property may exempt itself from liability for failure to comply with the Restrictions required in this Exhibit.

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

8. Pronouns. Any reference in this Exhibit and the Restrictions therein 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.

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

10. Capitalized Terms. All capitalized terms used in this Exhibit, unless otherwise defined herein, shall have the meanings assigned to such terms in the Agreement.

**EXHIBIT H**

# **EXHIBIT I**

[Budget]