

EXHIBIT "A"
CDBG Agreement

Recorded at the Request of
and When Recorded Return to:

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

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

CITY OF FRESNO

By: _____
Georgeanne A. White, City Manager

Date: _____

CITY OF FRESNO
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
AGREEMENT

by and between

CITY OF FRESNO,
a municipal corporation

and

Habitat for Humanity Fresno County, Inc.
a California Corporation

regarding

West Side of Barcus Avenue, Fresno, CA 93722
(Portion of A.P.N.510-030-36)
Affordable Single-Family Housing Project

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**COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT BETWEEN CITY OF
FRESNO AND HABITAT FOR HUMANITY FRESNO COUNTY, INC. A CALIFORNIA
CORPORATION**

This Community Development Block Grant Agreement (Agreement), is entered this _____, of April 2022, by and between the City of Fresno (CITY) and Habitat for Humanity Fresno County, Inc., a California Corporation (DEVELOPER).

RECITALS

WHEREAS, CITY has applied for and has been awarded funds from the United States Department of Housing and Urban Development (HUD) through the Community Development Block Grant (CDBG) Program, listed under 14.218 in the Catalog of Federal Domestic Assistance; and

WHEREAS, to advance the supply of affordable homeownership opportunities within the city of Fresno, CITY desires, among other things, to encourage investment in the affordable housing market; and

WHEREAS, the DEVELOPER desires to act as the owner/developer exercising effective project control, as to the acquisition, development, and sale of residential properties hereinafter referred to as the "Project", and shall preserve the residential properties for occupancy by low- and moderate-income households as defined by the CDBG Program and this Agreement; and

WHEREAS, HUD regulations at 24 CFR Part 570.201(a) allow for the use of CDBG funds to acquire real property by a private nonprofit corporation; and

WHEREAS, DEVELOPER is a California non-profit public benefit corporation and is exempt from federal income tax under section 501 (c)(3) of the United States Internal Revenue Code; and

WHEREAS, to further its goal to increase the supply of Affordable Housing within the City of Fresno, the CITY desires to assist the DEVELOPER by providing a One Hundred Ten Thousand Dollars and 00/100 (\$110,000) CDBG grant (Grant) upon the terms and conditions in this Agreement; and

WHEREAS, on August 1, 2020, environmental review of the Project pursuant to the California Environmental Quality Act (CEQA) guidelines resulted in a categorical exemption pursuant to Section 15332 Class 32 for infill development. Additionally, a June 29, 2020, National Environmental Policy Act (NEPA) environmental review of the Project pursuant to NEPA guidelines resulted in a Finding Of No Significant Impact; and

WHEREAS, the CITY has determined that this Agreement is in the best interest of, and will materially contribute to, the Housing Element of the Fresno General Plan. Further, the CITY has found that the Acquisition and subsequent construction of affordable housing: (i) will have a positive influence in the neighborhood and surrounding environs, (ii) is in the vital and best interest of the CITY, and the health, safety, and welfare of CITY residents, (iii) complies with applicable federal, State, and local laws and requirements, (iv) will increase, improve, and preserve the community's supply of Low-Income Housing available at an affordable cost to Low-Income household, as defined hereunder, (v) planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of Low-Income Housing, and

(vi) will comply with any and all owner participation rules and criteria applicable thereto; and

WHEREAS, the CITY and DEVELOPER have determined that the Acquisition constitutes routine programmatic/grantee lender activity utilizing available and allocated program/grantee funding, outside the reach of the California Constitution Article XXXIV and enabling legislation; and

WHEREAS, the parties acknowledge and agree that the obligations and liabilities of the DEVELOPER hereunder shall be joint and several unless and except to any extent expressly provided otherwise; and

WHEREAS, on February 17, 2022, the DEVELOPER'S Board reviewed and approved by Resolution #118, the development of the Project and Agreement.

ARTICLE 1. DEFINITIONS

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

1.1 Acquisition means vesting of the Property in fee title to the DEVELOPER for the subsequent construction of two single-family houses.

1.2 Affordability Period means a period of 30 years commencing from the date the CITY enters project completion information into HUD's Integrated Disbursement and Information System (IDIS), which date will be provided to the DEVELOPER by the CITY and added as an administrative amendment hereto; CITY agrees to enter project completion information into IDIS within thirty days of CITY's receipt thereof.

1.3 Affordable Housing or Affordable Housing Unit means two units required to be occupied by Low-Income Households.

1.4 Budget means the Budget for the development of the Project, as may be administratively amended upon the approval of the CITY's Housing and Community Development Division Manager provided any increase in CDBG Funds hereunder requires City Council Approval, attached hereto as EXHIBIT "C".

1.5 Certificate of Completion means that certificate issued, in the form attached as EXHIBIT "E" (Exemplar Certificate of Completion), to the DEVELOPER by the CITY evidencing completion of the Project and a release of construction related covenants for the purposes of the Agreement.

1.6 CFR means the Code of Federal Regulations.

1.7 Commencement of Construction means the time the DEVELOPER or the DEVELOPER's construction contractor begins substantial physical work on the Property, including, without limitation, delivery of materials and any work, beyond maintenance of the Property in its status quo condition, which shall take place in accordance with the Project Schedule.

1.8 Declaration of Restrictions means the Declaration of Restrictions in the form attached hereto as EXHIBIT "D", which contains the Affordability covenants and requirements of this Agreement which shall run with the land and which the DEVELOPER shall record or cause to be recorded against the Property upon Acquisition.

1.9 Eligible Costs means the CDBG eligible acquisition and predevelopment

costs funded by the Grant, consistent with the Project Budget attached as EXHIBIT “C”, and allowable under 24 C.F.R. 570.

1.10 Event of Default shall have the meaning assigned to such term under Section 8.1 hereunder.

1.11 CDBG Funds means the federal Community Development Block Grant Program monies in an amount of One Hundred Ten Thousand Dollars and 00/100 (\$110,000) to be used solely for eligible property acquisition costs, including title, escrow and recording costs, and predevelopment costs.

1.12 Funding Sources means the CITY’s CDBG Funds, HOME Investment Partnerships Program funds, City General Fund money, Habitat for Humanity funds, and any other funds that may become available to the Project.

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

1.14 Household means one or more persons occupying the Units within the Project.

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

1.16 Low-Income Household means families whose annual income does not exceed 80% of the median income for the Fresno, California area as determined by HUD, except as HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD finding that such variations are necessary.

1.17 Project means the Acquisition and subsequent construction of two affordable units, on-site and off-site improvements, and parking located at approximately the northwest area of N. Barcus Avenue and W. Rialto Avenue.

1.18 Project Schedule means the schedule for commencement and completion of the Project included in EXHIBIT “B”.

1.19 Project Units, Units, or Affordable Housing Units mean the acquisition and subsequent construction of two for-sale units of which two units will be preserved as Affordable Units for the duration of the 30-year affordability period.

1.26 Property or Project Property means the existing vacant property located at approximately the northwest area of N. Barcus Avenue and W. Rialto Avenue, EXHIBIT “A” – Legal Property Description.

ARTICLE 2. TERMS OF THE CDBG Grant

2.1 Grant of CDBG Funds. The CITY agrees to provide a grant of CDBG Funds to the DEVELOPER, in an amount not to exceed One Hundred Ten Thousand Dollars

and 00/100 (\$110,000) all under the terms and condition provided in this Agreement. The CDBG Grant Funds shall be used exclusively for the acquisition of the Property, including title, escrow and recording costs, and predevelopment costs all of which are deemed Eligible Costs for the Project.

2.2 Term of Agreement. This Agreement is effective upon the date of execution and shall remain in force with respect to the Project for the duration of the Affordability Period unless earlier terminated as provided herein. After the 30-year Affordability Period, this Agreement will expire. It is understood and agreed upon, however, that if for any reason this Agreement should be terminated in whole or in part as provided hereunder, without default, the CITY agrees to record a Notice of Cancellation regarding this Agreement upon the written request of the DEVELOPER.

2.3 Incorporation of Documents. The City Council-approved Minutes of April ____, 2022, approving this Agreement, the Act and HUD regulations at 24 CFR 570, 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.

2.4 Covenants of DEVELOPER. The DEVELOPER for itself and its agents/assigns covenants and agrees to comply with all the terms and conditions of this Agreement and the requirements of 24 CFR 570.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

3.1 Existence and Qualification. The DEVELOPER, represents and warrants to the CITY as of the date hereof, that the DEVELOPER is a a California 501(c)(3) non-profit corporation; the DEVELOPER has the requisite power, right, and legal authority to execute, deliver, and perform its obligations under the Agreement 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 the DEVELOPER enforceable against the DEVELOPER in accordance with its respective terms, except as such enforceability may be limited by: (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws of general applicability affecting the enforcement of creditors' rights generally, and (b) the application of general principles of equity without the joinder of any other party.

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

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

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

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

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

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

ARTICLE 4. UNIFORM ADMINISTRATIVE REQUIREMENTS

The DEVELOPER, for itself and its development team it represents shall adhere to the following Uniform Administrative Requirements found in the U.S. federal regulations at 2 CFR Part 200, as provided in this Agreement and including the following (when applicable):

4.1 Establish and maintain effective internal control over CDBG Grant Funds made available through this Agreement to provide reasonable assurance that the funds are administered in compliance with applicable federal statutes, regulations, and the terms and conditions of this Agreement. This includes evaluation and internal monitoring of the Project and prompt, appropriate action when instances of noncompliance are identified.

4.2 Follow a written procurement policy that allows for full and open competition that meets the minimum standards of the U.S. federal regulations at 2 CFR 200.317 through 200.326.

4.3 Take reasonable measures to safeguard protected personally identified information and other information the CITY designates as sensitive consistent with applicable federal, state, and local laws regarding privacy and obligations of

confidentiality.

4.4 Use its best effort to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in the Agreement, 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 that is at least 51% owned and controlled by minority group members or women.

4.5 Prohibit the use of CDBG Grant Funds for personnel employed in the administration of the Project for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

4.6 Comply with the requirements of the Secretary of Labor in accordance the Davis-Bacon Act, as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other federal, state, and local laws and regulations pertaining to the labor standards insofar as those acts apply to the performance of this Agreement.

4.7 Comply with 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 C.F.R. Part 5 and maintain documentation that demonstrates compliance with hour and wage requirements of this part.

4.8 Warrant and covenant that no CDBG Grant Funds provided, nor persons employed as a result of this Agreement shall be in any way or to any extent engaged in the conduct of political activities.

4.9 Maintain a financial management system that identifies all federal awards received and expended and the federal programs under which they were received, including: Catalog of Federal Domestic Assistance number, federal award identification number and year, name of the federal agency and name of the pass-through entity, if any.

4.10 Determine allowable costs in accordance with the terms and conditions of this Agreement and the federal cost principles published in the U.S. federal regulations at 2 CFR 200 subpart E, and maintain effective control over, and accountability for, all funds, property, and other assets to ensure all assets are safeguarded and they are used for the authorized use of this Agreement, and maintain accurate financial reporting on federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

4.11 Maintain written standards of conduct covering conflict of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the DEVELOPER. If the DEVELOPER has a parent, affiliate, or subsidiary organization, the standards of conduct must cover organizational conflict of interest to ensure the DEVELOPER is able to be impartial in conducting a procurement action involving a related organization. At a minimum, the standard of conduct shall include any person who is an employee, agent, consultant, officer, or elected official or appointed official the DEVELOPER. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this Agreement, 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 or benefit from a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those whom they have business or immediate family ties, during their tenure or for one year thereafter.

ARTICLE 5. OTHER CDBG PROGRAM REQUIREMENTS

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

5.2 Compliance with Agreement. The DEVELOPER warrants, covenants and agrees that upon any uncured default by the DEVELOPER within the meaning of Article 8.1 of this Agreement, the CITY may suspend or terminate this Agreement and all other agreements with the DEVELOPER without waiver or limitation of rights/remedies otherwise available to the CITY.

5.3 Construction Standards. The DEVELOPER shall construct the proposed Units 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.

5.4 Covenants and Restrictions to Run with the Land. The CITY and the DEVELOPER expressly warrant, covenant and agree to ensure that the covenants and restrictions set forth in this Agreement are recorded and will run with the land, provided, however, that, on expiration of this Agreement such covenants and restrictions shall expire, provided that such agreements contain written provisions that are no more onerous and which are consistent with the customary standard requirements imposed by the financing source(s), on subordinate cash flow obligations under their then existing senior financing policies, and further provided that City Attorney approves such document(s) as to form.

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

B. The DEVELOPER covenants and agrees with the CITY that after issuance of a recorded certification of completion for the Project until the expiration of the Affordability Period it shall cause two of the Units to be Affordable Housing for Low-Income households.

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

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

5.5 Displacement of Persons. The DEVELOPER covenants and agrees with the CITY that pursuant to 24 C.F.R 570.606, it will take all reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations, and farms). The parties acknowledge and agree that the Property site is currently vacant land and is not occupied.

5.6 Lead-Based Paint. The DEVELOPER covenants and agrees with the CITY 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 C.F.R. Part 35, including the HUD 1012 Rule, and 24 C.F.R. 982.401(j), and any amendment thereto, and Environmental Protection Agency (EPA) Section 402 (c)(3) of the Toxic Substances Control Act (TSCA) to address lead-based 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. The 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. The DEVELOPER shall be responsible for all disclosure, inspection, testing, evaluation, and control and abatement activities.

5.7 Other Laws and Regulations. The DEVELOPER covenants and agrees with the CITY that, in addition to complying with the federal laws and regulations already cited in this Agreement, the DEVELOPER has reviewed, and shall comply with and require all its contractors and subcontractors on the Project to comply with, all other federal laws and regulations that apply to the CDBG Program, including, without limitation:

A. Requirements of 24 C.F.R. 58.6 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128).

B. The DEVELOPER does not intend to use any financing that is secured by a mortgage insured by HUD in connection with the Project as part of its land acquisition costs of the Project.

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

D. Equal Opportunity requirements as described in Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107.

E. The provisions of the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 C.F.R. 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”).

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

G. Section 109 of the Housing and Community Development Act of 1974 requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibition against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to program or activities receiving federal financial assistance under Title I programs.

H. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR 135.

I. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at par 35, subparts, A, B, J, K and R of this part apply.

J. Exclusion of Debarred and Suspended Contractor requirements as described in 2 CFR Part 180.

K. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for CDBG benefits, including financial assistance, public services, jobs, and access to new or rehabilitated housing and other facilities made available with CDBG. Benefits do not include relocation services and payments to which persons displaced are entitled by law (24 CFR 570.613).

L. A building or facility designed, constructed, or altered with CDBG funds governed by this Agreement that meets the definition of “residential structure” as defined in 24 CFR 40.2 or the definition of “building” as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR Part 40 for residential structures, and appendix A to 41 CFR Part 101-19. subpart 101-19.6, for general type buildings).

M. The Americans with Disabilities Act 942 U.S.C. 12131; 47 U.S.C 155, 201, 2085 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

N. The DEVELOPER understands and agrees that, if the Project is terminated before completion, either voluntarily or otherwise, such constitutes an ineligible activity, and the CITY will not be required to provide any further CDBG Funds to the Units.

5.8 Records and Reports. Until the Certificate of Completion is issued by the CITY, the DEVELOPER shall submit to the CITY, in a form acceptable to the CITY, a quarterly report summarizing progress to date on the Project. Upon issuance of the Certificate of Completion, the DEVELOPER shall submit to CITY, in a form acceptable to the CITY, annual reports summarizing compliance with property standards, tenant income, and rent restrictions.

The CITY shall monitor and evaluate DEVELOPER's performance under this Agreement to determine compliance with this Agreement and CDBG requirements. DEVELOPER shall cooperate with the CITY and any federal auditors authorized by CITY and shall make available all information, documents, and records reasonably requested and shall provide CITY the reasonable right of access to both records and personnel during normal business hours for the purpose of assuring compliance with this Agreement and evaluating performance hereunder. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

ARTICLE 6. DISBURSEMENT OF CDBG GRANT FUNDS

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

6.1 Loan Commitments and Financing Plan. The DEVELOPER shall submit its most current Finance Plan for the Project to the CITY within the time frame provided in the Project Schedule. So long as the Finance Plan is consistent with the Budget, the CITY shall accept the Finance Plan. If the Finance Plan is not consistent with the Budget, then within thirty days after receiving the Finance Plan, the CITY, through its Planning and Development, Housing and Community Development Division, will review the Finance Plan and deliver notice to the DEVELOPER either approving or disapproving the Finance Plan in its reasonable discretion. If the CITY disapproves the Finance Plan, it will specify the reason for the disapproval and ask the DEVELOPER to provide any additional information the CITY may need to approve the Finance Plan. The failure of the CITY to send notice within such thirty-day time period shall be deemed an approval of the Finance Plan.

6.2 Finance Plan Content. The Finance Plan shall contain all Project pre-construction and post-construction, and permanent loans or letters of intent from one or more qualified public/private lenders or funding sources in sufficient amounts, combined with any other DEVELOPER financing, for the DEVELOPER to complete construction of the Project. The total amount of the liens to be recorded against the Property as presented in the Finance Plan shall not exceed the DEVELOPER's estimated construction Budget.

6.3 Use of CDBG Grant Funds. The DEVELOPER warrants, covenants and agrees that it shall request CDBG Funds only for reimbursement of Eligible Costs incurred as identified in the attached Budget, attached hereto as EXHIBIT "C". The CITY's obligations shall in no event exceed the CDBG Funds amount specified in this Agreement.

A. If any CDBG Funds shall be determined to have been requested and/or used by the DEVELOPER for costs other than for Eligible Costs, and subject to the notice and cure provisions of Section 8.1 hereunder, an equal amount from nonpublic funds shall become immediately due and payable by the DEVELOPER to the CITY; provided, however, that the DEVELOPER shall, subject to its full cooperation with the CITY, be entitled to participate in any opportunity to remedy, contest, or appeal such determination.

B. In the event CDBG Funds are requested to reimburse Property

Acquisition Costs which subsequently lose eligibility as Eligible Costs, the DEVELOPER shall immediately return such CDBG Funds to the CITY.

C. The CITY will disburse CDBG Funds, only to the DEVELOPER through proper invoicing, for Eligible Costs as provided in this Article 6.

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

A. There exists no Event of Default as provided in Article 8, nor any act, failure, omission, or condition that with the passage of time or the giving of notice or both would constitute an Event of Default.

B. The DEVELOPER has received and delivered to the CITY firm commitments of, or Agreements for, sufficient funds to finance the Project.

C. The DEVELOPER has provided evidence acceptable to the City, that it is and will continue to be an eligible 501(c)(3) non-profit upon execution of the Agreement and for the duration of the Affordability Period.

D. The CITY has approved the requested reimbursement of Property Acquisition Cost.

E. The DEVELOPER has obtained insurance coverage and delivered to the City evidence of insurance as required in Article 7.

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

G. The DEVELOPER has provided the CITY with a written request for CDBG Funds (provided by the CITY), for reimbursement of Eligible Costs, and detailing such Eligible Costs applicable to the request.

H. The CITY has received certification required by Section 6.6 of this Agreement.

I. The CITY has received, and continues to the have the right to disburse, CDBG Funds.

6.5 Requests for Reimbursement of CDBG Funds. The DEVELOPER shall request that the CITY reimburse funds for Eligible Costs using the CITY's Request for Disbursement of Funds form. The DEVELOPER shall only request a maximum of One Hundred Ten Thousand Dollars and 00/100 (\$110,000) in CDBG Funds. All requests should provide in detail such Eligible Costs applicable to the request. All requests for CDBG Funds disbursement shall be accompanied with the Certification required by Section 6.6 of this Agreement.

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

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

B. The DEVELOPER has carried out all of its obligations and is in compliance with all the obligations or covenants specified in this Agreement, to the

extent that such obligations or covenants are required to have been carried out or are applicable at the time of the request for the Reimbursement;

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

D. The Disbursement requested will be used solely for reimbursement of Eligible Costs identified in this Agreement and must be supported by the itemized obligations that have been properly incurred, expended and are properly chargeable in connection with acquisition of the Property and predevelopment costs.

6.7 Disbursement of Funds. The disbursement of CDBG Funds shall occur within the normal course of CITY business after the CITY receives the Certification and to the extent of annually allocated and available CDBG Funds.

ARTICLE 7. INSURANCE AND INDEMNITY AND BONDS

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

7.1 Insurance and Indemnity Requirements.

(a) Throughout the life of the Agreement, the DEVELOPER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

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

(c) The fact that insurance is obtained by the DEVELOPER shall not be deemed to release or diminish the liability of the developer, including, without limitation, liability under the indemnity provisions of the Agreement. The duty to indemnify the 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 the DEVELOPER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the DEVELOPER, vendors, suppliers, invitees, contractors, sub-contractors, consultants, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage 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 Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance, or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

7.2 Minimum Limits of Insurance.

The DEVELOPER, or General Contractor if DEVELOPER subcontracts with such, shall procure, and maintain for the duration of the contract, and for five years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to the CITY, its, officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. Commercial General Liability
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,
 - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
2. Commercial Automobile Liability
\$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation Insurance as required by the State of California with statutory limits and employer's liability with limits of liability not less than:
 - (iii) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.

4. 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.)
5. Contractors' Pollution Legal Liability (limits of liability of not less than the following:
 - (i) \$1,000,000 per occurrence or claim; and,
 - (ii) \$2,000,000 general aggregate per annual policy period.

In the event the Agreement involves any lead based, mold or asbestos environmental hazard, either the Commercial Auto policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering

(a) Materials to be transported by the applicant pursuant to the Agreement.

(b) In the event the Agreement involves any lead-based environmental hazard (e.g., lead based paint), and/or asbestos environmental hazard (e.g., asbestos remediation), and/or mold environmental hazard (e.g. mold remediation) the Commercial Pollution Liability insurance policy or other appropriate policy shall be endorsed to include coverage for lead based environmental hazards and/or asbestos environmental hazards and/or mold environmental hazards and "microbial matter including mold".

7.3 Umbrella or Excess Insurance.

In the event the DEVELOPER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents, and volunteers.

7.4 Deductibles and Self-Insured Retentions.

The DEVELOPER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and the DEVELOPER shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, 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) The DEVELOPER shall provide a financial guarantee, satisfactory to the CITY's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the CITY be responsible for the payment of any deductibles or self-insured retentions.

7.5 Other Insurance Provisions/Endorsements.

(i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days written notice has been given to the CITY, except ten days for nonpayment of premium. The DEVELOPER is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, the DEVELOPER shall furnish the 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 the CITY, the DEVELOPER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.

(ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form. The Contractors Pollution Liability insurance policy shall be written on either an occurrence form, or a claims-made form.

(iii) The Commercial General, Automobile and Contractors Pollution Liability insurance policies shall be endorsed to name CITY, its officers, officials, agents, employees and volunteers as an additional insured. The DEVELOPER shall establish additional insured status for the CITY and for all ongoing and completed operations under both Commercial General and Commercial Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: CG 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) All such policies of insurance shall be endorsed so the DEVELOPER's insurance shall be primary, and no contribution shall be required of the CITY. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents, and volunteers. If the DEVELOPER maintains higher limits of liability than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits of liability maintained by the DEVELOPER.

(v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated minimum limits.

(vi) For any claims related to the Agreement, the DEVELOPER's insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the DEVELOPER's insurance and shall not contribute with it.

(vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to the CITY, its officers, officials, agents, employees and volunteers.

(viii) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as Loss Payee.

Providing of documents – The DEVELOPER shall furnish the CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY's Risk Manager or his/her designee prior to work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of the CITY, the DEVELOPER shall immediately furnish the CITY with a complete copy of any insurance policy required under the Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of the Agreement. All subcontractors working under the direction of the DEVELOPER shall also be required to provide all documents noted herein.

7.6 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 Agreement or the commencement of work by the DEVELOPER.

(ii) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work or termination of the Agreement, 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 Agreement, or work commencement date, the DEVELOPER must purchase "extended reporting" period coverage for a minimum of five years after completion of the work or termination of the Agreement, 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 Agreement.

7.7 Maintenance of Coverage.

If at any time during the life of the Agreement or any extension, the DEVELOPER or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under the Agreement shall be discontinued immediately until notice is received by the CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate the Agreement. No action taken by the CITY hereunder shall in any way relieve the DEVELOPER of its responsibilities under the Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the 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 the DEVELOPER shall not be deemed to release or diminish the liability of the developer, including, without limitation, liability under the indemnity provisions of the Agreement. The duty to indemnify the 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 the DEVELOPER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the DEVELOPER, its principals, officers, agents, employees, persons under the supervision of the developer, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

7.8 Subcontractors.

If the DEVELOPER subcontracts any or all of the services to be performed under this Agreement, the DEVELOPER shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by the CITY Risk Manager or designee. If no Side Agreement is required, the DEVELOPER shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein, or that is customary in the relevant industry, and the DEVELOPER shall ensure that the CITY, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with the DEVELOPER, and the CITY, prior to commencement of any work by the subcontractor.

7.9 Indemnity.

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

To the full extent required by applicable federal and state law, Developer and its contractors and agents shall comply with the Davis-Bacon Act, as amended, California Labor Code Section 1720 et seq., and the regulations adopted pursuant thereto ("Prevailing Wage Laws"), if so required, and shall be solely responsible for carrying out the requirements of such provisions. Developer shall indemnify, defend (with counsel of Developer's) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors, or third party claimants pursuant to Labor Code sections 1726 and 1781),

the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including, but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages.

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

7.10 Property Insurance.

The DEVELOPER shall maintain in full force and effect, throughout the remaining life of this Agreement, a policy(ies) of property insurance acceptable to the CITY, covering the Project premises, with limits reflective of the value of the Project premises upon issuance of the Certificate of Completion or substantial completion of the project referenced in this agreement, including fire and Extended Comprehensive Exposure (ECE) coverage in an amount, form, substance, and quality as acceptable to the CITY's Risk Manager. The CITY shall be added by endorsement as a loss payee thereon.

7.11 Bond Obligations.

The DEVELOPER or its General Contractor shall obtain, pay for and deliver good and sufficient payment and performance bonds along with a Primary Obligee, Co-Obligee or Multiple Obligee Rider in a form acceptable to the CITY from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California and Treasury-listed, in a form satisfactory to the CITY and naming the CITY as Obligee.

A. The "Faithful Performance Bond" shall be at least equal to one 100 % of the DEVELOPER's estimated construction costs as reflected in the DEVELOPER's pro forma budget, to the guarantee faithful performance of the Project, within the time prescribed, in a manner satisfactory to the CITY, consistent with this Agreement, and that all material and workmanship will be free from original or developed defects.

B. The "Payment Bond" shall be at least equal to 100 % of construction costs approved by the CITY to satisfy claims of material supplies and of mechanics and laborers employed for this Project. The bond shall be maintained by the DEVELOPER in full force and effect until the Project is completed and until all claims for materials and labor are paid and as required by the applicable provisions of Chapter 7, Title 15, Part 4, Division 3 of the California Civil Code.

C. The "Material and Labor Bond" shall be at least equal to 100% of the DEVELOPER's estimated construction costs as reflected in the DEVELOPER's pro forma budget, to satisfy claims of material supplies and of mechanics and laborers employed for this Project. The bond shall be maintained by the DEVELOPER in full force and effect until the Project is completed, and until all claims for materials and labor are paid, released, or time barred, and shall otherwise comply with any applicable provision of the California Code.

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

the construction of the Project and shall be subject to and governed by the laws of the State of California.

ARTICLE 8. DEFAULT AND REMEDIES

8.1 Events of Default. The parties agree that each of the following shall constitute an Event of Default by the DEVELOPER for purposes of this Agreement after the cure period in Section 8.2 has expired without a cure:

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

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

C. Except as otherwise provided in this Agreement, the failure of the DEVELOPER to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) the DEVELOPER's material deviation in the Project as identified in this Agreement, without the CITY's prior written consent; (2) the DEVELOPER's use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) the DEVELOPER's failure to commence or complete the Project, as specified in this Agreement; (4) cessation of the Project for a period of more than fifteen consecutive days; (5) any material adverse change in the condition of the DEVELOPER or its development team, or the Project that gives the CITY reasonable cause to believe that the Project cannot be completed by the scheduled completion date according to the terms of this Agreement; (6) the DEVELOPER's failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY's request; (7) the DEVELOPER's failure to comply with any federal, state or local laws or applicable CITY restrictions governing the Project, including but not limited to provisions of this Agreement pertaining to equal employment opportunity, nondiscrimination and lead-based paint;

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

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

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

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

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

I. Any substantial or continuous breach by the DEVELOPER of any material obligation owned by the DEVELOPER imposed by any other agreement with respect to the financing, of the Project, whether or not the CITY is a party to such agreement after expiration of all notice and cure periods contained within such document.

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

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

A. Terminate this Agreement immediately upon written notice;

B. Bring an action in equitable relief: (1) seeking specific performance 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;

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

ARTICLE 9. GENERAL PROVISIONS.

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

9.1 Amendments. No modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by the parties hereto. The CITY recognizes that other Project funders and equity investors may require revisions to the Loan Documents to be consistent with their funding and investing requirements. The CITY agrees to reasonably consider and negotiate as to any reasonable amendments to this Agreement to address such requirements, subject to any necessary City Council approval and approval as to form by the City Attorney.

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

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

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

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

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

9.7 Effective Date. This Agreement shall be effective upon the date first above written, upon the CITY and the DEVELOPER's complete execution following City Council approval.

9.8 Entire Agreement. This Agreement represents the entire and integrated agreement of the parties. This Agreement supersedes all prior negotiations, representations or agreements, either written or oral.

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

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

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

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

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

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

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

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

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

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

If to the CITY: City of Fresno
Planning and Development Department, Housing and
Community Development Division
2600 Fresno Street, Room 3065
Fresno, CA 93721-3605

If to DEVELOPER: Habitat for Humanity Fresno County, Inc.
Attention: Executive Director
4991 E. McKinley Avenue, Suite 123
Fresno, CA 93727

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

9.20 Recording of Documents. The DEVELOPER agrees to cooperate with the CITY and execute any documents required, promptly upon the CITY's request, and to promptly effectuate the recordation of this Agreement, the Declaration of Restrictions, and any other documents/instruments that the CITY requires to be recorded, in the Official Records of Fresno County, California, consistent with this Agreement.

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

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

[SIGNATURE PAGE TO FOLLOW]

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

CITY OF FRESNO,
a California municipal corporation

HABITAT FOR HUMANITY, INC.,
a California corporation

By: _____
Georgeanne A. White
City Manager
(Attach notary certificate of acknowledgment)

By: Ashely Hedemann
Ashely Hedemann
Interim Executive Director
(Attach notary certificate of acknowledgment)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Tracy N. Parvanian
Tracy N. Parvanian Date 4-16-22
Senior Deputy City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy

- Attachments:
EXHIBIT A: LEGAL PROPERTY DESCRIPTION
EXHIBIT B: PROJECT DESCRIPTION AND SCHEDULE
EXHIBIT C: PROJECT BUDGET
EXHIBIT D: EXEMPLAR DECLARATION OF RESTRICTIONS

EXHIBIT "A" LEGAL DESCRIPTION

For APN/Parcel ID(s): **510-030-36**

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

PARCEL A OF LOT LINE ADJUSTMENT NO. 2017-03, PERFECTED BY THE GRANT DEED RECORDED JUNE 1, 2017 AS DOCUMENT NO. 2017- 0068171 OFFICIAL RECORDS FRESNO COUNTY, DESCRIBED AS FOLLOWS:

THE SOUTH 175.00 FEET OF THE WEST 553.40 FEET OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 13 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL UNITED STATES GOVERNMENT TOWNSHIP PLAT THEREOF, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA.

TOGETHER WITH ALL THAT PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15; THENCE SOUTH 0°09'09" WEST, 165.92 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, TO THE INTERSECTION OF SAID WEST LINE WITH THE NORTH LINE OF TRACT NO. 4217, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 56 OF PLATS AT PAGES 64 AND 65, FRESNO COUNTY RECORDS; THENCE SOUTH 89°56'1" EAST, 1311.64 FEET ALONG SAID NORTH LINE, TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID TRACT NO. 4217; THENCE NORTH 0°04'59" EAST, 166.16 FEET ALONG SAID EAST LINE TO THE NORTHEAST CORNER OF THE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15, SAID NORTHEAST CORNER ALSO BEING THE SOUTHEAST CORNER OF TRACT NO. 5599, ACCORDING TO THE MAP THEREOF RECORDED III VOLUME 83 OF PLATS AT PAGES 99 AND 100, FRESNO COUNTY RECORDS; THENCE NORTH 89°56'49" WEST, 758.04 FEET ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15, SAID NORTH LINE ALSO BEING THE SOUTH LINE OF SAID TRACT NO. 5599, TO THE SOUTHWEST CORNER OF SAID TRACT NO. 5599; THENCE CONTINUING NORTH. 89°56'49" WEST, 553.40 FEET ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15, TO THE POINT OF BEGINNING.

TOGETHER WITH UNDERLYING FEE INTEREST, IF ANY, ADJACENT TO THE ABOVE DESCRIBED PROPERTY IN AND TO THE ADJOINING PUBLIC RIGHT OF WAYS.

EXCEPTING THEREFROM ALL THAT PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15; THENCE SOUTH 0°04'59" WEST, 166.16 FEET ALONG EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15, TO THE NORTHEAST CORNER OF SAID TRACT NO. 4217, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 56 OF PLATS AT PAGES 64 AND 65, FRESNO COUNTY RECORDS; THENCE NORTH 89°56'1" WEST, 107.00 FEET ALONG THE NORTH LINE OF SAID TRACT NO. 4217, TO THE NORTH END OF THE CENTERLINE OF NORTH BARCUS AVENUE, A 50.00 FOOT RIGHT OF WAY DEDICATED FOR PUBLIC STREET EASEMENT PURPOSES BY SAID TRACT NO. 4217, SAID POINT ALSO BEING THE SOUTH END OF THE CENTERLINE OF EASEMENT FOR PUBLIC STREET PURPOSES GRANTED TO THE CITY OF FRESNO BY THE DEED OF EASEMENT RECORDED APRIL 28, 2011 AS DOCUMENT NO. 2011-0058325, OFFICIAL RECORDS FRESNO COUNTY, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 250.00 FEET AND TO WHICH BEGINNING OF SAID NON-TANGENT CURVE A RADIAL LINE BEARS SOUTH 89°53'36"

EAST; THENCE NORTHERLY ALONG THE CENTERLINE OF SAID NORTH BARCUS AVENUE AS GRANTED BY SAID DOCUMENT NO. 2011-0058325 THE FOLLOWING THREE COURSES:

1) NORTHERLY, 33.99 FEET ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF $7^{\circ}47'22''$; THENCE

2) NORTH $7^{\circ}40'58''$ WEST, 99.27 FEET ALONG A TANGENT LINE TO LAST SAID CURVE TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 250.00 FEET; THENCE

3) NORTHERLY, 33.96 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $7^{\circ}47'22''$ TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15, SAID NORTH LINE ALSO BEING THE SOUTH LINE OF TRACT NO. 5599, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 83 OF PLATS AT PAGES 99 AND 100, FRESNO COUNTY RECORDS, LAST SAID POINT ALSO BEING THE SOUTH END OF THE CENTERLINE OF NORTH BARCUS AVENUE, A 50.00 FOOT RIGHT OF WAY DEDICATED FOR PUBLIC STREET EASEMENT PURPOSES BY SAID TRACT NO. 5599; THENCE SOUTH $89^{\circ}56'49''$ EAST, 125.00 FEET ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15, TO THE POINT OF BEGINNING.

EXHIBIT "B"
PROJECT DESCRIPTION AND SCHEDULE

I. PROJECT DESCRIPTION

The Project consists of the construction of two single-family wood framed, detached houses to be located on the west side of Barcus Avenue, Fresno, CA 93722, in addition to the construction of related on-site and offsite improvements. The houses will be sold as affordable housing and will be occupied by very low to low-income households.

The DEVELOPER will construct two (3bed/2bath) 1,241 square foot houses at the subject site. The eligible homebuyers will have an annual income of not more than 80% of area median income and will invest 500 hours of sweat-equity hours toward construction of their house. Once the houses are constructed, they will be sold through escrow to very low to low-income homebuyers.

HOME CHDO-FUNDED UNITS

% of Median	Units
80% or less	2
Totals	2

II. PROJECT SCHEDULE

- A. Split Lot into two equal sections: April 30, 2022
- B. Commencement of Construction: May 30, 2022
- C. Completion of Construction: August 15, 2023
- D. Close final escrow on last house: October 1, 2023

EXHIBIT "C" PROJECT BUDGET

RESIDENTIAL DEVELOPMENT BUDGET (10A) Barcus Properties (Central Phase II)

Date: 2/16/2022

Description	Residential	Funding Sources				NOTES
	Total for 2 Homes	City HOME Funds	CDBG Grant	City General Funds	Habitat Fresno	
Acquisition Costs:						
Purchase Price	\$77,000	\$0	\$77,000	\$0	\$0	
Liens	\$0	\$0	\$0	\$0	\$0	
Closing, Title & Recording Costs	\$1,000	\$0	\$1,000	\$0	\$0	
Extension Payment	\$0	\$0	\$0	\$0	\$0	
Other:	\$0	\$0	\$0	\$0	\$0	
SUBTOTAL	\$78,000	\$0	\$78,000	\$0	\$0	
Construction						
Basic Construction Contract	\$343,500	\$289,863	\$0	\$0	\$53,637	
Bond Premium	\$0	\$0	\$0	\$0	\$0	
Infrastructure Imp: On-Site	\$30,000	\$30,000	\$0	\$0	\$0	
Infrastructure Imp: Off-Site	\$109,137	\$0	\$0	\$21,137	\$88,000	
Hazardous Abate. & Monitoring	\$0	\$0	\$0	\$0	\$0	
Construction Contingency	\$33,042	\$0	\$0	\$0	\$33,042	10% of Basic Construction Contract
Sales Taxes	\$0	\$0	\$0	\$0	\$0	
Other Const. Costs: Project Mgmt	\$53,866	\$0	\$0	\$0	\$53,866	16% of Basic Construction Contract
Other Construction Costs:	\$0	\$0	\$0	\$0	\$0	
SUBTOTAL	\$569,545	\$319,863	\$0	\$21,137	\$228,545	
Development						
Appraisals	\$2,200	\$0	\$0	\$0	\$2,200	
Architect/Engineer	\$29,000	\$7,000	\$0	\$0	\$22,000	
Environmental Assessment	\$8,000	\$8,000	\$0	\$0	\$0	
Geotechnical & Soils Study	\$4,000	\$4,000	\$0	\$0	\$0	
Boundary & Topographic Survey	\$0	\$0	\$0	\$0	\$0	
Legal	\$0	\$0	\$0	\$0	\$0	
Developer Fee	\$35,219	\$0	\$0	\$0	\$35,219	10% of Basic Construction Contract
Project Management	\$0	\$0	\$0	\$0	\$0	
Technical Assistance	\$0	\$0	\$0	\$0	\$0	
Consultants	\$10,000	\$0	\$0	\$0	\$10,000	
SWPPP Plan Costs	\$0	\$0	\$0	\$0	\$0	
SUBTOTAL	\$88,419	\$19,000	\$0	\$0	\$69,419	
Other Development						
Property Tax	\$1,000	\$0	\$0	\$0	\$1,000	
Insurance/Bonds	\$13,119	\$0	\$0	\$0	\$13,119	
Bidding Costs	\$0	\$0	\$0	\$0	\$0	
Permits, Fees & Utility Hookups	\$9,476	\$6,000	\$0	\$0	\$3,476	
Impact/RTMF/School/Permits	\$102,000	\$41,137	\$32,000	\$28,863	\$0	Flood Control Fee will be paid by CDBG fu
Development Period Utilities	\$1,400	\$0	\$0	\$0	\$1,400	
Construction Loan Fees	\$12,420	\$0	\$0	\$0	\$12,420	
Construction Warranty Costs	\$0	\$0	\$0	\$0	\$0	
Other Loan Fees (State HF, etc.)	\$0	\$0	\$0	\$0	\$0	
Storage, Const. Staff Facilities	\$6,300	\$6,000	\$0	\$0	\$300	
Accounting/Audit	\$23,265	\$0	\$0	\$0	\$23,265	7% of Basic Construction Contract (Note A)
Marketing/Loan Orig	\$19,605	\$0	\$0	\$0	\$19,605	6% of Basic Construction Contract
Carrying Costs at Rent Up	\$0	\$0	\$0	\$0	\$0	
Operating Reserves	\$0	\$0	\$0	\$0	\$0	
Replacement Reserves:	\$0	\$0	\$0	\$0	\$0	
SUBTOTAL	\$188,587	\$53,137	\$32,000	\$28,863	\$74,587	
Total Construction Project Costs						
	\$924,550	\$392,000	\$110,000	\$50,000	\$372,551	% split between Funding Sources is based upon the Total Construction Project Costs. Avg Cost per Home See Note B
Percentage of Project	100%	42%	12%	5%	40%	

NOTES:

- A** Costs including but not limited to; planning & implementing targeted outreach for potential partner families, processing applications, loan underwriting and escrow documents, homeowner education, monitoring sweat equity, etc.
- B** \$462,275 Avg cost per home. The project consists of Two 3 bed/2 bath estimated at 1,241 sq ft.

EXHIBIT "D"
EXEMPLAR DECLARATION OF RESTRICTIONS

Recorded at the Request of
and When Recorded Return to:

City of Fresno
Planning and Development Dept.
Housing and Community Development
Division
2600 Fresno Street, Room 3065
Fresno, CA 93721-3605

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

The document is exempt from the payment of a recording fee in accordance with Government Code Sections 6103 and 27383.

APN: Portion of 510-030-36

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (Declaration) is executed as of this _____ day of _____, 2022, by Habitat for Humanity Fresno County, Inc., a California corporation (DECLARANT), in favor of the CITY OF FRESNO, a California municipal corporation (CITY).

WHEREAS, the DECLARANT is the owner of the real estate in the county of Fresno, state of California consisting of a portion of A.P.N.:510-030-36, which is more particularly described in EXHIBIT "A" – Legal Description, attached hereto and made a part hereof, including the improvements thereon (the Property); and

WHEREAS, pursuant to a certain City of Fresno Community Development Block Grant (CDBG) Agreement dated _____ 2022, incorporated herein by reference (CDBG Agreement) and instruments referenced therein, the DECLARANT agrees to utilize, and the CITY agrees to provide, certain CDBG funds from the United States Department of Housing and Urban Development (HUD), to the DECLARANT and the DECLARANT agrees to construct and preserve two units as Affordable Very Low to Low-Income units reserved for households earning 50% to 80%, or below, of the area median income for the Fresno Metropolitan Statistical Area (FMSA). Two houses shall be 3bed/2bath units, subject to the terms and conditions set forth in the CDBG Agreement; and

WHEREAS, the CDBG regulations promulgated by HUD, including without limitation impose certain affordability requirements upon property owned by the DECLARANT, which affordability restrictions shall be enforceable for a 30-year period; and

WHEREAS, these restrictions are intended to bind the DECLARANT, and all purchasers of the Property 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 Project. 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 CITY, and will be enforceable by it. 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 commencing on the date the DECLARANT is notified by the CITY that the Affordable Unit Homebuyer information is has been entered into HUD's Integrated Disbursement and Information System (IDIS) as provided in the CDBG Agreement, constituting the commencement of the 30 year Affordability Period.

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

2. Restrictions. The following covenants and restrictions ("Covenants and Restrictions") on the use and enjoyment of the Property shall be in addition to any other covenants and restrictions affecting the Property. All such covenants and restrictions are for the benefit and protection of the CITY and shall run with the Property and be binding on any future owners of the Property and inure to the benefit of and be enforceable by the CITY. These covenants and restrictions are as follows:

The DECLARANT for itself and its successor(s) on title covenants and agrees that from the date the Project is entered into IDIS as complete, until the expiration of the Affordability Period, it shall cause the two units be used as single-family owner-occupied affordable housing to Very Low to Low-Income Households with an income of not more than 50% to 80%, or less, of area median income. The DECLARANT further agrees to file a recordable document setting forth the Project Completion Date when determined by the CITY. Unless otherwise provided in the 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 persons 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 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 two Affordable houses constituting the Project upon the Property shall be sold only to eligible natural persons, who shall occupy the house as the purchaser's principal place of residence. The forgoing requirement that the purchaser of the house constituting the Project Property occupy the house as the purchaser's principal residence does not apply to persons, other than natural persons, who acquire the Project Property or portion thereof by foreclosure or deed in lieu of foreclosure; or HUD qualified entities that acquire the Property or portion thereof with the consent of the CITY.

iii. Homeowner Income Requirements. The two houses constituting the Project upon the Property and each of them may be conveyed only to a natural person(s) whose annual Household income at the time of purchase is not greater than 80% of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size.

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.

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 Restriction. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Covenant and Restriction, as may be amended or supplemented from time to time, are accepted and ratified by 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 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 of those with whom the former owner has or had formally, 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 Project information is entered into IDIS as complete, until the expiration of the 30-year Affordability Period. The failure or delay at any time of the CITY and / 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 the DECLARANT or any future owner of the Property to comply with the Covenant and Restriction required by this Declaration, as may be amended from time to time, the CITY shall be entitled to recover its respective costs and reasonable attorney's fees incurred in connection with such default or failure.

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

8. Severability. The invalidity of the Covenant and Restriction 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 the DECLARANT.

12. Recordation. The 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 CDBG Agreement.

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

15. DECLARANT LIABILITY. The DECLARANT shall not have any personal liability for the obligations under this Declaration. The sole recourse of the CITY shall be exercising of its rights to terminate the CDBG Agreement or bring an action in equitable relief.

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

DECLARANT:

Habitat for Humanity Fresno County, Inc., a California corporation

By: _____

Name: Ashley Hedemann

Title: Interim Executive Director

(Attach notary certificate of acknowledgment)

Date: _____

EXHIBIT "A"
Legal Description
To Declaration of Restrictions

For APN/Parcel ID(s): 510-030-36

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3) NORTHERLY, 33.96 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $7^{\circ}47'22''$ TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15, SAID NORTH LINE ALSO BEING THE SOUTH LINE OF TRACT NO. 5599, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 83 OF PLATS AT PAGES 99 AND 100, FRESNO COUNTY RECORDS, LAST SAID POINT ALSO BEING THE SOUTH END OF THE CENTERLINE OF NORTH BARCUS AVENUE, A 50.00 FOOT RIGHT OF WAY DEDICATED FOR PUBLIC STREET EASEMENT PURPOSES BY SAID TRACT NO. 5599; THENCE SOUTH $89^{\circ}56'49''$ EAST, 125.00 FEET ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 15, TO THE POINT OF BEGINNING.