

**AGREEMENT BETWEEN
CITY OF FRESNO
AND
TFS INVESTMENTS, LLC.
FOR THE NEIGHBORHOOD STABILIZATION PROGRAM**

THIS AGREEMENT, is entered this 29th day of November, 2012 by and between the City of Fresno ("CITY") and TFS INVESTMENTS, LLC., a California Limited Liability Company ("DEVELOPER").

RECITALS

WHEREAS, CITY has applied for and has been awarded funds from the United States Department of Housing and Urban Development (HUD) for a Neighborhood Stabilization Program 3 and a Neighborhood Stabilization Program 1, ("NSP3" and "NSP1" respectively, or "NSP" collectively); and

WHEREAS, to advance the supply of affordable rental housing within the city of Fresno, CITY desires, among other things, to encourage investment in the affordable rental housing market.

WHEREAS, CITY has an allocation of the NSP3 and NSP1 funds to award in accordance with applicable notices, regulations and guidance from HUD in the pursuit of encouraging the development of affordable rental housing; and

WHEREAS, DEVELOPER desires to act as the owner/developer exercising effective project control, as to the acquisition, rehabilitation, related on-site and off-site improvements, and rental of foreclosed and abandoned residential properties hereinafter referred to as the "Project(s)", and shall preserve the residential properties as low, moderate, and middle-income rental housing, as defined by the NSP Program and this Agreement; and

WHEREAS, to further its goal of increasing the supply of Affordable Rental Housing within the City of Fresno, CITY desires to assist DEVELOPER by providing an aggregate of up to One Million Eight Hundred Thousand dollars and 00/100 (\$1,800,000.00) in the form of residual receipts NSP loan(s) to DEVELOPER for the Project(s) (the "LOAN(S)"), for reimbursement of NSP-eligible costs.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals, incorporated herein by reference, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree as follows:

A. SERVICE

DEVELOPER will carry out the services required under this agreement satisfactory to CITY and in full accordance with the policies, procedures and other provisions of the NSP Single-Family and Multi-Family Rental Development Program Manual ("Program Manual"), provided to DEVELOPER by CITY, and incorporated herein by reference. DEVELOPER hereby agrees to accept and follow any written amendments to the Program Manual by CITY that are

APPROVED BY CITY COUNCIL
November 29, 2012
By *Sherrin L. Badertocher*
DEPUTY

made as a direct result of additional guidance or regulations provided by HUD, as well as any written amendments that are mutually agreed upon by CITY; and

1. Subject to the prior review and approval of CITY, DEVELOPER shall acquire, develop and/or rehabilitate, rent and operate residential property that is foreclosed upon, abandoned or vacant in accordance with the definitions and requirements of the NSP program and this Agreement and as described in Division IV, Scope of Service.

2. DEVELOPER is responsible for providing the deliverables herein described within the time periods and for the approximate average budget amounts described in EXHIBIT "A", Rental Development Activity and Detailed Budget attached hereto and incorporated herein.

B. TIME OF PERFORMANCE

1. Commencement and Completion Dates Services of DEVELOPER shall commence on the day this Agreement is executed by the last party to execute it ("Commencement Date") and shall be completed on December 31, 2013 ("Completion Date") with all NSP funds allocated having been expended, unless CITY, through its City Manager's office, and at its sole discretion, approves an extension of the completion date.

2. Term of This Agreement and the provisions herein shall begin on the Commencement Date and will remain in force with respect to the Project(s), unless terminated earlier as provided herein, through the duration of the Affordability Period and will continue for the time period during which DEVELOPER is responsible for NSP reporting or compliance measures or remains in control of NSP funds (e.g. Loans are outstanding) or other NSP assets, including program income for any Project(s) after which this Agreement shall terminate.

C. LOAN(S)

DEVELOPER'S sole source of compensation hereunder will be in the form of LOANs of NSP funds as described herein.

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

2. The total amount of NSP funding allocated to DEVELOPER is up to Three Million Three Hundred Thousand Dollars and no/100 (\$3,300,000.00). This amount represents an allocation of CITY's total NSP3 and NSP1 funding which is contingent upon DEVELOPER's performance.

3. A detailed project budget and cash flow projections are included in EXHIBIT "A" attached hereto. CITY may require additional budget breakdowns, for individual properties and/or

collectively in a form and content prescribed by CITY. DEVELOPER shall provide such supplementary budget information in a timely fashion on CITY'S request.

4. Loan of NSP3 and NSP1 Funds. CITY agrees to provide a Loan of NSP3 Funds to DEVELOPER in an amount not to exceed One Million Eight Hundred Thousand dollars and 00/100 (\$1,800,000.00) under the terms and conditions provided in this Agreement. The NSP Funds shall only be used for payment or reimbursement of NSP Eligible Costs.

5. Loan Documents. For each Project, DEVELOPER shall execute and documents shall consist of a Note, a Deed(s) of Trust on the Property securing said note, a Declaration of Restrictions, samples of which are attached hereto as Exhibits "E", "D" and "C" respectively, and a memorandum of this Agreement. It is understood that each property will have separate Loan Documents.

6. Loan Repayment and Maturity and Interest Rate. The LOAN(s) will be due and payable in 30 years from origination date in accordance with the Note(s). Each LOAN will have an Affordability Period based on the amount of NSP funds loaned per Unit (See Division II) and bear interest at two percent (2%) per annum. Repayment shall commence at the end of the Affordability Period with payments due annually from Residual Receipts with all remaining principal and interest due at maturity.

7. Incorporation of Documents. The Loan Documents, the Act and HUD NSP regulations and all exhibits, attachments, documents and instruments referenced herein, as now in effect and as may be amended from time to time, constitute part of this Agreement and are incorporated herein by reference. All such documents have been provided to the parties herewith or have been otherwise provided to/procured by the parties and reviewed by each of them prior to execution hereof.

8. Use of NSP Funds. DEVELOPER warrants, covenants and agrees that it shall request NSP Funds only for reimbursement of eligible costs aggregating not more than One Million Eight Hundred Thousand dollars and 00/100 (\$1,800,000.00) for all Projects.

a. If any such Funds shall be determined to have been requested and/or used by DEVELOPER for costs other than for Eligible Costs, subject to the notice and cure provisions of this Agreement, an equal amount from nonpublic funds shall become immediately due and payable by DEVELOPER to CITY. Notwithstanding, subject to DEVELOPER'S full cooperation with CITY and at CITY'S sole discretion, DEVELOPER will/may be entitled to participate in any opportunity to remedy, contest, or appeal such determination.

b. In the event NSP Funds are requested to reimburse Eligible Costs which subsequently lose eligibility as Eligible Costs, DEVELOPER shall immediately return such NSP Funds to CITY.

9. Conditions Precedent to Disbursement. CITY shall not be obligated to make or authorize any disbursements of NSP Funds unless all the following conditions are satisfied:

a. There exists no Event of Default as provided in this Agreement, nor any act, failure, omission or condition that with the giving of notice would constitute an Event of Default.

b. Insurance coverage as required hereunder has been provided to and approved by CITY's Risk Manager.

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

d. DEVELOPER has provided CITY with a written Request for Disbursement of Funds and the Certification as described below.

10. Request for and Disbursement of NSP Funds. DEVELOPER shall request disbursement of NSP Funds using CITY's Request for Disbursement of Funds form acceptable to CITY. All requests must provide in detail such Eligible Costs applicable to the request. All requests shall be accompanied with the Certification required by paragraph 11 below. Said request shall be itemized and properly documented to clearly show the items, tasks or services for which payment is being claimed and the basis for cost computation whether by purchase agreement, cost per hour, cost per weight, cost per task or other measurement as agreed by and between CITY and DEVELOPER, as otherwise set forth in this Agreement. Approved requests for reimbursements will be paid by check to DEVELOPER. In the case of approved property acquisition costs, CITY will also provide a disbursement of NSP funds to escrow.

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

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

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

c. DEVELOPER has not committed or suffered an act, event, occurrence, or circumstance that constitutes an Event of Default or that with giving of notice would constitute an Event of Default; and

d. The Disbursement requested is solely for reimbursement of eligible costs and is supported by the itemized documentation that the expenses have been properly incurred and are properly chargeable in connection with the Affordable Units.

12. Disbursement of Funds. Disbursements of NSP Loan proceeds shall occur within the normal course of business (approximately thirty (30) days) after CITY receives and approves the Request for Disbursement of Funds and the Certification to the extent NSP Funds have been allocated. The disbursements of NSP funds to escrow for property purchases is a process that may be used at CITY's sole discretion and may be completed through a wire, or through the printing of check(s) to be deposited into escrow.

13. Recapture and Reallocation of DEVELOPER'S NSP Allocation. If DEVELOPER fails to expend NSP funds as indicated with regard to the goals and delivery schedule in EXHIBIT "A", CITY at its sole discretion may recapture all or a portion of DEVELOPER's total NSP funding allocation. The portion recaptured will be equal to CITY's estimate of the amount of NSP funds that would remain unspent by the spending deadlines described herein, based on DEVELOPER's activities to date and capacity to complete the work.

In addition, the amount of DEVELOPER's NSP funding allocation that is not obligated or expended by the Completion will be recaptured immediately unless CITY grants an extension of the Completion Date in writing based on extenuating circumstances and compelling evidence that obligations will be completed during the extended period.

D. CITY RESPONSIBILITIES

CITY is responsible for the following tasks and deliverables.

1. Review and approval, within Program guidelines, of each property purchase as described herein and in the Program Manual.
2. Completing Tier 1 environmental assessments and providing Tier 1 clearances for all NSP target areas, as well as completing and approving site-specific environmental reviews completed by DEVELOPER.
3. Management of all draws of NSP funds from HUD and payment of valid and properly documented reimbursement requests from DEVELOPER.
4. Reporting to HUD via the Disaster Recovery Grant Reporting (DRGR) system, using, in part, data provided by DEVELOPER.
5. Monitoring all program activities of DEVELOPER to assure compliance with the terms of this Agreement including all NSP3 and NSP1 requirements.
6. Processing requests for disbursements of NSP3 and NSP1 funds, including necessary construction inspections, in a timely manner; CITY will clearly and promptly describe any deficiencies identified by CITY that prevent a disbursement or portion of a disbursement from being approved. Upon the request of DEVELOPER, CITY must promptly itemize and describe such deficiencies in writing.

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**DIVISION II
GENERAL CONDITIONS**

I. DEFINITIONS

The following terms have the meaning and content set forth whenever and wherever used in this Agreement and any attached exhibits or attachments hereto.

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

Acquisition Cost means the purchase price of a property, appraisal fees, property inspection fees paid to a third party (e.g. pest inspection, lead-based paint inspection, etc.), fees and points associated with DEVELOPER'S use of temporary private funds for purchase of property, not to exceed three (3) points and 8% interest p.a.

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

Affordability Period means the minimum period of affordability, by level of NSP investment per unit as determined by the following table, commencing thirty (30) days from the recording of the Certificate of Completion:

NSP3 Investment	Affordability Period
<\$15,000/unit	5 years
\$15,000-\$40,000/unit	10 years
>\$40,000	15 years

Affordable Project (also known as Property(ies); NSP Assisted Units OR Property(ies) Affordable Rental Housing) means the acquisition, rehabilitation and leasing of NSP assisted housing units and related on-site and off-site improvements, to be located upon the Affordable Project Property(ies). All units will be leased as Low, Moderate, and Middle income housing in accordance with the NSP Program requirements, and stipulations in this Agreement.

Affordable Project Property refers to the Property(ies) on which the Affordable Project Units will be located.

Affordable Rental Housing means the rental housing units to be acquired, rehabilitated and rented, on the Affordable Project Property(ies).

Budget means the Proposed Project Budget attached hereto as EXHIBIT "A" in sample format, for the Project(s), as may be amended, upon the approval of CITY's Housing and Community

Development Division Manager, provided any increase in NSP Funds hereunder requires City Council Approval.

Certificate of Completion means that certificate issued, in the form attached as EXHIBIT "B" to be issued to DEVELOPER by CITY evidencing completion of the Project(s), a release of construction related covenants for the purposes of the Agreement, to be issued individually for each property assisted with NSP funds.

CFR means the Code of Federal Regulations.

Commencement of Construction means the various date(s) that DEVELOPER or DEVELOPER's construction DEVELOPER begins substantial physical work on each Property, including, without limitation, delivery of materials and any work, beyond maintenance of the Property(ies) in its status quo condition, and not later than thirty (30) calendar days following CITY's approval of commencement of construction.

Completion Date means the date that CITY issues the final recorded Certificate of Completion for the Project(s). The final Completion Date of the Project is December 31, 2013 unless extended as provided herein.

Contract means this Agreement.

Current Market Appraised Value means the value of a foreclosed upon home or residential property that is established through an appraisal made in conformity with the appraisal requirements of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (URA) at 49 CFR 24.103 and completed within 60 days prior to a final offer made for the property(ies) by DEVELOPER; provided, however, if the anticipated value of the proposed acquisition is estimated at \$25,000 or less, the current market appraised value of the property may be established by a valuation of the property that is based on a review of available data and is made by a person CITY determines is qualified to make the valuation.

Declaration of Restrictions means the Declaration of Restrictions, as outlined substantially in the form attached hereto as EXHIBIT "C", which shall be recorded against the Property(ies) no later than the date of disbursement of Loan funds for the purchase of said Property(ies), setting out the requirements of this Agreement which shall run with the land.

Deed of Trust means that standard deed of trust including assignment of rents and security agreement given by DEVELOPER, as Trustor, to CITY as beneficiary recorded against the Property(ies). All deeds of trust must be approved by the City Attorney as to form, as well as any amendments to, modifications of and restatements of said Deed of Trust. The terms of any such Deed of Trust shall be substantially in the form attached hereto as EXHIBIT "D".

Development Costs – see Eligible Costs.

Eligible Costs or Development Costs means those costs allowable under NSP Regulations for acquisition, development, rehabilitation and operation of NSP assisted units as may be reimbursed by the Loan, consistent with the individual project budgets as pre-approved by CITY, provided, however, that costs incurred in connection with any activity that is determined to be ineligible under the Program by HUD or CITY shall not constitute Eligible Costs.

Event of Default shall have the meaning assigned to such term hereunder.

Family has the same meaning given that term in 24 CFR 570.3.

Federal Neighborhood Stabilization Program 1 Funds (also referred to in this Agreement as "NSP1 Funds") refers to the federal Neighborhood Stabilization Program 1 administered by HUD.

Federal Neighborhood Stabilization Program 3 Funds (also referred to in this Agreement as "NSP3 Funds") refers to the federal Neighborhood Stabilization Program 3 administered by HUD.

Foreclosed. A home or residential property is foreclosed upon if any of the following conditions apply: (a) The property's current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified; (b) the property owner is 90 days or more delinquent on tax payments; (c) under state, local, or tribal law, foreclosure proceedings have been initiated or completed; or (d) foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP CITY, DEVELOPER, sub-recipient, DEVELOPER, or end user.

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

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

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

Low, Moderate, and Middle income households means those households whose annual income is at or below 120 percent (120%) of the median income for the Fresno, California Metropolitan Statistical Area (MSA) as determined by HUD, except as HUD may establish income ceilings higher or lower for the area on the basis of HUD findings that such variations are necessary.

Note refers to the instrument evidencing the non-assumable, NSP3 and NSP1 Loan(s) given by DEVELOPER as promissor, in favor of CITY as promisee, for the performance of the services set forth in this Agreement and secured by a Deed of Trust naming CITY as beneficiary.

Operating Expenses means actual, reasonable and customary (for comparable quality, construction of rental housing in Fresno County) costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the Project in a calendar year, including, without limitation: painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certificates, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings which are not paid from the capital replacement reserve, fees and expenses of property management and common area expenses, fees and expenses of accountants, attorneys and other professionals, repayment of any completion or operating loans

including any and all deferred DEVELOPER's fees per the Budget, made to DEVELOPER, its successors or assigns, and other actual operating costs and capital costs which are incurred and paid by DEVELOPER, but which are not paid from reserve accounts.

Program Income has the meaning provided by HUD regulations for NSP3 and NSP1.

Project Schedule means the schedule for commencement and completion of the Project included within the Rental Development Activity and Detailed Budget, EXHIBIT "A".

Project Units means the units acquired, rehabilitated and leased on the property(ies) to be preserved as Affordable NSP3-assisted and NSP1-assisted Units.

Property means the property and/or properties to be purchased by DEVELOPER, as pre-approved in writing by CITY, to be rehabilitated and leased in accordance with the terms of this Agreement.

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

Residual Receipts means Residual Receipts as defined in the Note.

Unit means a dwelling unit of the Project.

Very Low-Income. For the purposes of this Agreement means those whose annual income does not exceed fifty-percent (50%) of the median income for the Fresno, California Metropolitan Statistical Area as determined by HUD, except as HUD may establish income ceilings higher or lower than 50% of the median income for the area on the basis of HUD findings that such variations are necessary.

II. INDEPENDENT CONTRACTOR

In the furnishing of the services provided for herein, DEVELOPER is acting solely as an independent DEVELOPER. Neither DEVELOPER, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which DEVELOPER shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that DEVELOPER is performing its obligations in accordance with the terms and conditions thereof.

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

Because of its status as an independent DEVELOPER, DEVELOPER and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. DEVELOPER shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, DEVELOPER shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of DEVELOPER'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, DEVELOPER may be providing services to others unrelated to CITY or to this Agreement.

III. INSURANCE REQUIREMENTS

Throughout the life of this Contract, DEVELOPER shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) 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 City's Risk Manager. The following policies of insurance are required:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:
 - \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$2,000,000 aggregate for products and completed operations
 - \$2,000,000 general aggregate applying separately to the work performed under the Contract
- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.
- (iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.
- (v) BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. (Only required if the project includes new construction of a building; or renovation of, or addition to, an existing building.)

- (vi) CONTRACTORS POLLUTION LIABILITY (required unless waived in writing by the City's Risk Manager or his/her designee) insurance with limits of liability of not less than the following:
 - \$1,000,000 per occurrence or claim
 - \$2,000,000 general aggregate per annual policy period

In the event DEVELOPER purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

In the event this Contract involves any lead based, mold or asbestos environmental hazard, either the Automobile Liability insurance policy or the Contractors Pollution Liability insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by DEVELOPER pursuant to the Contract.

In the event this Contract involves any lead-based environmental hazard (e.g., lead based paint), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event this Contract involves any asbestos environmental hazard (e.g., asbestos identification or remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event this Contract involves any mold environmental hazard (e.g., mold identification or remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and "microbial matter including mold" within the definition of "Pollution" under the policy.

DEVELOPER shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and DEVELOPER shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) DEVELOPER shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

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

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form. The DEVELOPERs Pollution Liability insurance policy shall be written on either an occurrence form, or a claims-made form. The General Liability, Automobile Liability and DEVELOPERs Pollution Liability insurance policies shall name City, its officers, officials, agents, employees and volunteers as an additional insured. All such policies of insurance shall be endorsed so DEVELOPER's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to

City, its officers, officials, employees, agents and volunteers. If DEVELOPER maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by DEVELOPER. The General Liability insurance policy shall also name the City, its officers, officials, agents, employees and volunteers as additional insureds for all ongoing and completed operations. The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the City as a loss payee. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.

DEVELOPER shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Contract and before work commences. Upon request of City, DEVELOPER shall immediately furnish City with a complete copy of any insurance policy required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Contract.

Claims-Made Policies - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Contract or the commencement of work by DEVELOPER.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the work or termination of the Contract, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract, or work commencement date, DEVELOPER must purchase extended reporting period coverage for a minimum of 5 years after completion of the work or termination of the Contract, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to City for review.
- (v) These requirements shall survive expiration or termination of the Contract.

If at any time during the life of the Contract or any extension, DEVELOPER or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Contract shall be discontinued immediately, and all payments due or that become due to DEVELOPER shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Contract. No action taken by City hereunder shall in any way relieve DEVELOPER of its responsibilities under this Contract. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

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

DEVELOPER, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Contract and the final acceptance by the City of the work or materials to be performed or supplied thereunder, the DEVELOPER shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the DEVELOPER or his/her insurance company from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

If DEVELOPER should subcontract all or any portion of the services to be performed under this Contract, DEVELOPER shall require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with DEVELOPER and City prior to the commencement of any work by the subcontractor.

IV. PERFORMANCE AND PAYMENT BONDS

The DEVELOPER shall provide two good and sufficient surety bonds from a corporate surety admitted by the California Insurance Commissioner to do business in the State of California, on forms as those provided by the City in these Specifications, and approved by the City.

1. The "Payment Bond" shall be for not less than 100 percent of the Contract price, to satisfy claims of material suppliers and of mechanics and laborers employed by DEVELOPER on the work. The bond shall be maintained by the DEVELOPER in full force and effect until the work is completed and accepted by the City, and until all claims for materials and labor are paid, and shall otherwise comply with Chapter 7, Title XV, Part 4, Division 3 of the California Civil Code.

2. The "Faithful Performance Bond" shall be for 100 percent of the Contract price to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the City, and that all materials and workmanship will be free from original or developed defects.

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

V. INDEMNIFICATION

To the furthest extent allowed by law including California Civil Code section 2782, DEVELOPER shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in Contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by City, DEVELOPER or any other person,

and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. DEVELOPER's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If DEVELOPER should contract or subcontract all or any portion of the work to be performed under this Contract, DEVELOPER shall require each DEVELOPER and/or subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph. This section shall survive termination or expiration of this Contract.

VI. GENERAL GUARANTY

Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the DEVELOPER or its DEVELOPER of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The DEVELOPER or its DEVELOPER shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of 1 year from the date of final acceptance of work unless a longer period is specified. The Engineer will give notice of observed defects with reasonable promptness.

VII. PRECEDENCE OF CONTRACT DOCUMENTS

The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this project; (2) Permits from other agencies as may be required by law; (3) Supplemental Agreements, Change Orders, or this Agreement the one dated later having precedence over another dated earlier; (4) Special Conditions; (5) General Conditions; (6) Technical Specifications; (7) Plans; (8) Standard Specifications; (9) Standard Plans. Detailed Plans shall have precedence over general Plans.

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

Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order of precedence.

VIII. NONFEDERAL LABOR STANDARD PROVISIONS

GENERAL PROVISIONS: The following Nonfederal Labor Standards Provisions, including the following provisions concerning: maximum hours of work, minimum rates of pay, and overtime compensation, with respect to the categories and classifications of employees hereinafter mentioned are included in the Contract pursuant to the requirements of applicable State or local laws, but the inclusion of such provisions shall not be construed to relieve the DEVELOPER or

any subcontractor from the pertinent requirements of any corresponding Federal Labor-Standard Provisions of this Contract. In cases the minimum rates of pay set forth below shall be higher than the minimum rates of pay required by or set forth in the Federal Labor-Standards Provisions of this Contract for corresponding classifications, the minimum rates of pay set forth below shall be deemed, for the purpose of this Contract, to be the applicable minimum rates of pay for such classifications. The limitations, if any, in these Nonfederal Labor Standards Provisions upon the hours per day, per week or month which employees engaged on the work covered by this Contract may be required or permitted to work thereon shall not be exceeded.

SCHEDULE OF WAGES AND SALARIES: In accordance with the provisions of sections 1770 to 1781, inclusive of the Labor Code of the State of California and/or section (1)(b) of the United States Labor Code, the Director of Industrial Relations and/or the United States Secretary of Labor shall ascertain the general prevailing rate of wages applicable to the work to be done under this Contract to be included in these Specifications by reference. (Copies of the wage rates or specific wage rate determinations may be obtained from the Contract Compliance Officer at City of Fresno Public Works Department, Construction Management Division, 1721 Van Ness, Fresno, California 93721, (559) 621-5600.)

LABOR CODE SECTION 1775: PENALTIES FOR UNDER-PAYMENT OF WAGES: The DEVELOPER and each subcontractor shall comply with California Labor Code section 1775 and pay not less than the wages established by the Director of the Department of Industrial Relations and/or the Federal government. In accordance with such section 1775, DEVELOPER or such subcontractor shall, as a penalty to the City, forfeit up to \$200.00, as determined by the Labor Commissioner, for each calendar day or portion thereof for each worker under this Contract paid less than the established wage rates. These penalties shall be withheld from progress payments then due. The DEVELOPER shall contain in each subcontract the requirements hereunder.

PENALTIES FOR VIOLATION OF EIGHT HOUR DAY: Eight hours labor constitutes a regular day's work under this Contract. DEVELOPER or any subcontractor under him/her shall forfeit as a penalty to the City \$25.00 for each worker employed in the execution of this Contract by DEVELOPER or such subcontractor for each calendar day during which any such worker is required or permitted to labor more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of sections 1810 to 1815, inclusive, of the California Labor Code. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of the California Labor Code, and notwithstanding the foregoing, work performed by employees of DEVELOPERs and subcontractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours in excess of 8 hours per day at not less than one and one-half (1.5) times the basic rate of pay.

LABOR CODE SECTION 1777.5; EMPLOYMENT OF APPRENTICES: If this Contract involves \$30,000 or more, the DEVELOPER and each subcontractor shall comply with California Labor Code section 1777.5, as it may be amended from time to time, the entire provisions of which are incorporated by this reference as if fully set forth herein, and Article 10, Subchapter 1, Chapter 2, Title 8 of the California Code of Regulations for all apprenticeable occupations applicable to the work as defined in such laws and regulations. DEVELOPER shall be responsible for the compliance with such Labor Code section for all apprenticeable occupations and shall contain in each subcontract the requirements hereunder. In accordance with section 1777.5 of the California Labor Code and the rules and regulations of the California Apprenticeship Council, properly indentured apprentices shall be employed in the execution of this Contract in at least

the ratio of not less than 1 hour of apprentice work for every 5 hours of journeyman work (unless the respective DEVELOPER or subcontractor has been exempted from such ratio) and paid the prevailing rate of per diem wages for apprentices in the trade to which he/she is registered. The employment and training of each apprentice shall be in accordance with either the apprenticeship standards and apprentice agreements under which he/she is training, or the rules and regulations of the California Apprenticeship Council. Prior to commencing work on the Contract, DEVELOPER and each subcontractor shall submit contract award information to the City, if requested, and to an applicable apprenticeship program that can supply apprentices to the job site. The information shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. Within 60 days after concluding work on the Contract, the DEVELOPER and each subcontractor shall submit to the City, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Contract. DEVELOPER shall employ apprentices for the number of hours computed before the end of the Contract or, in the case of the subcontractor, before the end of the subcontract and endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site.

FRESNO MUNICIPAL CODE SECTION 4-113; LABOR CODE SECTION 1777.5; EMPLOYMENT OF APPRENTICES: If this Contract involves \$500,000 or more, the DEVELOPER shall contain in each subcontract the requirements hereunder and be responsible for providing all documentation required hereunder from subcontractor to the City. The DEVELOPER and each subcontractor shall provide documentation to City demonstrating compliance with the requirements of California Labor Code section 1777.5 and Article 10, Subchapter 1, Chapter 2, Title 8 of the California Code of Regulations by providing City copies of each of the following:

1. All contract award information (e.g., completed form DAS 140) sent by DEVELOPER and by subcontractors to the State Division of Apprenticeship Standards and each applicable apprenticeship program in accordance with California Labor Code section 1777.5, as may be amended from time to time, including identification of addressee.
2. All requests by DEVELOPER and by subcontractors for approval, and all responses and certificates from any applicable apprenticeship program disapproving or approving DEVELOPER or subcontractor(s), to train apprentices; if any.
3. All requests by DEVELOPER and by subcontractors for dispatch of apprentices from any applicable apprenticeship program (e.g., completed form DAS 142); and all responses thereto, if any.
4. All certifications, if any, of DEVELOPER and of subcontractor(s) as an individual employer apprenticeship program by the State Division of Apprenticeship Standards or the California Apprenticeship Council.
5. All apprenticeship agreements of apprentices employed by DEVELOPER and by subcontractor(s) and performing work under the Contract.
6. A verified statement by the DEVELOPER and by the subcontractor within 60 days after concluding the work of the respective journeyman and apprentice hours performed on the Contract or subcontract.

7. All certificates of any exemption by the State Division of Apprenticeship Standards, California Apprenticeship Council or any apprenticeship program of DEVELOPER or subcontractor from any requirements of California Labor Code section 1777.5, as may be amended from time to time.

8. Other documentation as may be requested by City.

LABOR CODE SECTION 6705: If this Contract involves an estimated expenditure in excess of \$25,000.00 and excavation of any trench or trenches five feet or more in depth, then your attention is directed to California Labor Code section 6705 relating to a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, the entire provisions of which are incorporated by this reference as if fully set forth hereinafter. Before execution of the Contract by the City, the DEVELOPER shall submit to the City and the Engineer shall accept, if satisfactory to him/her, said detailed plan.

If, in the Engineer's opinion, there is any noncompliance with said detailed plan, then the DEVELOPER shall stop forthwith all trench work until, either in the Engineer's or the State Division of Industrial Safety's opinion, there is compliance. The City shall not be liable for costs incurred by the DEVELOPER due to the work stoppage and the DEVELOPER will not be given nor is entitled to an extension of time to complete the work within the time set forth in this Contract due to the work stoppage.

WAGE AND PRICE CONTROL: Notwithstanding any provisions of the Contract to the contrary, the DEVELOPER shall be bound by the orders issued and rules and regulations adopted pursuant to the Economic Stabilization Act of 1970 (Public Law 91-379, 84 Statutes 799), as amended, or any subsequent Act of Congress.

COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970: This Contract is subject to all terms and conditions of the OCCUPATIONAL SAFETY AND HEALTH ACT of 1970, the California Occupational Safety and Health Act and their present and future amendments. DEVELOPER expressly assumes responsibility for compliance therewith and warrants that all materials, supplies and equipment provided or installed pursuant to this Contract, whether provided by the DEVELOPER, subcontractor, or a supplier, fully satisfy the requirements of said Acts. DEVELOPER shall, upon insertion in each Contract with a subcontractor or supplier of a clause by which the subcontractor or supplier warrants such compliance, be relieved of responsibility by the subcontractor or supplier.

LABOR CODE SECTION 1776; PAYROLLS AND BASIC RECORDS: The DEVELOPER and each subcontractor shall comply with California Labor Code section 1776, the entire provisions of which are incorporated by this reference as if fully set forth herein, and DEVELOPER shall contain in each subcontract the requirements hereunder.

1. Accurate payroll records and basic records relating thereto shall be maintained by the DEVELOPER and each subcontractor during the course of the work and preserved for a period as required by law for all journeymen, apprentices, workers, and other employees employed in connection with the work. Such records shall contain information as on the payroll record forms provided by the Division of Labor Standards of the Department of Industrial Relations, the name, address, social security number, work classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents), daily and weekly number of hours worked, deductions made and actual per diem wages paid. The

DEVELOPER shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to all employees affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

DEVELOPERS employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. (a) The DEVELOPER shall submit weekly (7 days after each week ending pay period) for each week in which any Contract work is performed a certified copy of all payrolls to the Engineer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The DEVELOPER is responsible for the submission of certified copies of payrolls by all subcontractors.

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the DEVELOPER or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify under penalty of perjury under the laws of the State of California each of the following:

- (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause entitled "LABOR CODE SECTION 1776; PAYROLLS AND BASIC" and that such information is true, correct and complete;
- (ii) That each employee employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions;
- (iii) That each employee has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract;
- (iv) DEVELOPER has complied with the requirements of California Labor Code sections 1771, 1811, and 1815 for any work performed hereunder by his/her employees.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b) (2) of this clause.

(d) The falsification of any of the above certifications may subject the DEVELOPER or Subcontractor to civil or criminal prosecution.

3. The DEVELOPER or subcontractor shall make certified copies of all the records required under paragraph (a) of this clause available for inspection at all reasonable hours at the principal office of the DEVELOPER by, and furnished upon request to, the Engineer, the Division of Labor Standards Enforcement of the Department of Industrial Relations, the Division of Apprenticeship Standards of the Department of Industrial Relations, and each of their authorized representatives. A certified copy of the employee's record shall likewise be made available for inspection or furnished upon request by the employee or his/her authorized representative. The DEVELOPER shall provide hereunder the street address, city and county of the location of the payroll records maintained by DEVELOPER and shall provide a notice of any

change of location and address within 5 working days of such change. The DEVELOPER and subcontractors shall permit such representatives to interview employees during working hours on the job. If the DEVELOPER or subcontractor fails to submit the required records within 10 days after each week ending pay period, or to furnish or make them available for inspection within 10 days of request, (DEVELOPER has 10 days to comply) after written notice, the DEVELOPER shall forfeit \$100.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, pursuant to California Labor Code section 1776. These penalties shall be withheld from progress payments then due.

IX. FAIR EMPLOYMENT PRACTICES AND NONDISCRIMINATION

In connection with the performance of work under this Contract, the DEVELOPER agrees as follows:

1. The DEVELOPER shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), marital status, political affiliation, sex, age (over 40), sexual orientation, and denial of family care leave or on any other basis prohibited by law. The DEVELOPER shall ensure that the treatment of employees and evaluation of applicants for employment are free of such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The DEVELOPER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment Practices section.

2. DEVELOPER and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

3. DEVELOPER assures City that it shall comply with the requirements of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989) and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same. Said group of laws and requirements are collectively referred to in this Contract as the "anti-discrimination laws".

4. The DEVELOPER will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a written notice advising the said labor union or workers' representative of the DEVELOPER's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The DEVELOPER will permit access to his/her records of employment, employment advertisements, application forms, and other pertinent data and records by the City, State of California, the State Fair Employment and Housing Commission, or any other appropriate agency designated by the City or the State of California, for the purposes of investigation to ascertain compliance with the Fair Employment Practices and Nondiscrimination section of this Contract.

6. DEVELOPER agrees to collect and maintain information to show compliance with the "anti-discrimination laws" including a list of discrimination complaints, reports of any compliance reviews conducted by other agencies descriptions of any pending discrimination-based lawsuits and data on the racial, ethnic, national origin, sex and handicap characteristics of the population it serves.

7. DEVELOPER agrees to cooperate with City, and any other appropriate agency designated by the City, in all manner necessary to permit City and any such agency to adequately report to the United States Environmental Protection Agency on DEVELOPER's compliance with the "anti-discrimination laws".

8. A finding of willful violation of the Fair Employment Practices section of this Contract or of the California Fair Employment and Housing Act shall be regarded by the City as a basis for determining the DEVELOPER to be not a "responsible Bidder" as to future contracts for which such DEVELOPER may submit bids, for revoking the DEVELOPER's prequalification rating, if any, and for refusing to establish, reestablish, or renew a prequalification rating for the DEVELOPER.

The City will deem a finding of willful violation of the California Fair Employment and Housing Act to have occurred upon receipt of written notice from the Fair Employment and Housing Commission that it has investigated and determined that the DEVELOPER has violated the California Fair Employment and Housing Act and has issued an order under California Government Code section 12973, section 12970, or obtained an injunction under California Government Code section 12973.

Upon receipt of such written notice from the Fair Employment and Housing Commission, the City shall notify the DEVELOPER that unless he/she demonstrated to the satisfaction of the City within a stated period that the violation has been corrected, that he/she will be reported to the City Council as not a "responsible Bidder" on any future Contract.

9. The DEVELOPER agrees, that should the City determine that the DEVELOPER has not complied with the Fair Employment Practices section of this Contract, then pursuant to Labor Code sections 1735 and 1775, the DEVELOPER shall forfeit, as a penalty to the City, for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the Labor Code for violation of prevailing wage rates. Such monies may be recovered from the DEVELOPER. The City may deduct any such damages from any monies due the DEVELOPER from the City. Furthermore, DEVELOPER agrees that the City shall have the right to terminate this Contract either in whole or in part, and any loss or damage sustained by City in securing the goods or services thereunder shall be borne and paid for by DEVELOPER and by the surety under the performance bond, if any, and City may deduct from any moneys due or thereafter may become due to DEVELOPER, the difference between the price named in the Contract and the actual cost thereof to City to cure DEVELOPER's breach of the Contract.

10. Nothing contained in this Fair Employment Practices section shall be construed in any manner or fashion so as to prevent the City from pursuing any other remedies that may be available at law.

11. After award of the Contract, the DEVELOPER shall certify to the City that he/she has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by the City:

a. The DEVELOPER shall provide evidence, as required by the City, that he/she has notified all supervisors, foremen, and other personnel officers in writing of the content of the antidiscrimination clause and their responsibilities under it.

b. The DEVELOPER shall provide evidence, as required by the City, that he/she has notified all sources of employee referrals (including unions, employment agencies, advertisement, Department of Employment) of the content of the antidiscrimination clause.

c. The DEVELOPER shall file a Fair Employment Practices compliance report, as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also spell out the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire. The compliance report shall be kept current throughout the Contract in that the DEVELOPER shall report any changes in or additions to the answers therein, including changes in agreements with others. After the work or supply of materials is complete, before final payment, the DEVELOPER shall submit a final statement of compliance.

d. Personally, or through his/her representatives, the DEVELOPER shall, through negotiations with the unions with whom he/she has agreements, attempt to develop an agreement which will:

- (1) Spell out responsibilities for nondiscrimination in hiring, referral, upgrading and training.
- (2) Otherwise implement an affirmative antidiscrimination program in terms of the unions; specific areas of skill and geography, to the end that qualified disadvantaged workers will be available and given an equal opportunity for employment.

12. DEVELOPER's signature on this Contract shall constitute a certification under the penalty of perjury under the laws of the State of California that DEVELOPER has, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.

13. The DEVELOPER will include the provisions of the foregoing paragraphs 1 through 12 in every first tier subcontract so that such provisions will be binding upon each such subcontractor.

X. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Existence and Qualification. DEVELOPER shall provide to CITY any evidence required or requested by CITY to demonstrate the continuing existence, qualification, and authority of DEVELOPER to execute this Agreement and to perform the acts necessary to carry out the Project. DEVELOPER represents and warrants that as of the date hereof, DEVELOPER is a duly organized Limited Liability Company in good standing with the State of California; DEVELOPER has the requisite power, right, and legal authority to execute, deliver, and

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

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

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

Assurance of Governmental Approvals and Licenses. DEVELOPER represents and warrants, as of the date hereof, that DEVELOPER, to the best of DEVELOPER's knowledge, is in compliance with all federal, state, local governmental reviews, consents, authorizations, approvals, and has or will obtain all licenses presently required by law to enter into this Agreement and perform the work contemplated hereunder. DEVELOPER warrants that any work hereunder requiring a special license will only be performed by a party legally licensed to perform such work and said party, if not DEVELOPER, shall be under contract with DEVELOPER to perform said work.

Prompt Progress Payment to Subcontractors. A prime DEVELOPER or subcontractor shall pay a subcontractor not later than 7 days of receipt of each progress payment in accordance with Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. Any violation of Section 7108.5 shall subject the violating DEVELOPER or subcontractor to the penalties, sanction and other remedies of that section. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime DEVELOPER or subcontractor in the event of a dispute involving late payment or nonpayment by the prime DEVELOPER, deficient subcontractor performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors.

1. All contract and subcontracts (all tiers), shall contain the foregoing provision.

Performance Monitoring. CITY will monitor the performance of DEVELOPER based on goals and performance standards as stated above along with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this contract. Substandard performance as determined by CITY will constitute noncompliance with this Agreement. If corrective action is not taken by DEVELOPER within a reasonable period of time after being notified by CITY, contract suspension or termination procedures will be initiated. DEVELOPER agrees to provide HUD, the HUD Office of Inspector General, the General Accounting Office, CITY, or CITY's internal auditor(s) access to all records related to performance of activities in this agreement.

Compliance with Agreement. DEVELOPER warrants, covenants and agrees that, upon any uncured default by DEVELOPER within the meaning of Section XI of this Agreement, CITY may suspend or terminate this and any and all other Agreements with DEVELOPER without waiver or limitation of rights/remedies otherwise available to CITY.

Compliance with Laws. DEVELOPER shall be responsible for and promptly and faithfully comply with, conform to and obey all present and future federal, state and local statutes, regulations, rules, ordinances and other legal requirements applicable by reason of this Agreement or otherwise to the Project including without limitation prevailing wage requirements. DEVELOPER acknowledges that the use of federal funds on the Project is subject to extensive federal regulation and covenants and agrees that it shall comply with, conform to and obey (and take such steps as are required of DEVELOPER to enable CITY to comply with, conform to and obey) all federal statutes, regulations, rules and policies applicable to the Project.

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

Additionally, DEVELOPER agrees:

1. That CITY shall not be directly or indirectly responsible, obligated or liable with the inspection, testing, removal or abatement of asbestos or other hazardous or toxic chemicals, materials, substances, or wastes and that all liability for such work shall be and remain solely with DEVELOPER;
2. Not to transport to or from the proposed Property, or use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, or about the Property, or surrounding real estate, or transport to or from the Property, or surrounding real estate, any hazardous or toxic chemicals, materials, substance, or wastes or allow any person or entity to

do so except in such amounts and under such terms and conditions permitted by applicable laws, rules, regulations, ordinances, and statutes;

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

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

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

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

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

Conflict of Interest. DEVELOPER warrants, covenants and agrees that it shall comply with the Conflict of Interest requirements of NSP including, without limitation, that no owner, sponsor or officer, employee, agent or consultant of DEVELOPER (other than an employee or agent of DEVELOPER who occupies a Unit as the property manager or maintenance worker) may occupy an Affordable Project Unit. DEVELOPER understands and acknowledges that no employee, agent, consultant, officer or elected official or appointed official of CITY, who exercises or has exercised any functions or responsibilities with respect to the Affordable Project, or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from the Affordable Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for anyone with which that person has family or business ties, during his or her tenure or for one year thereafter. The applicable Conflict of Interest requirements of 24 CFR Section 570.611 shall also be followed.

1. Prior to CITY'S execution of this Agreement, DEVELOPER shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in Exhibit H, attached hereto and incorporated herein. During the term of this Agreement, DEVELOPER shall have the obligation and duty to immediately notify CITY in writing of any change to the

information provided by DEVELOPER in such statement.

2. DEVELOPER shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, DEVELOPER shall provide a written opinion of its legal counsel and that of any subcontractors that, after a due diligent inquiry, DEVELOPER and the respective subcontractor(s) are in full compliance with all laws and regulations. DEVELOPER shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, DEVELOPER shall immediately notify CITY *of these facts in writing*.

3. In performing the work or services to be provided hereunder, DEVELOPER shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

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

5. Neither DEVELOPER, nor any of DEVELOPER'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. DEVELOPER and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

6. If DEVELOPER should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, DEVELOPER shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

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

Disadvantaged Business Enterprise Outreach Activities. DEVELOPER covenants and agrees that it shall comply with all federal laws and regulations regarding Disadvantaged Business Enterprise outreach activities, including, without limitation, the requirement that DEVELOPER comply with CITY'S Disadvantaged Business Enterprise outreach program.

XI. DEFAULT AND REMEDIES

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

1. DEVELOPER's use of NSP Funds, for costs other than Eligible Costs or for uses not permitted by the terms of this Agreement.
2. DEVELOPER's failure to obtain and maintain the insurance coverage as required under this Agreement.
3. Except as otherwise provided in this Agreement, the failure of DEVELOPER to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) DEVELOPER's substantial deviation in the construction of the Project from the Final Plans/Conditional Use Permit (CUP), without CITY's prior written consent; (2) DEVELOPER's use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) DEVELOPER's failure to commence or complete the Project, unless delay is permitted under this Agreement; (4) the cessation of work on the Project for a period of more than fifteen (15) consecutive days (other than as provided in this Agreement) prior to submitting to CITY, certification that the Project is complete; (5) any material adverse change in the financial condition of DEVELOPER or the Project that gives CITY reasonable cause to believe that the Project cannot be completed by the Completion Date according to the terms of this Agreement; (6) DEVELOPER's failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY's request; (7) DEVELOPER's failure to substantially comply with any federal, state or local laws or applicable CITY restrictions governing the Project, including but not limited to provisions of this Agreement pertaining to equal employment opportunity, nondiscrimination and lead-based paint.
4. Any representation, warranty, or certificate given or furnished by or on behalf of DEVELOPER shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that DEVELOPER concealed or failed to disclose a material fact to CITY, provided, however, that if any representation, warranty, or certification that proves to be materially false is due merely to DEVELOPER's inadvertence, DEVELOPER shall have a thirty (30) day opportunity after written notice thereof to cause such representation, warranty, or certification to be true and complete in every respect.
5. DEVELOPER shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within ninety (90) days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within ninety (90) days.
6. DEVELOPER's failure, inability or admission in writing of its inability to pay its debts as they become due or DEVELOPER's assignment for the benefit of creditors.
7. A receiver, trustee, or liquidator shall be appointed for DEVELOPER or any substantial part of DEVELOPER's assets or properties, and not be removed within ten (10) days.
8. DEVELOPER's breach of any other material condition, covenant, warranty, promise or representation contained in this Agreement not otherwise identified within this Section.
9. Any substantial or continuous breach by DEVELOPER of any material obligation owed by DEVELOPER imposed by any other agreement with respect to the financing, of the Project,

whether or not CITY is a party to such agreement after expiration of all notice and cure periods contained within such document.

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

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

1. Terminate this Agreement immediately upon written notice to DEVELOPER;
2. Bring an action in equitable relief (1) seeking specific performance by DEVELOPER of the terms and conditions of this Agreement, and/or (2) enjoining, abating or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief; and
3. Pursue any other remedy allowed by law or in equity or under this Agreement.

XII. GENERAL MISCELLANEOUS

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

Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as DEVELOPER represents to CITY that DEVELOPER is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of DEVELOPER to do and perform the services in a skillful manner and DEVELOPER agrees to thus perform the services. Acceptance of the services by CITY shall not operate as a release of DEVELOPER from said standards of said profession.

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

Binding on All Successors and Assigns. Unless otherwise expressly provided in this

Agreement, all the terms and provisions of this Agreement shall be binding on and inure to the benefit of the parties hereto, and their respective nominees, heirs, successors, assigns, and legal representatives.

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

Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. All powers and remedies given by this Agreement shall be cumulative and in addition to those otherwise provided by law.

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

Discretionary Governmental Actions. Certain planning, land use, zoning and other permits and public actions required in connection with the Project including, without limitation, the approval of this Agreement, the environmental review and analysis under NEPA, CEQA or any other statute, and other transactions contemplated by this Agreement are discretionary government actions. Nothing in this Agreement obligates 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. CITY cannot take action with respect to such matters before completing the environmental assessment of the Project under NEPA, CEQA and any other applicable statutes. CITY cannot and does not commit in advance that it will give final approval to any matter. CITY shall not be liable, in contract, 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.

Effective Date. This Agreement shall be effective upon the Parties' complete execution following City Council approval.

Entire Agreement. This Agreement represents the entire and integrated agreement of the parties with respect to the subject matter hereof. This Agreement supersedes all prior negotiations, representations or agreements, either written or oral. . This Agreement may be modified or amended only by written instrument duly authorized and executed by both CITY and DEVELOPER.

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

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

Governing Law and Venue. Except to the extent preempted by applicable federal law, the

laws of the State of California shall govern all aspects of this Agreement, including execution, interpretation, performance, and enforcement. Venue for filing any action to enforce or interpret this Agreement will be Fresno County, California.

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

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

No Assignment or Succession. DEVELOPER shall not sell, lease, transfer, assign or otherwise dispose of all or any material part of any interest it might hold in the Property without the prior written consent of CITY, which consent shall not be unreasonably withheld or delayed.

1. This Agreement is personal to DEVELOPER and there shall be no assignment by DEVELOPER of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by DEVELOPER, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

2. DEVELOPER hereby agrees not to assign the payment of any monies due DEVELOPER from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due DEVELOPER directly to DEVELOPER.

No Third-Party Beneficiary. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties other than expressly identified herein. No DEVELOPER, subcontractor, mechanic, materialman, laborer, vendor, or other person hired or retained by DEVELOPER shall have any rights hereunder and shall look to DEVELOPER as their sole source of recovery if not paid. No third party may enter any claim or bring any such action against CITY under any circumstances. Except as provided by law, or as otherwise agreed to in writing between CITY and such person, each such person shall be deemed to have waived in writing all right to seek redress from CITY under any circumstances whatsoever. DEVELOPER shall include this paragraph in all contracts/subcontracts.

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

Notice. Any notice to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by

written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

Recording of Documents. DEVELOPER agrees to cooperate promptly in any manner required at CITY's request, with the recordation of documents/instruments consistent with this Agreement in the Official Records of Fresno County, California. Said cooperation includes but is not limited to correction of errors in documents and witnessed execution thereof.

Recycling Program. In the event DEVELOPER maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, DEVELOPER at its sole cost and expense shall:

1. Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
2. Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
3. Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision of this Agreement shall not affect the remaining provisions.

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

DIVISION III FEDERAL REQUIREMENTS

GENERAL REQUIREMENTS

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

The Project shall not be located in a tract identified by the Federal Emergency Management Agency as having special flood requirements. Notwithstanding the foregoing, in accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), DEVELOPER shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement - DEVELOPER will, in all solicitations or advertisements for employees placed by or on behalf of DEVELOPER, state that it is an Equal Opportunity or Affirmative Action employer.

Subcontract Provisions - DEVELOPER will include the provisions of Paragraphs XI.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own DEVELOPERs or subcontractors.

1. Monitoring - DEVELOPER will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

2. Content - DEVELOPER shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

Prohibited Activity - DEVELOPER is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

Copyright - If this contract results in any copyrightable material or inventions, HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

Eminent Domain - DEVELOPER will not undertake any involuntary acquisition of property with NSP funds without prior written consent of CITY and written opinion of counsel that such acquisition is lawful.

Uniform Relocation Assistance - DEVELOPER agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24; 24 CFR Part 42 – Displacement, Relocation Assistance and Real Property Acquisition for HUD and HUD Assisted Programs; and 24 CFR 570.606 – Displacement, relocation acquisition, and replacement of housing. DEVELOPER

shall provide appropriate relocation assistance (URA or section 104(d)) to eligible displaced persons as defined by applicable HUD and/or URA regulations that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for an NSP-assisted project. DEVELOPER also agrees to comply with applicable CITY or local ordinances, resolutions and policies concerning the displacement of persons.

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968.

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The DEVELOPER agrees to send to each labor organization or representative of workers with which the DEVELOPER has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the DEVELOPER'S commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The DEVELOPER agrees to include this section 3 clause in every contract and subcontract subject to compliance with regulations in 24 CFR, replacing DEVELOPER'S name with the contractor or subcontractor's name as applicable.

HISTORIC PRESERVATION

DEVELOPER agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list. DEVELOPER will provide project descriptions to CITY staff to ensure Historic Preservation compliance during the environmental review process.

LOBBYING

By its execution of this Agreement DEVELOPER hereby certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a DEVELOPER of Congress, an officer or employee of Congress, or an employee of a DEVELOPER of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a DEVELOPER of Congress, an officer or employee of Congress, or an employee of a DEVELOPER of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all DEVELOPERS shall certify and disclose accordingly:
4. Lobbying Certification - This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ADMINISTRATIVE REQUIREMENTS

Financial Management

1. Accounting Standards – Under this Agreement DEVELOPER is not a sub-recipient and therefore is not subject to the provisions of 24 CFR Part 84 and 24 CFR Part 85, which apply only to governmental entities and nonprofit sub-recipients carrying out NSP programs.
2. DEVELOPER will use adequate internal controls, and maintain necessary source documentation for all costs incurred and adhere to any other accounting requirements included in this Agreement or the Program Manual.
3. Cost Principles contained in OMB Circulars A-87, "Cost Principles for State, Local and Indian Tribal Governments," A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," do not apply to this DEVELOPER agreement.

Documentation and Record Keeping

1. Tenant Data - DEVELOPER shall maintain tenant data demonstrating tenant eligibility for services provided. Such data shall include, but not be limited to, tenant name, address, income level or other basis for determining eligibility, and description of service or benefit provided. Such information shall be made available upon request to CITY monitors or their designees for review.

2. Records to be Maintained - DEVELOPER shall maintain all records required by Federal regulations specified in 24 CFR 570.506. Such records shall include but not be limited to:

a. Records providing a full description of each activity undertaken and demonstrating that each activity undertaken benefits low-, moderate-, or middle-income persons;

b. Records documenting the eligibility of activities and properties assisted;

c. Records documenting the purchase and sale amounts—or rental amounts of each property, discounts, and the sources and uses of funds for each activity;

d. Records documenting compliance with the fair housing and equal opportunity requirements of the NSP program, including but not limited to the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program;

e. Records documenting efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property has complied with the tenant protection requirements;

f. Financial records and other records necessary to document compliance with Subpart K of 24 CFR Part 570.

3. Retention of Records - DEVELOPER shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date that CITY submits its first quarterly performance report to HUD via DRGR. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

4. Access to Records - DEVELOPER shall furnish and cause each of its own DEVELOPERs or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by CITY, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

5. Disclosure of Information - DEVELOPER understands that tenant information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of CITY's or DEVELOPER's responsibilities with respect to services provided under this contract, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

6. Close-Out - DEVELOPER's obligation to CITY shall not end until the HUD completes all close-out requirements for the NSP grant. Activities during this close-out period shall include, but are not limited to: making final payments; disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to CITY); and determining the custodianship of records. However, the terms of this Agreement shall remain in effect during any period that DEVELOPER has control over NSP funds, including program income.

7. Audits & Inspections - All DEVELOPER records with respect to any matters covered by this Agreement shall be made available to CITY, CITY agency, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts

or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by DEVELOPER within 30 days after receipt by DEVELOPER. Failure of DEVELOPER to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments or termination of this agreement. DEVELOPER hereby agrees to have an annual agency audit conducted in accordance with OMB Circular A-133.

Conflict of Interest

DEVELOPER agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

1. DEVELOPER shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
2. No employee, officer or agent of DEVELOPER shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
3. No covered persons who exercise or have exercised any functions or responsibilities with respect to NSP assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the NSP3-assisted activity, or with respect to the proceeds from the NSP assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of CITY, DEVELOPER, or any designated public agency.

Use of and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR 570.503, 570.504, and 570.505, as applicable, which include but are not limited to the following:

1. DEVELOPER shall transfer to CITY any NSP funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination, unless otherwise specified in the HUD closeout agreement with CITY.
2. Real property under DEVELOPER's control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used in accordance with the NSP3 application for the period consistent with the continued affordability requirements. If DEVELOPER fails to use NSP assisted real property in a manner that meets NSP affordability and benefit requirements within and for the prescribed period of time, DEVELOPER shall comply with the applicable sections under 24 CFR 570.503, 570.504, and 570.505.
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to which funds received under this Agreement were used to acquire the equipment). Equipment

not needed by DEVELOPER for activities under this Agreement shall be (a) transferred to CITY for the NSP program or (b) retained after compensating CITY an amount equal to the current fair market value of the equipment less the percentage of non-NSP funds used to acquire the equipment.

COMPLIANCE WITH LAWS

DEVELOPER covenants and agrees that, in addition to complying with the federal laws and regulations already cited in this Agreement, DEVELOPER has reviewed, and shall comply with and require all its contractors and subcontractors on this Project comply with, all other federal laws and regulations that pursuant to the following:

1. NSP Program, including, without limitation, requirements of the NSP Grant Agreement, the HERA Act of 2008 and/or the Dodd-Frank Act of 2010, the requirements applicable to entitlement communities under CDBG regulations, 24 CFR 58.6 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128)

DEVELOPER further acknowledges its responsibility for adherence to all applicable terms and conditions of this grant award by sub-recipient entities and contractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration.

2. Labor Standards

The Project "Labor" requirements, as applicable, of 24 CFR 92.354 including Davis Bacon prevailing wage requirements as amended (40 U.S.C. 276a - 276a-7), as supplemented by Department of Labor regulations (29 CFR Parts 1,3, 5 and 7);

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), including without limitation provisions of Section 102 and 107 and as supplemented by Department of Labor Regulations (29 CFR Part 5), in regards to the construction and management of the proposed Project.

The Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5 and as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

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

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

Non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279.

All other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

3. Civil Rights and Discrimination.

Title 8 of the Civil Rights Act of 1968 PL. 90-284. (Fair Housing Act); Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000); Civil Rights Requirements, 29 U.S.C. § 623, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. §12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 C.F.R. Parts 60 et seq.; Executive Order 11063 on Equal Opportunity and Housing; The Housing and Community Development Act of 1974, including without limitation §§104(b) and 109. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. CITY shall provide DEVELOPER with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement. Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

4. Affirmative Action

Disadvantaged Business Enterprises (DBE) - DEVELOPER will use its best efforts to afford small businesses, minority business enterprises, and women owned business enterprises to the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group DEVELOPERS or women. DEVELOPER may rely on written representations by businesses regarding their status as minority and women-owned business enterprises in lieu of an independent investigation.

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

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

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

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

9. Hatch Act - no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.

10. National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 CFR part 50 or 58.

**DIVISION IV
SCOPE OF SERVICE**

DEVELOPER will be responsible for carrying out activities in a manner satisfactory to CITY and consistent with all standards required as a condition of providing these funds. Program activities will include the following uses and corresponding activities eligible under NSP3 and NSP1:

A. DEVELOPER RESPONSIBILITIES

1. DEVELOPER will carry out this program in accordance with the policies, procedures and other provisions of the NSP Single-Family and Multi-Family Rental Development Program Manual ("Program Manual"), provided to DEVELOPER by CITY, and incorporated herein by reference. DEVELOPER hereby agrees to accept and follow any written amendments to the Program Manual by CITY that are made as a direct result of additional guidance or regulations provided by HUD, as well as any written amendments that are mutually agreed upon by CITY and DEVELOPER.

2. Program activity includes, subject to prior review and approval of CITY, the acquisition and development of residential property that is foreclosed upon, abandoned, or vacant in accordance with the definitions and requirements of the NSP program, to the extent that these activities are incorporated in this Section and in EXHIBIT "A", Rental Development Activity and Detailed Budget attached hereto and incorporated herein.

3. DEVELOPER is responsible for providing the deliverables herein described within the time periods and for the approximate average budget amounts described in EXHIBIT "A".

4. DEVELOPER shall maintain records which show sufficient documentation about the purchase, rehabilitation costs and sale amounts of each property and the sources and uses of funds for each activity so that HUD can determine whether CITY and DEVELOPER are in compliance with NSP requirements. DEVELOPER will be expected to provide this documentation to CITY for each property individually.

5. Prior to requesting/receiving any NSP funds, DEVELOPER will be responsible for executing a note and deed of trust in favor of CITY for a maximum amount of NSP funding which will be equal to 110% of the total amount of the approved, individual Project Budget for each property as more fully described herein.

6. DEVELOPER's expenditures for program delivery will be limited as follows, unless changes to the limits are agreed to in writing by CITY and DEVELOPER for a particular property:

a. The minimum number of homes (properties) to be acquired, rehabilitated, and leased is ten (10) With each home (property) having a maximum of four units, unless pre-approved in writing by the City Manager or his designee.

b. DEVELOPER will acquire only properties in designated NSP target areas that are eligible under NSP for rehabilitation or redevelopment as affordable residential properties. Properties acquired must be abandoned, vacant, or foreclosed upon as defined in the NSP program.

c. Designated target areas: DEVELOPER may carry out this activity only in the NSP combined target areas as identified in EXHIBIT "F", attached hereto.

d. Number of foreclosed and/or abandoned homes to be leased to households with incomes at or below 50% of area median income, to meet CITY's 25% set-aside requirement: twelve (12) units, a minimum of One Million and Eighty Dollars and zero cents (\$1,080,000), will be required to be set-aside to purchase or rehabilitate residential properties to be leased to households earning at or below 50% of the area median income.

e. CITY must provide prior written approval for each property to be eligible for funding under this Agreement. To request this approval, DEVELOPER will provide CITY with a property description, proof of abandoned, foreclosed, or vacant status as applicable, preliminary scope of work for rehabilitation work, a preliminary Project Budget, and a preliminary operating budget that estimates revenues, operating expenses, debt service and net operating income for the number of years of occupancy that matches the proposed Affordability Period for the property. The Project Budget will be provided in a form acceptable to CITY and similar to the sample individual project budget in EXHIBIT "A" herein. CITY will base its approval upon an assessment of NSP compliance, financial feasibility, conformity to expenditure limits described herein, and the potential marketability of the property.

f. The DEVELOPER is allowed a fee (Developer Fee) of ten percent (10%) of total development costs. Up to twenty-percent (20%) will be payable upon acquisition of an NSP qualified property, forty-percent (40%) is payable upon final completion of rehabilitation/construction work, and the balance is payable upon fifty-percent (50%) initial occupancy by a qualified renter(s) in properties with two or more units, and in single family residences upon initial occupancy by a qualified renter.

g. DEVELOPER may earn no other fee or profit from the development of an NSP-assisted dwelling unit. The Developer Fee is expressly in lieu of the payment or reimbursement of any administrative or management costs incurred by DEVELOPER in the implementation of the Activity.

h. DEVELOPER may expend up to \$500.00 per home in NSP funds for marketing costs such as advertisements and flyers. If marketing is funded for multiple NSP homes, the costs of such marketing must be allocated to each home.

i. Other limits on expenditures: Other acquisition, rehabilitation-construction and soft costs described in EXHIBIT "A" are not subject to per-home cost limits on a line-item basis, but must be reasonable and ordinary costs of development and, in the aggregate, must conform to the per-home cost limits described elsewhere in this Section. No NSP funds may be spent for purchases of equipment.

j. Accounting for expenditures: DEVELOPER will account for total NSP expenditures per home by means of assigning distinct accounting codes for NSP3 and NSP1 funded or reimbursed expenses for each property and another accounting code, if applicable, for non-NSP funded expenditures (if any). When the development of an NSP assisted home is completed, DEVELOPER will provide CITY with a complete accounting of NSP3 and NSP1 expenditures for that home along with non-NSP expenditures, if any.

7. Maximum rental amount:

a. The maximum rents are the lesser of: (1) the fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 92.252; or (2) a rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD annually, with adjustments for number of bedrooms in the unit.

b. For Units set aside for households earning 50% or less of the area median income, the rent will not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the Fresno, California Metropolitan Statistical Area, as determined by HUD, with adjustments for smaller and larger families. Notwithstanding the foregoing, the maximum rent for units under this paragraph shall not exceed that calculated under paragraph 7(a).

c. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

d. DEVELOPER must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services. Using a schedule of utility allowances from the local housing authority or equivalent document, the estimated amounts of the tenant-paid utilities will be deducted from the affordable housing payment amount. The result will be the maximum allowed cash rent.

e. DEVELOPER cannot refuse to lease NSP-assisted units to a certificate or voucher holder under 24 CFR part 982—Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program because of the status of the prospective tenant as a holder of such certificate, or voucher.

8. Environmental reviews: DEVELOPER is required to submit to CITY a Neighborhood Stabilization Program "Project Intake Form" in the form of Exhibit "G" attached hereto for each property proposed to be acquired or rehabilitated. The Intake Form requests specific characteristics of the subject property to determine the project description, acquisition, rehabilitation, land use/existing conditions, and environmental issues. The "Project Intake Form" will be used by CITY to environmentally assess the project pursuant to state and federal environmental guidelines. CITY will provide DEVELOPER a copy of CITY's completed environmental review on each property.

9. Inspections. DEVELOPER shall allow CITY on-site access to all properties for field inspections. DEVELOPER shall permit, facilitate, and require its contractors and consultants to permit and facilitate observation and inspection at each and every job site by CITY and other public authorities during reasonable business hours, for determining compliance with this Agreement, including without limitation all annual, or other timelines as provided by CITY, on-site inspections required by CITY.

10. Accessibility. DEVELOPER covenants and agrees to comply with all federal, state and local regulations concerning accessibility requirements in federally funded housing, including, but not limited to the following:

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

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

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

c. Title III of the Americans with Disabilities Act of 1990 (ADA) as it relates to the required accessibility of public and common use area of the Project.

d. The design and construction requirements as required by CITY's Universal Design Ordinance pursuant to FMC 11-110, including, but not limited to the following requirements:

- i. No step accessible entryway;
- ii. All interior doorways and passageways at least 32 inches wide;
- iii. One downstairs "flex room" and accessible bathroom with reinforcements for grab bars;
- iv. Six square feet of accessible kitchen counter space; and
- v. Hallways at least 42 inches wide.

11. Affirmative Marketing. DEVELOPER warrants, covenants and agrees that it shall comply with all affirmative marketing requirements, in order to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market. DEVELOPER shall be responsible for complying with CITY's "Affirmative Marketing Policy" document, as amended from time to time which is available upon request from CITY'S Housing and Community Development Division. DEVELOPER shall maintain records of actions taken to affirmatively market units, and to assess the results of these actions.

12. Construction Standards. DEVELOPER shall construct the proposed Project Units assisted under this Agreement in compliance with all applicable local codes, ordinances and zoning requirements in effect at the time of issuance of CITY building permits.

13. Covenants and Restrictions to Run with the Land. *DEVELOPER expressly warrants, covenants and agrees to ensure that the covenants and restrictions set forth in Exhibit C of this Agreement are recorded and will run with the land, provided, however, that, on expiration of this Agreement such covenants and restrictions shall expire.*

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

b. DEVELOPER covenants and agrees that after issuance of a recorded Certification of Completion for the Project until the expiration of the Affordability Period it shall cause the Units to be leased as Affordable Housing for Low, Moderate, and Middle-Income households.

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

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

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

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

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

16. Reporting Requirements. DEVELOPER warrants, covenants and agrees with CITY that it shall submit performance reports to CITY as detailed in Section E.14 below. Furthermore, DEVELOPER agrees to provide, at the sole cost of DEVELOPER, annual

certified Financial Statements for the Project expenses and ongoing financial transactions which occur as a result of this Agreement. DEVELOPER agrees to account for the expenditure of NSP Funds using generally accepted accounting principles, which financial documentation shall be made available to CITY and HUD, upon their respective written request(s).

17. Financial Statements and Audits. DEVELOPER (or its successor who shall receive federal financial assistance), as a recipient of federal financial assistance is required to submit certified Financial Statements that comply Generally Accepted Accounting Principles within one hundred and eighty (180) days following: 1) the end of fiscal year(s) in which the federal funds are disbursed hereunder, and 2) the end of fiscal year(s) in which this contract shall terminate, and otherwise upon CITY's, written request during the term of this Agreement, DEVELOPER, at its sole cost and expense shall submit to CITY:

a. Certified annual financial statements of DEVELOPER that are current, signed, and prepared according to generally accepted accounting principles consistently applied (except as otherwise disclosed therein) covering all the income and expenses and financial transactions for the Affordable Project during the prior fiscal year.

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

a. DEVELOPER will maintain 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 NSP Funds and to keep all invoices, receipts and other documents related to expenditures financed with NSP3 and NSP1 Funds for not less than six (6) years after the expiration or termination of the Agreement. Books and records must be kept accurate and current. For purposes of this section, "books, records and documents" include, without limitation; plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, funding applications, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda, and electronically stored versions of all the foregoing.

b. CITY may audit any conditions relating to this Agreement at CITY's expense, unless such audit shows a significant discrepancy in information reported by DEVELOPER in which case DEVELOPER shall bear the cost of such audit. DEVELOPER shall also comply with any applicable audit requirements of NSP regulations.

c. DEVELOPER will cooperate fully with CITY and HUD in connection with any interim or final audit relating to the Programs and the Project(s) that may be performed relative to the performance of this Agreement.

This section 18 shall survive the termination of this Agreement.

19. Terminated Project. DEVELOPER understands and agrees that, if the Project is terminated before the completion, either voluntary or otherwise, such constitutes an

ineligible activity and CITY shall not be required to provide any further NSP assistance funding to the Project Units.

B. INCOME ELIGIBILITY REQUIREMENTS

1. Initial and Annual Income Certification. DEVELOPER covenants and agrees that the Project Units will be affordable to Low, Moderate, and Middle-Income households during the Affordability Period. For Units funded with the NSP3 to meet the set-aside requirement for very Low Income Households, the units must be leased to and occupied by, or, if vacant, available for lease and occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than fifty percent (50%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable rent consistent with NSP3 Program regulations, for the Affordability Period except upon foreclosure or other transfer in lieu of foreclosure following default under a Deed of Trust. For Units not funded to meet the 25% set-aside, then the units must be leased to and occupied by, or, if vacant, available for lease and occupancy by (a) person(s) whose annual household income at the time of initial occupancy is not greater than one hundred twenty percent (120%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size. . However, if at any time following a transfer by foreclosure or transfer in lieu of foreclosure, but still during the Affordability Period, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes such owner of record those whom such owner of record has or had business ties, obtains an ownership interest in the Project or the Property, the Affordability Period shall be revived according to its original terms. In the event DEVELOPER fails to comply with this Section, or the Affordability Period is not revived following transfer by foreclosure or transfer in lieu of foreclosure, DEVELOPER shall return to CITY all NSP Funds disbursed to DEVELOPER by CITY.

2. DEVELOPER covenants and agrees with CITY that it shall comply with the procedures for annual income determinations to ensure continued availability of the Units to eligible households. DEVELOPER shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from each tenant Household leasing any NSP-assisted Unit. DEVELOPER shall make a good faith effort to verify that the income provided by an applicant or occupying Household in an income certification is accurate by taking one or more of the following steps as part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income verification form from the applicant's current employer; (3) obtain an income verification form from the Social Security Administration and California Department of Social Services if the applicant receives assistance from either of such agencies; or (4) if the applicant is unemployed, obtain another form of independent verification. Copies of household income certification and verification must be available for review by CITY. DEVELOPER further warrants, covenants and agrees that it shall cooperate with CITY in CITY's income certification/affordability monitoring activities.

C. DEVELOPMENT AND CONSTRUCTION OF THE PROJECT

Without waiver of limitation, the parties agree as follows:

1. Commencement and Completion of Project. DEVELOPER shall commence construction and, record a Notice of Completion upon completion of construction of the Project in accordance with the Project Schedule as identified in EXHIBIT "A".

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

DEVELOPER will not use NSP funds to demolish major structures or convert units from non-residential uses only without the prior written permission of CITY. Permission for demolition of minor structures such as porches, sheds and garages shall be deemed to have been granted when CITY approves the work write-ups for a particular property that DEVELOPER is assisting with NSP funds.

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

4. Fees, Taxes and Other Levies. DEVELOPER shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Project Property(ies), and shall pay such charges prior to delinquency. However, DEVELOPER shall not be required to pay and discharge any such charge so long as: (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, DEVELOPER deposits with CITY any funds or other forms of assurances that CITY, in good faith, may determine from time to time are appropriate to protect CITY from the consequences of the contest being unsuccessful. DEVELOPER shall have the right to apply for and obtain an abatement and/or exemption of the Project from real property taxes in accordance with all applicable rules and regulations, including Section 214(g) of the California Revenue and Taxation Code.

5. Financing. DEVELOPER shall promptly inform CITY of any new financing or funding not included in the Budget for the Project(s), and DEVELOPER shall provide CITY copies of all agreements with any and all Funding Sources for the Project(s). DEVELOPER shall require each agreement with any and all Funding Sources not included in the Budget to contain a provision whereby the party(ies) to the agreement other than DEVELOPER, if

permitted by the parties' applicable rules and regulations, agree to notify CITY immediately of any event of default by DEVELOPER thereunder. Should DEVELOPER not comply with all obligations of this section, the loan shall become immediately due and payable as provided for in this Agreement. This section shall survive expiration or termination of this Agreement.

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

7. Utilities. DEVELOPER shall be responsible, at its sole cost and expense, to determine the location of any utilities on the Property and to negotiate with the utility companies for and to relocate the utilities, if any, as necessary to complete the Project.

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

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

9. Permits and Licenses. Upon CITY's reasonable request, DEVELOPER shall submit, for CITY approval, all the necessary permits and licenses required for Commencement of construction of the Project. As CITY may reasonably request, DEVELOPER, at its sole cost and expense, shall provide to CITY copies of any and all permit approvals and authorizations including plot plan, plat, zoning variances, sewer, building, and other permits required by governmental authorities other than CITY in pursuit of the Project, and for its stated purposes in accordance with all applicable building, environmental, ecological, landmark, subdivision, zoning codes, laws, and regulations.

10. Scope of Work/Work Write Ups. Prior to acquisition of a property and commencement of construction on any PROJECT for which an NSP LOAN is sought hereunder, DEVELOPER shall submit to CITY for approval, a Scope of Work/Work Write Up similar in form and content to the attached Exhibit I. Failure to obtain prior approval may make PROJECT ineligible for NSP LOAN funding under this Agreement. DEVELOPER shall construct the Project(s) in full conformance with CITY-approved Scope of Work/Work Write Ups and any modifications/change orders thereto approved by CITY. DEVELOPER shall obtain

CITY's prior written approval for any modifications to the Scope of Work/Work Write Ups. DEVELOPER shall ensure that construction of the proposed PROJECT employs building materials of a quality suitable for the requirements of the PROJECT. DEVELOPER shall cause completion of the construction of the proposed Project in full conformance with applicable local, state and federal laws, statutes, regulations, NSP requirements and building and housing codes.

11. Project Responsibilities/Public Work-Prevailing Wage Requirements. DEVELOPER shall be solely responsible for all aspects of DEVELOPER's conduct in connection with the Project, including but not limited to, compliance with all local, state and federal laws including without limitation, as to prevailing wage and public bidding requirements. The Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification or type of workman needed in the execution of contracts for CITY. A copy of the resolution is on file at the Office of the City Clerk. Actual wage schedules are available upon request at CITY's Construction Management Office. Without limiting the foregoing, DEVELOPER shall be solely responsible for the quality and suitability of the work completed and the supervision of all contracted work, qualifications and financial conditions of and performance of all contracts, subcontractors, consultants and suppliers. Any review or inspection undertaken by CITY with reference to the Project and/or payroll monitoring/auditing is solely for the purpose of determining whether DEVELOPER is properly discharging its obligation to CITY, and shall not be relied upon by DEVELOPER or by any third parties as a warranty or representation by CITY as to governmental compliance and/or the quality of work completed for the Project.

12. Property Condition. DEVELOPER shall maintain the Property and all improvements on site in a reasonably good condition and repair (and, as to landscaping, in a healthy condition), all according to the basic design and related plans, as amended from time to time. DEVELOPER and those taking direction under DEVELOPER shall: (i) maintain all on-site improvements according to all other applicable law, rules, governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the improvements free from graffiti; (iii) keep the Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to on-site improvements; and (v) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials.

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

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

a. From the date of the execution of the Agreement, until issuance of the final Project's recorded Certificate of Completion, DEVELOPER shall submit a Quarterly Report, in a form approved by CITY, which will include the progress of construction of the Project(s) and affirmative marketing efforts (as applicable). The Quarterly Reports are due within fifteen (15)

days after each March 31st, June 30th, September 30th, and December 31st, during said period.

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

c. Annually, beginning on the first day of the month following CITY's issuance of the recorded Certificate of Completion for the Project, and continuing until the expiration of the Agreement, DEVELOPER shall submit proof of insurance as required in this Agreement.

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

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

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

16. Certificate(s) of Completion. Upon completion of the construction of the Project(s), DEVELOPER shall: 1) certify in writing to the CITY that the Project has been constructed in accordance with the Final Scope of Work/Work Write ups; 2) submit to CITY a cost-certifying final budget for the Project where DEVELOPER shall identify the actual costs of construction of the Project; 3) submit to CITY a Certificate of Occupancy for the Project; and 4) submit to CITY a recorded Notice of Completion for the Project. Upon a determination by CITY that DEVELOPER is in compliance with all of DEVELOPER's construction obligations, as specified in this Agreement, CITY shall furnish, within thirty (30) calendar days of a written request by DEVELOPER, a recorded Certificate of Completion for the Project in the form attached hereto as EXHIBIT "B". CITY will not

unreasonably withhold or delay furnishing the recorded Certificate of Completion. If CITY fails to provide the recorded Certificate of Completion within the specified time, it shall provide DEVELOPER with a written statement indicating in what respects DEVELOPER has failed to complete the Project in conformance with this Agreement or has otherwise failed to comply with the terms of this Agreement, and what measures DEVELOPER will need to take or what standards it will need to meet in order to obtain the recorded Certificate of Completion. Upon DEVELOPER taking the specified measures and meeting the specified standards, DEVELOPER will certify to CITY in writing of such compliance and CITY shall deliver the recorded Certificate of Completion to DEVELOPER in accordance with the provisions of this section.

D. RENTAL OPERATIONS

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

2. Lease Provisions for NSP Units. DEVELOPER shall include in all Leases for the NSP-assisted Units, provisions which authorize DEVELOPER to immediately terminate the tenancy of any Household of which one or more of its members misrepresented any fact material to the Household's qualification as a Low, Moderate, and Middle-Income Household. Each such lease agreement 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, such Household's rent may be subject to increase to the lesser of: 1) the amount payable by tenant under state or local law; or 2) thirty percent (30%) of the Household's actual adjusted monthly income, except that, consistent with the Act, tenants of NSP-assisted units that have been allocated low income housing tax credits by a housing credit agency pursuant to section 42 of the internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by section 42.

3. Final Management Plan. Before leasing any Affordable Units, and at least thirty (30) calendar days prior to the construction Completion Date, DEVELOPER shall submit to CITY, for review and approval, a plan for marketing and managing the proposed Affordable Units ("Final Management Plan"). The Final Management Plan shall address in detail how DEVELOPER or its designated management entity plans to market the availability of the Affordable Units to prospective tenants and how DEVELOPER plans to certify the eligibility of potential tenants. The Final Management Plan shall also address how DEVELOPER and/or the management entity plan to manage and maintain the Affordable Units in accordance with NSP3 Program regulations, and shall include appropriate financial

information and documentation. The Final Management Plan shall contain detailed descriptions of policies and procedures with respect to tenant selections and evictions. Topics to be covered in these procedures shall include at a minimum the following:

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

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

b. At least thirty (30) calendar days prior to the first Project's Completion Date, DEVELOPER shall submit any proposed management contract to CITY for prior review. CITY shall have the right to review any proposed amendments, other than renewals to the management contract, and any new management contracts during the term of this Agreement. Such management contract(s) shall contain a provision expressing this right.

4. Property Management. DEVELOPER shall comply with the following management responsibilities: DEVELOPER directly and/or through its designated management entity, is specifically responsible for all management functions with respect to the Project including, without limitation, the selection of tenants, certification and re-certification of Household size and income, evictions, collection of Rents and deposits, construction management, affirmative marketing, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. CITY shall have no responsibility for such management of the Project.

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

6. Nondiscrimination. All of the NSP Assisted Units shall be available for occupancy on a continuous basis to households who are income eligible. DEVELOPER shall not discriminate or segregate in the constructed complex, the use, enjoyment, occupancy or conveyance of any part of the Project or Property on the basis of race, color, ancestry, national origin, religion, sex, marital status, family status, source of income/rental assistance subsidy, physical or mental disability, Acquired Immune Deficiency Syndrome

(AIDS) or AIDS-related conditions (ARC), sexual orientation, or any other arbitrary basis. DEVELOPER shall otherwise comply with all applicable local, state and federal laws concerning nondiscrimination in housing. Neither DEVELOPER nor any person claiming under or through DEVELOPER, shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants or vendees of any Affordable Unit or in connection with employment of persons for the construction of any Affordable Unit. All deeds or contracts made or entered into by DEVELOPER as to the Affordable Units or the Project or portion thereof, shall contain covenants concerning nondiscrimination consistent with this section. DEVELOPER shall include a statement in all advertisements, notices and signs for availability of Affordable Units for rent to the effect that DEVELOPER is an Equal Housing Opportunity Provider.

E. Property Maintenance

DEVELOPER covenants and agrees, for the entire term of the Agreement, the following:

1. Adequate Repair and Maintenance. After construction of the Project, DEVELOPER shall maintain the Project and Property in compliance with all applicable codes, laws, and ordinances.
2. Inspection of Property. Any duly authorized representative of CITY or HUD shall, at all reasonable times, have access and the right to inspect the Property until completion of the Project and expiration of the applicable Affordability Period within seventy-two (72) hours written notice, subject to the rights of the tenants.
3. No Other Liens. DEVELOPER shall not create or incur, or suffer to be created or incurred, or to exist, any additional mortgage, pledge, encumbrance, lien, charge, or other security interest of any kind on the eligible Property, other than those related to construction or pre-development loans in relation to the Project consistent with the attached Budget without prior written consent of CITY.
4. Ownership. Except as required in pursuit hereof, DEVELOPER shall not sell, lease, transfer, assign or otherwise dispose of ("Transfer") all or any material part of any interest it might hold in the Property or the Project without prior written consent of CITY, which consent shall not be unreasonably withheld or delayed. "Transfer" shall exclude the leasing of any single Unit in the Project.
5. Payment of Liabilities. DEVELOPER shall pay and discharge in the ordinary course of its business all material obligations and liabilities, the nonpayment of which could have a material or adverse impact on its financial condition, business, or assets or on the operation of the Project, except such obligations and liabilities that have been disclosed to CITY in writing and are being contested in good faith.
6. Report of Events of Default. DEVELOPER shall promptly give written notice to CITY upon becoming aware of any Event of Default under this Agreement.

F. DEVELOPER Staffing

The names and roles of DEVELOPER’s key personnel (staff or contractors) executing the project are as follows:

- Chief Executive: Renena Smith, Assistant City Manager
- NSP Project Manager: John Robertson, Interim Housing Manager
- Construction Manager: John Giannetta, Sr. Community Revitalization Specialist
- Financial staff person responsible for approving submission of NSP payment requests: Crystal Smith, Management Analyst III

Any changes in the key personnel assigned or their general responsibilities under this project are subject to the prior approval of CITY.

G. TENANT PROTECTION REQUIREMENTS

DEVELOPER agrees to comply with the Recovery Act and the Dodd-Frank provisions concerning tenant protections applicable to NSP acquisitions of foreclosed property. DEVELOPER must document its efforts to ensure that the initial successor in interest (ISII) in a foreclosed upon dwelling or residential real property (typically, the ISII in property acquired through foreclosure is the lender or trustee for holders of obligations secured by mortgage liens) has provided bona fide tenants with the notice and other protections outlined in the Recovery Act. DEVELOPER will not use NSP funds to finance the acquisition of property from any ISII that failed to comply with applicable requirements unless DEVELOPER assumes the obligations of such ISII with respect to bona fide tenants. If DEVELOPER elects to assume such obligations, it may only do so if the tenant is still occupying the property and will provide any tenant displaced as a result of the NSP funded acquisition with the assistance outlined in 24 CFR 570.606. If DEVELOPER knows that the ISII did not comply with the NSP tenant protection requirements and vacated the property contrary to the NSP requirements, NSP funds cannot be used to acquire such properties.

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

CITY OF FRESNO, a Municipal Corporation

TFS INVESTMENTS, LLC., a California Company

By: *R. Renee Smith*
Mark Scott, City Manager
(Attach notary certificate of acknowledgment)

By: *[Signature]*
Terance Frazier, Managing Partner
(Attach notary certificate of acknowledgment)

Date: 1/28/13

Date: 1/25/13

ATTEST:
YVONNE SPENCE, CMC
City Clerk

APPROVED AS TO FORM:
Francine Kanne
Interim City Attorney

By: *Cindy Bruer*

By: *[Signature]*
Deputy City Attorney
R. Abrams

Deputy: *Cindy Bruer*

Date: 1/28/13

Date: 1/28/13

Developer:
TFS Investments, LLC., a California Company
Terance Frazier, Managing Partner
7643 N Ingram, Suite 105
Fresno, CA 93711

City:
City of Fresno, a municipal corporation
Mark Scott, City Manager
Office of the City Manager
2600 Fresno Street
Fresno, CA 93721

Attachments:

- Exhibit A: Sample Budget and Proposed Expenditure Schedule
- Exhibit B: Exemplar Certificate of Completion
- Exhibit C: Exemplar Declaration of Restrictions
- Exhibit D: Exemplar Deed of Trust
- Exhibit E: Sample Note
- Exhibit F: Eligible NSP3 Areas
- Exhibit G: Intake Form
- Exhibit H: Conflict of interest Disclosure
- Exhibit I: Sample Scope of Work Write Up

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California }
County of Fresno }

On 01/28/2013 before me, Katheryn Cornell, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared *****Renena Smith*****
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal Above

Signature: Katheryn Cornell
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Individual

Partner — Limited General Partner — Limited General

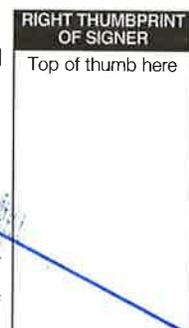
Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Fresno

On 01/25/2013 before me, Katheryn Cornell, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared *****Terance Frazier*****
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal Above

Signature: Katheryn Cornell
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Partner — Limited General Individual Partner — Limited General

Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

Exhibit A
Sample Budget and Proposed Expenditure Schedule

PROJECTED AVERAGE UNIT COSTS	NSP Funded	Other Funding	Total	NOTES										
Purchase price of property acquired	\$70,000	\$0	\$70,000	No fees or soft costs may be charged except those identified in the Agreement										
Acquisition portion of developer fee	\$2,400	\$0	\$2,400	Fee must cover costs of research and other acquisition costs not described in other line items										
Acquisition: prorations, legal, title and recording costs	\$1,500	\$0	\$1,500	Should include developer's costs related to acquisitions and NSP lien documents										
Rehabilitation/construction	\$50,000	\$0	\$50,000	Includes site security costs										
Rehab/construction portion of developer fee	\$4,800	\$0	\$4,800											
Real estate taxes during holding period	\$300	\$0	\$300											
Property and liability insurance during holding period	\$700	\$0	\$700											
Marketing budget per unit	\$500	\$0	\$500											
Final portion of developer fee, after occupancy	\$4,800	\$0	\$4,800											
Total Costs	\$135,000	\$0	\$135,000											
PROJECTED NSP FUNDS EXPENDED	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	TOTALS
Acquisition costs	\$ -	\$ 221,700	\$ 517,300	\$ 517,300	\$ 221,700	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$1,478,000
Constuction period costs (at end of period)	\$ -	\$ -	\$ 111,600	\$ 167,400	\$ 167,400	\$ 111,600	\$ 111,600	\$ 167,400	\$ 167,400	\$ 111,600	\$ -	\$ -	\$ -	\$1,116,000
Marketing and Final Dev Fee	\$ -	\$ -	\$ -	\$ -	\$ 10,600	\$ 15,900	\$ 15,900	\$ 10,600	\$ 10,600	\$ 15,900	\$ 15,900	\$ 10,600	\$ -	\$ 106,000
Subtotal, program delivery	\$ -	\$ 221,700	\$ 628,900	\$ 684,700	\$ 399,700	\$ 127,500	\$ 127,500	\$ 178,000	\$ 178,000	\$ 127,500	\$ 15,900	\$ 10,600	\$ -	\$2,700,000
Program Administration	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL PROJECTED NSP EXPENDITURES	\$ -	\$ 221,700	\$ 628,900	\$ 684,700	\$ 399,700	\$ 127,500	\$ 127,500	\$ 178,000	\$ 178,000	\$ 127,500	\$ 15,900	\$ 10,600	\$ -	\$2,700,000
CUMULATIVE PROJECTED NSP EXPENDITURES	\$ -	\$ 221,700	\$ 850,600	\$1,535,300	\$1,935,000	\$2,062,500	\$2,190,000	\$2,368,000	\$2,546,000	\$2,673,500	\$2,689,400	\$2,700,000	\$2,700,000	
ESTIMATED PORTION SPENT ON 25% SETASIDE		\$133,020	\$510,360	\$921,180	\$1,161,000	\$1,237,500	\$1,314,000	\$1,420,800	\$1,527,600	\$1,604,100	\$1,613,640	\$1,620,000	\$1,620,000	\$0

Note: one housing unit can include 2 or more rental units

	2012		2013												TOTALS	
	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
HOUSING DEVELOPMENT ACTIVITIES																
Acquisition agreements (housing units)	3	7	7	3												20
Acquisition closings (housing units)		3	7	7	3											20
Construction specs/es'ts completed (units)		3	3	4	3	3	4									20
Rehabilitations completed (units)			2	3	3	2	2	3	3	2						20
Housing units rented						2	3	3	2	2	3	3	2			20

All NSP3 assisted units shall be acquired, rehabilitated and leased by the Project Completion Date: November 30, 2013

INCOME TARGETING AND SETASIDE EXPENDITURES	Total
Homes rented to households =<50% AMI	12
Homes rented to households at <120% AMI	8

**Exhibit B:
Exemplar Certificate of Completion**

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

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

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

CERTIFICATE OF COMPLETION

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

APN: _____

City of Fresno

By: _____
Director or Designee
Development and Resource
Management Department

Date: _____

APN: _____

Recitals:

A. By a City of Fresno ("CITY") Neighborhood Stabilization Program ("NSP") Agreement dated _____, 2012, ("NSP Agreement"), as may be amended from time to time, _____, a California company (hereinafter referred to as "DEVELOPER"), agreed to purchase and rehabilitate residential units for rental to Low, Moderate, and Middle-Income households ("Project"), upon premises to be identified at various times after the execution of the NSP Agreement (the "Property"), one of which is identified by the assessor's parcel number above, with the assistance of NSP Funds while meeting the affordable housing, income targeting and other requirements of the NSP program according to the terms and conditions of the NSP Agreement and the Loan Documents and other document/instruments referenced therein.

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

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

E. The CITY's issuance of this Certificate of Completion is conclusive evidence that the DEVELOPER has completed reconstruction of this particular and singular Project/Activity as set forth in the NSP Agreement.

NOW THEREFORE:

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

2. This Certificate of Completion is not evidence of the DEVELOPER'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 NSP3 Agreement.

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

CITY OF FRESNO

By: _____
Director or Designee
Development and Resource Management Department

ATTEST:
YVONNE SPENCE, CITY CLERK

APPROVED AS TO FORM:
FRANCINE M. KANNE
INTERIM CITY ATTORNEY

By: _____
Deputy

By: _____
Assistant/Deputy

Date: _____

Date: _____

DEVELOPER:
a California company

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

Date: _____

**Exhibit C:
Exemplar Declaration of Restrictions**

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

AND WHEN RECORDED MAIL TO:

CITY OF FRESNO
Downtown and Community Revitalization Dept.
Housing and Community Development Division
Attn: Housing Manager
2600 Fresno Street, Rm. 3070
Fresno, CA 93721-3605

Title Order No. _____ Escrow
No. _____

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN [Number]

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this [Date] day of [Month], [Year] by [Declarant Name] ("Declarant") in favor of the City of Fresno, acting by and through its Development and Resource Management Department - Housing and Community Development Division, ("CITY").

WHEREAS, Declarant is the owner of the real estate in the county of Fresno, state of California, consisting of APN: [Number], which is more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, Pursuant to a certain Neighborhood Stabilization Program ("NSP") Agreement dated [Date], [Year] incorporated herein ("NSP Agreement") and instruments referenced therein, Declarant agrees to utilize, and CITY agrees to provide, certain NSP Funds from the United States Department of Housing and Urban Development (HUD), to Declarant and Declarant agrees to construct and/or rehabilitate and preserve the Project Units (the "Project") for Low, Moderate- and Middle-Income households (collectively "Affordable Units"), subject to the terms and conditions set forth in the NSP Agreement; and

WHEREAS the NSP regulations promulgated by HUD, and the NSP Agreement impose certain affordability requirements upon property benefited thereby, which affordability restrictions shall be enforceable for a thirty (30) year period; and

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

NOW THEREFORE, Declarant declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the plan for the construction and/or

rehabilitation, sale and occupancy of the Affordable Units upon the Property. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, will inure to the benefit of the future Owners of the home or any part thereof, the United States and the City, and will be enforceable by any of them. Any purchaser under a contract of sale covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration for the period of thirty (30) years constituting the Affordability Period.

Period of Affordability: The Neighborhood Stabilization Program requires the City to set periods of affordability as provided in NSP regulations. The minimum period of affordability for this program is thirty years (30 years). Year one shall be the 12-month period following issuance of the Certificate of Completion of the Project Property, with each succeeding year beginning on the anniversary thereof and ending 12 month hence. There will be no partial years.

1. **Declarations.** Declarant hereby declares that the Property, including the Affordable Units, is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Project and the NSP Agreement, and are established and agreed upon for the purpose of enhancing and protecting the value of the Property and in consideration for CITY entering into the NSP Agreement with Declarant.

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

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

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

(ii) Principal Residence. Each of the Affordable Units within the Project upon the Property shall be leased only to eligible Low-, Moderate- and Middle-Income households, who shall occupy the Affordable Units as their a principal residence. The foregoing requirement that the Property tenants occupy the Affordable Units as their principal residence does not apply to persons, other than natural persons, who acquire the Property or portion thereof by foreclosure or deed in lieu of foreclosure; or HUD qualified entities that acquire the Property or portion thereof, with the consent of the CITY.

(iii) Income Requirements. The Affordable Units constituting the Project upon the Property and each of them may be leased only to (a) natural person(s) whose annual household income at the time is not greater than one hundred twenty percent (120%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size.

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

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

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

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

thereof.

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

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

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

7. **Waiver.** Neither Declarant nor any future owner of the Property may exempt itself from liability for failure to comply with the Covenant and Restrictions required in this Declaration; provided however, that upon the transfer of the Property, the transferring owner shall be released from liability hereunder, upon CITY's written consent of such transfer, which consent shall not be unreasonably withheld, conditioned or delayed.

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

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

10. **Interpretation.** The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Declaration are inserted herein for

ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

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

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

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

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

///

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

DECLARANT:

[Declarant Name]
a California [Legal Identity]

By: _____
[Name]

Name: (Attach notary certificate of acknowledgment)

Title: _____

Date: _____

APPROVED AS TO FORM:
City Attorney's Office

By: _____
[Name] Date
Senior Deputy/Deputy City Attorney

Legal Description

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

[Legal Description]

APN [Number]

**Exhibit D:
Exemplar Deed of Trust with Assignment of Rent**

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

AND WHEN RECORDED MAIL TO

City of Fresno
Name Planning and Development Department
Address 2600 Fresno Street, Rm. 3070
City & Fresno CA 93721-3605
State Attn: Housing Manager

Title Order No. 10-291835-A-CU
Escrow No. 10-291835-RH

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN [Number]

DEED OF TRUST WITH ASSIGNMENTS OF RENTS

THIS DEED OF TRUST With Assignment of Rents ("Deed of Trust") made this [Date] day of [Month], [Year], by and between [Name of Trustor or Borrower], [Legal Identity] (herein "Trustor" and "Borrower"), [Name of Trustee] (herein "Trustee"), and the City of Fresno, a Municipal Corporation organized and existing under the laws of the State of California whose address is 2600 Fresno Street, Fresno, California 93721 (herein "Beneficiary" and "Lender").

Trustor, in consideration of the indebtedness herein recited and the trust herein created, does irrevocably grant and convey to Trustee, in trust, with power of sale, all Trustor's right, title, and interest now owned or hereafter acquired in the real property ("Land") located in Fresno County, California and more particularly described in the Attached Exhibit A, incorporated by reference (Trustor agrees that any greater to the Land later acquired during the term of this Deed of Trust will be subject to this Deed of Trust), together with the rents, issues, and profits, subject however, to the right, power, and authority granted and conferred on Trustor in this Deed of Trust to collect and apply the rents, issues, and profits; and

Trustor also irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all of Trustor's right, title and interest now owned or later acquired to the following property (including the rights or interests pertaining to the property) located at the Property:

- (1) All buildings ("Buildings") and improvements now or later on the land and all easements, rights, appurtenances, water and water rights, minerals and mineral rights; all machinery, equipment, appliances, and fixtures for the generation or distribution of air, water, heat, electricity, light, fuel, or refrigeration or for ventilating or sanitary purposes or for the exclusion of vermin or insects or for the removal of dust, refuse, or garbage; all wall safes, built-in furniture, and installations, window shades and blinds, light fixtures, fire hoses and brackets, screens, linoleum, carpets, furniture, furnishings, fixtures, plumbing, laundry tubs and trays, refrigerators, heating units, stoves, water heaters, incinerators, and communication systems and installations for which any Building is specially designed; all of these item, whether now or later installed, being declared to be for all purposes of this Deed of Trust a part of the Land, the specific enumerations in this Deed of Trust not excluding the general;
- (2) The rents, issues, profits, and proceeds relating to the foregoing; and
- (3) The Property to the extent not included on clauses (1) and (2) above.

TO SECURE, in order of priority that Beneficiary determines:

- (1) Payment of the indebtedness evidenced by a note of Trustor of even date with this Deed of Trust in the principal amount of [Written Dollar Amount] (\$[Amount]) ("Note"), payable to Beneficiary or order, and all extensions,

- modifications, or renewals of that note;
- (2) Payment of the interest on that indebtedness according to the terms of the Note;
 - (3) Payment of all other sums (with interest as provided herein) becoming due and payable to Beneficiary or Trustee pursuant to the terms of this Deed of Trust;
 - (4) Performance of every obligation contained in this Deed of Trust, the Note, the NSP Agreement dated the [Date] day of [Month], [Year] and its related documents, the Declaration of Restrictions dated the [Date] day of [Month], [Year], any instrument now or later evidencing or securing any indebtedness secured by this Deed of Trust, and any agreements, supplemental agreements, or other instruments of security executed by Trustor as of the same date of this Deed of Trust or at any time subsequent to the date of this Deed of Trust for the purpose of further securing any indebtedness amending this Deed of Trust or any instrument secured by this Deed of Trust (collectively the "Loan Documents"); and
 - (5) Payment of all other obligations owed by Trustor to Beneficiary that by their terms recite that they are secured by this Deed of Trust, including those incurred as primary obligor or as guarantor.

Trustor covenants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered except for encumbrances of record. Trustor covenants that Trustor will forever warrant and will defend the grant made in this Deed of Trust against all claims and demands, subject to encumbrances of record. Trustor covenants that Trustor will maintain and preserve the lien of this Deed of Trust until all the indebtedness under the Note is paid in full.

Trustor represents and warrants to Beneficiary that as of the date of this Deed of Trust Trustor is a [Type of Entity] organized, validly existing, and in good standing under the laws of the State of [Name of State] and is qualified to do business in California; that Trustor has the requisite power and authority to own, develop, and operate the property; and that Trustor is in compliance with all laws, regulations, ordinances, and orders of public authorities applicable to it.

Trustor represents and warrants to Beneficiary that as of the date of this Deed of Trust the execution, delivery, and performance by the Borrower and the borrowings evidenced by the Note are within the power of the Borrower; have been duly authorized by all requisite corporate or partnership actions, as appropriate; has received all necessary governmental approvals; and will not violate any provision of law, any order of any court or agency of government, the charter documents of Borrower, or any indenture, agreement, or any other instrument to which Borrower is a party or by which Borrower or any of its property is bound, nor will they conflict with, result in a breach of, or constitute (with due notice and lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge, or encumbrance of any nature on any of the property or assets of Borrower, except as contemplated by the provisions of the Loan Documents; and each of the Loan Documents, when executed and delivered to Beneficiary, will constitute a valid obligation, enforceable in accordance with its terms.

Trustor represents and warrants to Beneficiary that as of the date of this Deed of Trust that the Property is not used principally for agricultural or grazing purposes; that Trustor is engaged in the development and operation of Improvements to the Property; and that the principal purpose of the Loan is the acquisition, development and/or the operation of the Improvements to the Property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal. Borrower shall promptly pay when due the principal indebtedness evidenced by the Note.
2. Hazard Insurance. Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Beneficiary, shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require as set forth in the NSP Agreement referenced above.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

3. Preservation and Maintenance of Property. Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. Borrower shall not permit overcrowded conditions to exist as defined by the U.S. Department of Housing and Urban Development.
4. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect Lender's interest. If Lender requires mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable laws.

Any amounts disbursed by Lender pursuant to this Paragraph 5 shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder.

5. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall provide Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.
6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.
7. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust be reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be waiver of or preclude the exercise of any such right of remedy.
8. Successors and Assignees Bound; Joint and Several Liability; Co-Signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assignees of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. Any borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property of Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust or the Note, without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.
9. Transferability. One of the inducements to Beneficiary for making the Loan is the identity of Trustor. The existence of any interest in the Property other than the interests of Trustor and Beneficiary and any encumbrance permitted in this Deed of Trust, even though subordinate to the security interest of Beneficiary, and the existence of any interest in Trustor other than those of the present owners, would impair the Property and the security interest of Beneficiary, and,

therefore, except as provided herein or in the Loan Documents, Trustor/Borrower will not sell, convey, assign, transfer, alienate, or otherwise dispose of its interest in the Property, either voluntarily or by operation of law, or agree to do so, without the prior written consent of Beneficiary. Consent to one transaction by Beneficiary will not be deemed a waiver of the right to require consent to further or successive transactions. If Trustor is a corporation, any sale, transfer, or disposition of fifty percent (50%) or more of the voting interest of Trustor or of any entity that directly or indirectly owns or controls Trustor, including, without limitation, the parent company of Trustor, and the parent company of the parent company of Trustor, will constitute a sale of the Property for purposes of this article. If Trustor is a partnership any change or addition of a general partner of Trustor, change of a partnership interest of Trustor, or sale, transfer, or disposition of fifty percent (50%) or more of the voting interest or partnership interest of any partner of Trustor or of any corporation, partnership or entity that directly or indirectly owns or controls any partner of Trustor, including, without limitation, each parent company of a partner of Trustor and each parent company of any parent company of a partner of Trustor, will constitute a sale of the Property for purposes of this section. If Trustor is a limited liability company, any change of the manager or any sale, transfer or disposition of fifty percent (50%) or more of the partnership interests of Trustor, or disposition of fifty percent (50%) or more of the voting interest of Trustor or of any corporation, partnership or entity that directly or indirectly owns or controls any member of Trustor, including without limitations, each parent company of Trustor and each parent company of any parent company of a member of Trustor, will constitute a sale of the Property for purposes of this section. Any transaction in violation of this section will cause all Indebtedness, irrespective of the maturity dates, at the option of the Beneficiary and without demand or notice, immediately to become due, together with any prepayment premium in accordance with the terms of the Note except as prohibited by law.

10. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.
11. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust or if the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses", and "attorney's fees" include all sums to the extent not prohibited by applicable law or limited herein.
12. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation thereof.

NON-CONFORMING COVENANTS. Borrower and Lender further covenant and agree as follows:

13. Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, the Note or the Program restrictions, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 10 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 13, including, but not limited to, reasonable attorney's fees. If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine.

Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be primo facio evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

14. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower in paragraph 13 hereof, including but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.
15. Assignment of Rent; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 13 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 13 hereunder or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

16. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust, and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.
17. Substitute Trustee. Lender at lender's option, may from time to time, appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the Fresno County Recorder's Office. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Instrument is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.
18. Statement of Obligation. Lender may collect a fee not to exceed \$50 for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.
19. Event of Default.

The following events are each an "Event of Default":

- (a) Default in the payment of any sum of principal or interest when due under the Note or any other sum due under the Loan Documents.
- (b) Failure to maintain insurance as provided in Section 2 hereof.

- (c) The failure (without cure during the applicable period, if any, for cure) of any Borrower to observe, perform, or discharge any obligation, term, covenant, or condition of any of the Loan Documents, any agreement relating to the Property, or any agreement or instrument between any Loan Party and Beneficiary.
- (d) The assignment by Trustor, as lessor or sublessor, as the case may be, of the rents or the income of the Property or any part of it (other than to Beneficiary) without first obtaining the written consent of Beneficiary.
- (e) The following events:
 - (i) the filing of any claim or lien against the Property or any party of it, whether or not the lien is prior to this Deed of Trust, and the continued maintenance of the claim or lien for a period of thirty (30) days without discharge, satisfaction, or adequate bonding in accordance with the terms of this Deed of Trust;
 - (ii) the existence of any interest in the Property other than those of Trustor, Beneficiary, any tenants of Trustor, and any one listed in a title exception approved by Beneficiary in writing; or
 - (iii) the sale, hypothecation, conveyance, or other disposition of the Property except with the express written approval of Beneficiary, any of which will be an Event of Default because Trustor's obligation to own and operate the Property is one of the inducements to Beneficiary to make the Loan;
- (f) Default under any agreement to which Trustor is a party, which agreement relates to the borrowing of money by Trustor from Beneficiary.
- (g) Any presentation or warranty made by any Loan Party or any other Person under this Deed of Trust or in, under, or pursuant to the Loan Documents, is false or misleading in any material respect as of the date on which the representation or warranty was made.
- (h) Any of the Loan Documents, at any time after their respective execution and delivery and for any reason, cease to be in full force or are declared null and void, or the validity or enforceability is contested by Borrower or any stockholder or partner of Borrower, or Borrower denies that it has any or further liability or obligation under any of the Loan Documents to which it is a party.

If one or more Event of Default occurs and is continuing, then Beneficiary may declare all the Indebtedness to be due and the Indebtedness will become due without any further presentment, demand, protest, or notice of any kind, and Beneficiary may:

- (i) in person, by agent, or by a receiver, and without regard to the adequacy of security, the solvency of Trustor, or the existence of waste, enter on and take possession of the Property or any party of it in its own name or in the name of Trustee, sue for or otherwise collect the rents, issues, and profits, and apply them, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon the Indebtedness, all in any order that Beneficiary may determine. The entering on and taking possession of the Property, the collection of rents, issues, and profits, and the application of them will not cure or waive any default or notice of default or invalidate any act done pursuant to the notice;
- (ii) commence an action to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages of real property;
- (iii) deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause the Property to be sold, which notice Trustee or Beneficiary will cause to be filed for record;
- (iv) with respect to any Personalty, proceed as to both the real and personal property in accordance with Beneficiary's rights and remedies in respect of the Land, or proceed to sell the Personalty separately and without regard to the Land in accordance with Beneficiary's rights and remedies; or
- (v) exercise any of these remedies in combination or any other remedy at law or in equity.

20. Protection of Security.

If an Event of Default occurs and is continuing, Beneficiary or Trustee, without notice to or demand upon Trustor, and without releasing Trustor from any obligations or defaults may:

- (a) enter on the Property in any manner and to any extent that either deems necessary to protect the security of this Deed of Trust;
- (b) appears in and defend any action or proceeding purporting to affect, in any manner, the Obligations or the Indebtedness, the security of this Deed of Trust, or the rights or powers of Beneficiary or Trustee;
- (c) pay, purchase, or compromise any encumbrance, charge, or lien that in the judgment of Beneficiary or Trustee is prior or superior to this deed of Trust; and
- (d) pay expenses relating to the Property and its sale, employ counsel, and pay reasonable attorneys' fees.

Trustor agrees to repay on demand all sums expended by Trustee or Beneficiary pursuant to this section with interest at the Note Rate of Interest, and those sums, with interest, will be secured by this Deed of Trust.

21. Effect of Assignment.

The assignment rents as provided herein will not impose on Beneficiary any duty to produce rents, issues, or profits from the Property, or cause Beneficiary to be:

- (a) a "mortgage-in-possession" for any purpose;
- (b) responsible for performing any of the obligations of the lessor under any of the Leases; or
- (c) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property.

Beneficiary will not be liable to Trustor or any other party as a consequence of the exercise of the rights granted to Beneficiary under this assignment or the failure of Beneficiary to perform any obligation of Trustor arising under Leases.

///

///

///

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust on the day and year set forth above. By signing below, Borrower agrees to the terms and conditions as set forth above.

By: _____
[Name]
[Title]

Date: [Date]

STATE OF CALIFORNIA
COUNTY _____ } S.S.
OF _____

On _____ before _____ a Notary Public,
_____ me, _____

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

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

WITNESS my hand and official seal

Signature _____

APPROVED AS TO FORM:
City Attorney's Office

By: _____
[Name] [Date]
Senior Deputy/Deputy City Attorney

(This area for official notarial seal)

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

TO TRUSTEE

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidence of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

Please mail Deed of Trust, _____
Note and Reconveyance to

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made

Legal Description

EXHIBIT "A"

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

[Legal Description]

APN [Number]

**Exhibit D:
Exemplar Deed of Trust**

RECORDING REQUESTED BY
Chicago Title Company

AND WHEN RECORDED MAIL TO:
City of Fresno
Housing and Community Dev. Division
2600 Fresno Street, Room 3070
Fresno CA 93721-3605

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

File No.: _____
A.P.N.: _____

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made this _____, 2012, by

TRUSTOR: DEVELOPER

whose address is _____, **Fresno, California**

TRUSTEE: _____

and BENEFICIARY: City of Fresno, a California municipal corporation

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the City of **Fresno, Fresno County, State of California**, described as:

See Exhibit "A" attached hereto.

TOGETHER WITH the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph 10 of the provisions, incorporated by reference, to collect and apply such rents, issues and profits.

FOR THE PURPOSE OF SECURING:

1. Performance of each agreement of Trustor, incorporated by reference or contained herein, including without limitation the NSP Agreement entered between DEVELOPER, a California company and Beneficiary dated _____, 2012.
2. Payment of the indebtedness evidenced by a Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of \$ _____ to **City of Fresno** executed by Trustor in favor of Beneficiary or order.
3. Payment of such further sums as the then record Owner of said property hereafter may borrow from Beneficiary, when evidenced by another Note (or Notes) reciting it is so secured.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(4) To pay: at least ten (10) days before delinquency, all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the rate called for in the note secured hereby, or at the amount allowed by law at date of expenditure, whichever is greater, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in this same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting

any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five (5) years after issuance of such full reconveyance, Trustee may destroy said Note and this Deed of Trust (unless directed in such request to retain them.)

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder after expiration of all applicable cure periods, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Note(s) and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale.

Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all reasonable costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the persons or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the

Trustee predecessor, succeed to all its title, estate, rights, powers and duties, must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

(13) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so required, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be party unless brought by Trustee.

(15) The Loan is a nonrecourse obligation of Trustor. Neither Trustor nor any of its general and limited partners shall have any personal liability for repayment of the Loan. The sole recourse of the Lender under the Loan Documents for repayment of the Loan shall be the exercise of its rights against the Property.

(16) The withdrawal, removal and/or replacement of (where applicable) general partner of Trustor pursuant to the terms of a partnership agreement due to a violation by a general partner of the terms of a partnership agreement, or a voluntary withdrawal from a partnership by a general partner, and any transfer of limited partnership interests or interests in the same, shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan.

(17) Beneficiary agrees that the lien of this Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "Extended Use Agreement") recorded against the Property, provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code, subject to the limitations upon evictions, terminations of tenancies and increases in gross rents of tenants of low-income units as provided in that Section.

(18) Prior to declaring or taking any remedy permitted under Loan Documents, (where applicable) Trustor's limited partners shall have an additional period of not less than thirty (30) days to cure such alleged default. Notwithstanding the foregoing, in the case of a default that cannot with reasonable diligence be remedied or cured within thirty (30) days, Trustor's limited partners shall have such additional time as reasonably necessary to remedy or cure such default, but in no event more than ninety (90) days from the expiration of the initial thirty (30) day period above, and if the Trustor's limited partners reasonably believe that in order to cure such default, Trustor's limited partners must remove one or both of Trustor's general partners in order to cure such default, Trustor's limited partners shall have and additional thirty (30) days following the effective date of such removal to cure such default.

(19) Beneficiary shall give the Trustor's limited partners notice of any default under the Loan Documents at the following address:

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale be mailed to Trustor at Trustor's address hereinbefore set forth, or if none shown, to Trustor at property address.

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

Except as provided herein or in the NSP3 Agreement, if the Trustor/Grantor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

Signature of Trustor(s):

By: _____

Its: _____

ALL SIGNATURES MUST BE NOTARIZED

Exhibit E
Sample Note

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

PROMISSORY NOTE

Loan Amount: \$ _____
Fresno, California

Date: _____, 2013

For value received, the undersigned, DEVELOPER, a California company ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation, ("Lender"), the sum of _____, to the extent that such funds are loaned to Borrower, with interest on the unpaid principal balance running from the date of disbursement with simple interest at the rate of [Number]% annually in accordance with the Neighborhood Stabilization Program (NSP) Agreement dated [Date], [Year], entered into between the Lender and borrower, ("Agreement"), with all principal and interest due and payable on or before the earlier of (i) Borrower's uncured default under the Agreement with respect to the Project, and (ii) [Insert Number of Years of Affordability Period] years from the date of the issuance of the Certificate of Completion as referenced in the Agreement, ("Maturity Date"), on which date the unpaid balance of principal with unpaid interest thereon shall be due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws.

This is a Residual Receipts Note. Principal and interest payments equal to 100% of annual Residual Receipts, to the extent that Residual Receipts exist and are itemized in audited financial statements supplied to Lender with each payment hereunder, shall be due one hundred eighty (180) days following the completion of construction, unless otherwise agreed to by Lender in writing, and said payment continues each successive year thereafter until the Maturity Date, upon which all principal and interest shall be due and payable (prorated amounts to be paid for the first and last year of the Note). Any failure to make a payment required hereunder within ten (10) days after such payments are due shall constitute a default under the Agreement with respect to the Project and this Note. It shall not be a default hereunder if no payment was made because Project Residual Receipts did not exist for any particular year. Additionally any failure to timely submit to Lender audited financial statements within thirty (30) days after such financial statements are due shall constitute a default under the Agreement with respect to the Project and Note.

Residual Receipts means in each operating year, the sum of: (i) all cash received by the Project from rents, lease payments, and all sources generally considered in the apartment industry to be "other income" (which does not include payments for optional services provided by Borrower), and excluding (a) tenant security or other deposits required by law to be segregated, and (b) interest on reserves not available for distribution, and (ii) the net proceeds of any insurance (including rental interruption insurance), other than fire and extended coverage and title insurance, to the extent not

reinvested, less the sum of: (i) payments towards any deferred developer fee (including repayment of loans or capital contributions made by a partner to a partnership specifically for the purpose of paying the deferred developer fee), if applicable; (ii) contributions to any prudent and reasonable cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as may be reasonably required for the operation of the Project not to exceed an amount as pre-approved by Lender, annually adjusted in proportion to the average increase of the following indices (a) the United States Bureau of Labor Statistics for Hourly Wage Rates of all workers in manufacturing, and (b) of all Commodity Wholesale Prices, said indices shall be re-defined to the mutual satisfaction of the parties in the event of change in form and basis of indices, all increases shall use the indices for calendar year 2010 as their base; (iii) the payment of principal and interest, and any associated fees, expenses, and costs, with respect to the Financing; (iv) payments made to any investors which are required to reimburse the investors a portion of its capital contribution in relation to the Project when there is a shortfall in funding initially promised pursuant to any investor or partnership agreement; (v) the payment of any deferred development costs.

All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the Agreement. In addition, as used in this Note, the following terms will have the following meanings:

Business Day means any day other than Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day.

Note Maturity Date means [Insert Number of Years of Affordability Period] years from the date Lender enters project completion data into HUD's DRGR system constituting the completion date.

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust and Assignment of Rents, on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note, and executed in favor of and delivered to the Lender ("Deed of Trust"), insured as a 3rd position lien on the Property.

Time is of the essence. It will be a default under this Note if Borrower defaults under the Agreement, any other Loan Document with the Lender, or this Note and such default continues beyond the notice and cure period as provided in such documents. In the event of a default by Borrower with respect to any sum payable under this Note and the failure to cure such default within ten (10) days, the Borrower shall pay a late charge equal to the lesser of two percent (2%) of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to

the interest and then to principal balance. On the occurrence of an uncured default or on the occurrence of any other event that under the terms of the Loan Documents give rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind. Lender acknowledges and agrees that it shall send notice of any default hereunder to the limited partners of Borrower and shall accept any cure offered by such limited partners on the same basis as it would accept a cure from Borrower.

The indebtedness evidenced by this Note may, at the option of the Borrower, be prepaid in whole or in part without penalty. Lender will apply all the prepayments first to the payment of any costs, fees, late charges, or other charges due under this Note or under any of the other Loan Documents and then to the interest and then to the principal balance.

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

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

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

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

The Deed of Trust provides as follows:

[E]xcept as provided herein or in the Loan Documents, Trustor/Borrower will not sell, convey, assign, transfer, alienate, or otherwise dispose of its interest in the Property, either voluntarily or by operation of law, or agree

to do so, without the prior written consent of Beneficiary...Any transaction in violation of this section will cause all Indebtedness, irrespective of the maturity dates, at the option of the Beneficiary and without demand or notice, immediately to become due, together with any prepayment premium in accordance with the terms of the Note except as prohibited by law.

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

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

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

This Note may be prepaid at any time without penalty.

IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be executed as of the date and year first above written.

DEVELOPER
a California company

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

Date: _____

APPROVED AS TO FORM:
City Attorney's Office

By: _____
[Name] [Date]
Senior Deputy/Deputy City Attorney

Exhibit F: Eligible NSP Areas

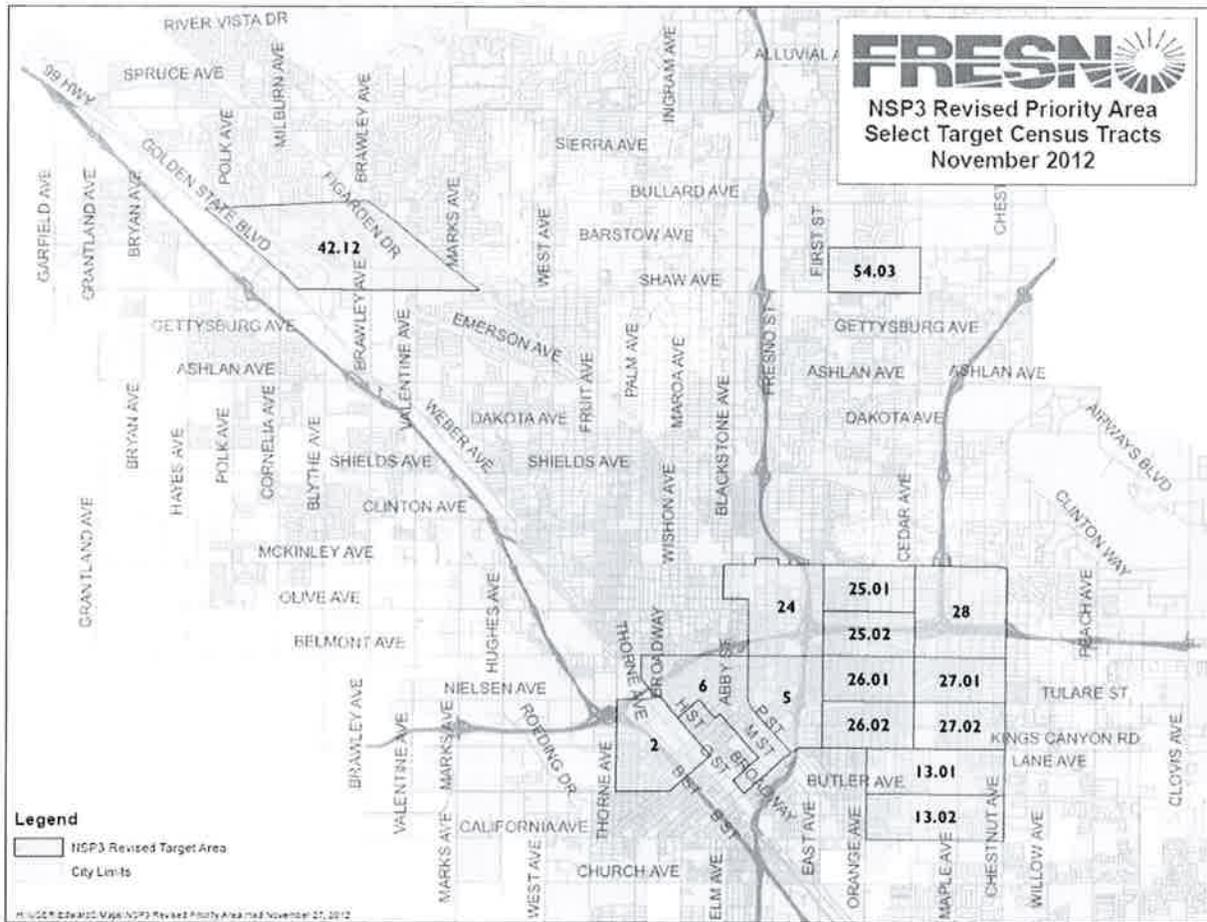


Exhibit G: Intake Form

Please submit a completed Intake Form with your request for Neighborhood Stabilization Program (NSP) 3 funds. Give a brief description as your response and where requested, encircle Yes or No. Incomplete responses may cause a delay in the closing of the property transaction. The provided information will be used to determine project eligibility and environmental clearance - Release of Funds cannot occur prior to environmental clearance.

Date:			
Street Address of Project/Property to be Acquired:			
City	Zip	Census Tract No:	A.P.N:
Current Owner:			
Name/Co. Name:			
Street Address:			
City, State, Zip:			
Telephone No:		Fax:	
E-Mail:			
I. Project Description			
<i>Provide photographs of the project and site (photos should include views looking north, south, east and west from the project to see adjacent land uses).</i>			
A. Indicate type of project: Acquisition of real property <input type="checkbox"/> Rehabilitation <input type="checkbox"/>			
B. Is property: vacant <input type="checkbox"/> abandoned <input type="checkbox"/> foreclosed <input type="checkbox"/>			
C. Is the property a residential: single family dwelling, duplex, tri-plex, four-plex, other, commercial or industrial?			

	D. Will the residence be owner or renter occupied? _____
	F. Is the mortgage/tax foreclosure process completed? (Yes / No)
	G. Has the property owner made any mortgage payment within the last 90 days? (Yes / No)
	H. Has the property been vacant for more than 90 days? (Yes / No)
	I. Is the property currently occupied? (Yes / No)
	J. Was property foreclosed upon prior to February 17, 2009? (Yes / No). Give date foreclosed: _____
	K. If foreclosed after February 17, 2009, are you providing adequate documentation of tenant protection compliance from the Initial Successor in Interest? (Yes / No). Provide copy of certification.
	L. If Initial Successor in Interest will not or cannot certify or demonstrate compliance with NSP tenant protection, the transaction must be abandoned, or perform due diligence to determine whether any bona fide tenant occupied the property. If so, determine if they were allowed to remain through the end of the lease term or tenancy and received any required notices.
II. Acquisition	
	A. What is the listed price of the property on the real estate data base (i.e. Fannie Mae, REO, Multiple listings, etc.)? \$ _____
	B. Has the seller accepted an offer from the buyer? (Yes / No / Pending)
	C. List any provisions or contingencies attached to the offer: _____

	D. Does the accepted offer to purchase the property meet the required discounted price of at least one percent (1%) below the current market-appraised value of the property? (Yes / No)
	E. How much NSP funds are you requesting for Acquisition? \$ _____
III. Rehabilitation	
<i>(Provide a detailed cost estimate for all proposed rehabilitation work).</i>	
	A. Does the project currently meet the City's property rehabilitation standards? (Yes / No)
	B. If No, please lists all items necessary to rehabilitate the residence back to habitability: _____ _____ _____ _____
	C. Could the project benefit from rehabilitation improvements to increase energy efficiency or conservation by installing energy star appliances, energy efficient windows, installation of insulation? (Yes / No)
	D. Identify improvements to increase energy efficiency: _____ _____

E. *A City Inspector will conduct an inspection of the property to determine the habitability of the residence, or to verify the rehab assessment as required by the NSP regulations. (Note: This inspection is not to be confused with a third-party Home Inspection that may be required by buyer - lender or seller). Please Identify a contact person and telephone number whom to be contacted in order to schedule a site visit inspection.*

Name of Contact Person: _____

Telephone: _____

IV. Existing Conditions

A. Describe the Project Site Area:

Gross Acres/sq. ft: _____

B. Existing Zoning: _____

C. Existing Use of Land: _____

D. Existing General Plan Designation: _____

V. Residential Project

A. Number of Existing Dwelling Units:

Single Family(four-plex or less): _____

Apartments (5 units or more): _____

Condominiums: _____

B. Number of Dwelling Units with:

One bedroom _____

Two bedrooms _____

Three bedrooms _____

Four or more bedrooms _____

	C. Total number of parking spaces provided: Covered parking: _____ Uncovered: _____
	D. Number of stories: _____
	E. Type of appliances and heating (gas, electric, gas/electric, solar): _____
	F. Total Number of gross square feet of floor area: _____

VI. Environmental Data

	A. Land Use
	1. What use(s) currently occupy the project site (vacant, industrial, residential, etc.)? _____ _____
	2. What land uses (agriculture, residences, school, etc.) are north, south, east, & west of the site? _____ _____
	3. How many structures are on the site? _____. Have the structures been tested for asbestos containing materials? (Yes / No) Include report and/or laboratory test results, if available.
	4. Have the structures been tested for lead-based paint? (Yes / No) Include report and/or laboratory test results, if available.

	<p>5. Describe the project site's topography and vegetation:</p> <p>_____</p> <p>_____</p>
	<p>B. Circulation</p> <p>Identify by name all major and secondary highways and freeways adjacent to the proposed project:</p> <p>_____</p> <p>_____</p>
	<p>C. Floodplain Management</p> <p>Is any part of the area of consideration located in a Special Flood Hazard Area (SFHA, i.e. area designated "A" or "V" Zone by FEMA)? (Yes / No)</p>
	<p>D. Historic/Architecturally Significant Project</p> <p>Does the project involve any structures, buildings, street lighting systems, spaces, sites or components thereof which may be designated or eligible for designation in any of the following: (please check)</p> <p><input type="checkbox"/> National Register of Historic Places</p> <p><input type="checkbox"/> California Register of Historic Resources</p> <p>What year was the structure built? _____</p>
	<p>E. Airport Clear Zones</p> <p>Is the subject property located in the Clear Zone (CZ), Approach Protection Zone, or in the Runway Clear Zone (RCZ) of a commercial civil airport or military airfield?</p> <p>(Yes / No)</p>

	<p>F. Explosive & Flammable Operations</p> <p>Will this proposed acquisition/rehabilitation project result in increased residential density or cause a vacant building to become physically or legally habitable? (Yes / No)</p> <p>Is the proposed project within 1 mile of any visible, explosive-or-flammable-substance container (a stationary, above-ground tank with a capacity of more than 100 gallons)? (Yes / No)</p> <p>If yes, what is tank volume? _____ gallons, or dike area around tank: _____ sq. ft.</p>
	<p>G. Toxic/Hazardous/Radioactive Materials, Contamination, Chemicals or Gases (24 CFR 58.5(i)(2))</p> <p>Are there visible dumps, landfills, industrial sites or other locations containing or releasing toxic/hazardous/ radioactive/materials, chemicals or hazardous wastes on or near the subject site? (Yes / No)</p> <p>Does this project site contain an underground storage tank (which is not a residential fuel tank)? (Yes / No)</p> <p>Do Federal, State or local environmental records sources reveal nearby on or nearby sites that may pose threats to the subject site occupants' health or safety? (Yes / No)</p>
	<p>H. Storage Tanks</p> <p>Are there any storage tanks/containers (larger than 100 gallons) on the project site or vicinity? (Yes / No).</p> <p>If yes, what are the sizes of each tank? _____.</p> <p>Describe the contents (diesel, propane, gas, etc.) _____.</p> <p>What is the approximate distance from the container to the project site? _____</p>

I. Noise Sources

Is the project site within 2 blocks of a railroad track? (**Yes** / **No**)

Is the project site within 1 mile of an airport? (**Yes** / **No**)

Is the project site within 2 blocks of a major highway? (**Yes** / **No**)

If yes, describe the noise sources and their locations in relation to the project site:

Exhibit H

Conflict of Interest Disclosure

DISCLOSURE OF CONFLICT OF INTEREST

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm or organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Do you or any of your subcontractors have, or expect to have any interest, direct, or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>

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

Explanation: _____

Signature _____

Date _____

(name) _____

(company) _____

(address) _____

(city state zip) _____

Additional page(s) attached.

Exhibit I

Sample Scope of Work Write Up

State Prevailing Wage Project

Project No: 12-0016

EXHIBIT "C"

SCOPE OF WORK

Owner: City Of Fresno, 621-8300
Contact: John Giannetta, (559)621-8434

Site Address:
386 N Park
Fresno, CA 93701

The Contractor shall be responsible to include in his bid any permits and all requirements by the Planning and Development Department to insure that all installations will meet all applicable codes. Those installations performed shall be in strict compliance with all Building, Plumbing, Mechanical, and Electrical Codes. Quality of the work performed and materials installed shall be as outlined in "A Guide to Rehabilitation Standards: Standard Specifications" and are to meet the standards of the industry, as determined by the staff of the City of Fresno's Planning and Development Department, Housing and Community Development Division. Repair of items will be done as outlined below to guarantee those repairs for at least one year. The Contractor is required to submit a construction schedule to the City and Owner prior to the start of work. A complete list of all subcontractors that will be used on the project must be included and submitted to the City along with the sealed bid.

**Basement Under Floor Area
Structural**

Repair Retaining Wall @ Basement (FCC) \$ _____
Repair retaining wall as needed

Repair / Construct Basement Access Door @ Basement (FCC) \$ _____
Construct a safe operable basement access door with hinges and latch.
Repair all damaged brick and concrete connecting to foundation for proper support. Install a handrail down to basement attached to side of stairway for safety purposes.

**Bathroom(s)
Remodel**

Complete Remodel Bathroom @ Hall Bathroom (FCC) \$ _____
Completely remodel bathroom. Remove vanity cabinet and replace with a corner vanity cabinet and mirror to match. Remove toilet and replace with a low flow toilet, replace existing baseboard to match at vanity cabinet, install granite counter top with sink and faucet to match shower, install matching 1/4 round on shower tile enclosure for finished look, install 5 wire shelves in closet area behind door, prime and paint walls, trim, and door in a water based semi-gloss enamel. Install exhaust fan. NOTE: Including the relocation of all plumbing as needed.

**Bedroom
Electrical**

Health & Safety: Repair / Replace Switch Leg @ Back Bedroom (FCC) \$ _____

Repair switch leg by removing conduit on exterior of wall and rewire to a cut in box inside the wall to match others throughout house.

Finish Work

Replace Interior Door @ Front Bedroom (FCC)

Replace missing closet door with new hollow core door of similar size, type and design including all hardware. Prep and paint to match existing color. Door to be cut to allow free swing over carpet and close properly.

\$ _____

Consulting

Asbestos

Health & Safety: Asbestos Work @ Outlined Scope in Survey

Contractor will review asbestos abatement scope outlined in asbestos survey provided. Contractor will be responsible for hiring a licensed asbestos abatement contractor for proper completion of asbestos abatement including notifications, monitoring, additional testing, and disposal.

1. Properly remove abandoned transite pipe from under residence thru exterior wall and up thru eave of residence.
2. Proper removal of separation wall in between kitchen and living room. Asbestos is contained in kitchen ceiling tape and texture.
3. Proper removal of separation walls between kitchen and laundry room. Asbestos is contained in kitchen ceiling tape and texture.

\$ _____

Lead Testing

Health & Safety: Obtain Lead Consultation & Clearance

Obtain Lead Consultation regarding safe work practices from the CDPH/RRP Certified Supervisor who performed the Lead Assessment. After completion of all work, the City of Fresno will pay for the Lead Clearance Inspection conducted by the Certified Lead Inspector/Assessor that performed the original Lead Assessment/Consultation for the property. Contractor is responsible for consulting fee (\$ 500.00) and any re-inspections costs if the Clearance fails.

\$ 500.00

Entire Structure

Electrical

Health & Safety: Upgrade Electrical Service / Wiring @ Entire Structure (FCC)

Remove and replace service panel to a 200 amp service. Upgrade all substandard wiring to meet today's code, adaptable to solar connection. Replace all switches, plugs and device plates as needed to meet today's code, replace old light fixtures with new like style.

\$ _____

Evaporative Cooler

Install Evaporative Cooler and Ducting @ Entire Structure

Install a roof mount Master Cool brand evaporative cooler of proper size, for house square footage with all necessary ducting needed.

\$ _____

Entry

Front Entry Door

Replace Front Entry and Rear Doors @ Front and Rear Entry's (FCC)

Replace front door and rear entry doors with a metal six panel door. Use remaining deadbolts from both doors. Replace old entry locks with passage lock to match deadbolts. Install proper weather stripping and thresholds on both front and rear entry doors. Front door to match ERA and style of existing older home.

\$ _____

Exterior

Exterior Painting

Exterior Painting @ Exterior (FCC)

\$ _____

Repair/prepare surfaces listed to be painted according to the "The Guide to Rehabilitation Standards " and paint to manufacturer's recommendation. Home was built in 1928. Use Safe Work Practices and the EPA's RRP (Renovation, Repair & Painting) methods. Stucco surfaces shall be sprayed and back rolled to assure complete penetration of paint into cracks and voids. All surfaces shall have two (2) coats of paint including a primer coat of Glidden Gripper Coat Primer/Sealer GL-321-1200 or equivalent. All cracks and voids over 1/8" shall be filled with a recommended caulking before painting to seal moisture or insect intrusion. LBP Clearance testing will follow completion of painting and results must pass required certification standards. Contractors are responsible for testing costs and clean up.

Fencing

Remove / Replace Existing Rear Yard fence @ Back Yard (FCC)

\$ _____

Remove and replace approximately 100 feet of rear yard fence. To be replaced with 6 ft wood fence. Install gate at north side of house with locking hardware.

On Site

Construct a New Carport @ Rear Yard (FCC)

\$ _____

Construct a new carport over 12x20 concrete slab with approved drawings, plans and required permits in designated area and design type approved by the infill committee according to all city codes and city compliances required. Permit to show final inspection approval upon completion.

Remove Trees and Stumps @ Exterior

\$ _____

Removal of three trees, front yard tree and stump, removal of tree and stump in back yard fence line, removal of tree and stump on north side of house.

Remove/ Repair/ Replace Porch Railings @ Front Porch Railing (FCC)

\$ _____

Repair front porch railing to be level and uniform. Replace any material with like material to match existing construction.

Plumbing

Health & Safety: Remove and Replace Water Heater @ Exterior (FCC)

\$ _____

Remove and replace water heater with insta-hot style water heater located on exterior wall. Remove all excess piping including asbestos exhaust piping on exterior south wall.

Health & Safety: Repair and Replace Water Main @ Front yard (FCC)

\$ _____

Remove PVC water main and replace with proper materials for code.

Install Back Flow Preventers @ Exterior (FCC)

\$ _____

Install back Flow Preventers on all exterior hose bibs

Windows

Health & Safety: Lead Remediation Wood Window Change Out @ Exterior (FCC)

\$ _____

Remove and replace all existing windows indicated Positive/Poor on LBP Inspection & Risk Assessment Report. All new windows to be WOOD SASH, dual-pane, low-e, Sierra Pacific, Anderson, Jeld-win, or approved equal, MATCHING THE EXISTING STYLE/DESIGN/ERA, per Lead Hazard Control Program approved materials. Work to include removal / replacement, installation, repair, trim and painting of all surrounding areas of the window enclosures on interior and exterior elevations including but not limited to sills, frames and casing. Use LBP Safe Work Practice/RRP Rule as required with proper clean-up. Contractor will be responsible for any additional testing costs and cleanup required if area fails Clearance test.

Windows to be used must be approved by Karana Hattersley Drayton historic preservation officer 621-8520.

1. Windows in rear bedroom to be centered on existing walls, lowered and framed to allow proper egress for a sleeping room.

Interior

Electrical

Install as Required Carbon Monoxide and Smoke Detector Alarms @ Interior (FCC)

\$ _____

As per California Building Code Section R315.1 and R315.2, Carbon Monoxide alarms shall be installed in the following locations;

1. Outside each separate dwelling unit sleeping area in the immediate vicinity of the bedroom(s)
2. On every level of a dwelling unit including basements.

Note: R315.3.1 Multipurpose alarms may be used in mentioned areas as well.

Finish Work

Interior Painting @ Interior (FCC)

\$ _____

If subject was built before 1978 use extra caution and LBP "Safe Work Practices". Clearance testing will follow completion of painting and results must pass required certification standards. Painters are responsible for any further testing costs and appropriate clean up of property. Follow all "Guide to Rehabilitation Standards" requirements for preparation, priming and finish painting. Use coatings and associated products from leading paint manufacturers and follow their required recommendations. Use Safe LBP Work Practices as required according to EPA and State of Ca standards found in the LBP Report on pre determined areas of concern findings report.

Plumbing

Install Wall Heaters @ Interior (FCC)

\$ _____

Remove and relocate wall heater replace with new energy efficient model. Install heat transfer ducting to transfer heating to bedrooms. Heat transfer ducting system will require a minimum of R-8 ducting and will be required to run off a separate thermostat located in a low heat area.

Kitchen

Remodel

Complete Remodel of Kitchen @ Kitchen (FCC)

\$ _____

See attached drawing. demolish existing cabinets, remove separation wall to laundry room, remove wall from kitchen/dining room separation, enclose window above existing sink, raise south window to match cabinet grade. Approximate 3.0X3.0, Kitchen to middle bedroom doorway will need to be moved south on wall to accommodate refrigerator space. Install economy grade cabinets including built in range and hood, range to be slide in or drop in gas range/ oven combo, double basin sink with disposal, pull out handle ADA compliant faucet set, granite counter tops to include breakfast bar on west end, dishwasher, repair tile flooring to match where wall has been removed and where else is needed. NOTE: Including the relocation of all plumbing as needed.

On Site

Concrete

Concrete Flat Work @ Driveway

\$ 1442.00

Use industry standards for removal, prep, set up, forming, pour and finish with broom type finish for non slip feature. Joint all areas required not to exceed a 12' span with proper slope to avoid water pooling. Use recommended mix as required for intended purpose. Repair all areas and leave ground next to concrete with proper grade and evenness. All concrete over pour or debris is to be removed and leave area clean. (Driveway has already been installed. Contractor to provide payment of \$1442.00 to Housing Authority for half of cost).

Remove Existing Concrete and Install New @ Front Yard (FCC)

\$ _____

Break up and haul off existing concrete to repair trip hazards as required per Health and Safety issues. replace with new concrete to match existing and connecting to driveway.

Landscaping / Sprinklers

Repair/ Replace Sprinkler System @ Front Yard

\$ _____

Repair/ replace sprinkler system in front yard. Allow separate stations for flower beds and lawn.

Front Yard Landscape @ Front Yard

\$ _____

Install new lawn through front yard and park strip, flowers and shrubs installed in flowerbed in front yard and along north side of house.

Patio Cover

Build Patio Cover to Meet Current Code Requirements @ Back yard (FCC)

\$ _____

Obtain permit to build a new patio cover that extends out. Approx 15 X 10. Cover to meet all current code requirements with drawings and permit obtained from the City Building Department. Roofing to match house

Prune Trees

Prune Trees For Safety @ Back Yard

\$ _____

Prune rear yard corner tree out of neighbors yard and down to a manageable size away from power lines.

Roof

Replace Existing Roof

Remove and Re-Roof Existing @ Roof

\$ _____

Remove all existing roofing (all layers) and dispose of. Install roof bracing and repair roof structure to accommodate solar panels (South Facing Slope). Provide and install new OSB sheathing as required; 30# felt, and 30 year Dimensional 3 tab roofing. Owner to select color. Include all roof metal, pipe jacks, flashings, etc. Replace / repair damaged wood including fascia and barge rafters. Re-roof as outlined with all required permits and inspection clearance as specified in Section VII Guide to Rehabilitation Standards. Haul off all debris and leave area broom clean after work. Correct any sag or unevenness in rafters before roofing. Inspect for water leaks at valleys, ridge and roof jacks / vents for damage or mold to insulation and replace as required with required insulation.

Sub Floor

Sub Floor Vents

Repair / Replace Sub Floor Vents @ Sub Floor (FCC)
Repair and replace all defective sub floor vents as needed.

\$ _____

Total \$ _____

ADDENDUM TO CONTRACT

Owner's Name: City Of Fresno

Project Address: 386 N Park Fresno, CA 93701

It shall be the responsibility of the Contractor to include all costs necessary to perform and complete the items listed in this Addendum, and to perform all work in accordance with this Contract. The items listed below shall be the only changes affected by this Addendum, all other items and/or provisions of the Contract will remain the same.

Addendum to Scope Of Work

1. City of Fresno will obtain all required permits for project
2. Front yard landscape, lawn to be fescue roll in, plants to be 8 azaleas.
3. Plumbing, Remove and relocate wall heater replace with new energy efficient model. Install heat transfer ducting to transfer heating to bedrooms. Heat transfer ducting system will require a minimum of R-8 ducting and will be required to run off a separate thermostat located in a low heat area. (FCC) to relocate wall heater only. Contractor will be responsible for installing heat transfer system.

CONTRACTOR'S CERTIFICATION: I hereby certify that all the items outlined above are included in my original Bid and Proposal.

Contractor's Signature _____

Date _____

OWNER'S CERTIFICATION: I hereby certify that all the items outlined above are in addition to the original Scope of Work. All other items and/or provisions of the original Scope of Work will remain the same.

Owner's Signature _____

Date _____