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Agenda Item: ID#15-167 (10:00 A.M.#2)

Date: 2/26/15

CITY CLERK, FRESNO, CA

## FRESNO CITY COUNCIL



### Supplemental Information Packet

Agenda Related Items – ID#15-167 (10:00 A.M.#2)

### **Contents of Supplement: Amended Edison Plaza Second Reformation of DD&A**

#### Item(s)

Approve a Second Reformation of Disposition and Development Agreement among the City of Fresno, in its capacity as Housing Successor Agency to the Redevelopment Agency of the City of Fresno, Edison Plaza Partners, L.P., Fresno Edison Apartments, L.P., and Fresno Edison Apartments, II, L.P. (Council and Housing Successor action)

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

#### **Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

SECOND REFORMATION OF  
DISPOSITION AND DEVELOPMENT AGREEMENT

This Second Reformation of Disposition and Development Agreement ("Reformation of Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, among the CITY OF FRESNO, a municipal corporation, in its capacity as HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO (the "Agency"), EDISON PLAZA PARTNERS, L.P., California limited partnership (the "Original Developer"), FRESNO EDISON APARTMENTS, L.P., a California limited partnership (the "Phase I Developer") and FRESNO EDISON APARTMENTS, II, L.P., a California limited partnership (the "Phase II Developer"). This Second Reformation of Disposition and Development Agreement is entered into with respect to that certain Disposition and Development Agreement between Agency and Original Developer, with an effective date of March 9, 2011, as previously reformed by that certain Reformation of Disposition and Development Agreement with Edison Plaza Partners, L.P., with an effective date of January 24, 2012 (as reformed, the "DDA").

WHEREAS, the Agency and Original Developer entered into the DDA, pursuant to which the Original Developer proposed to purchase an estimated 6.9 acres of property from the Agency at Six Hundred Fifty Five Thousand Dollars (\$655,000.00) and develop in two phases a multi-family apartment complex anticipated to include 128 units, 88 of which would be affordable (the "Original Project"), which has been revised to include 128 units, 116 of which will be affordable (the "Project"); and

WHEREAS, Original Developer has determined to enter into a Memorandum of Understanding with the Phase I Developer relating to the ownership and development of the Project, and therefore the current Agreement does not express the intent of the parties for the current design and configuration of the Project or that the Phase I Developer and the Phase II Developer will now develop the Project as two separate and distinct phases; and

WHEREAS, California Civil Code section 3399 provides that when, through mutual mistake of the parties, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention; and

WHEREAS, the parties now shall reform the Agreement to match the actual agreement as understood by the parties and to express their intent.

NOW, THEREFORE, with reference to the above recitals, and in consideration of the mutual covenants and agreements contained in the Agreement and this Reformation of Agreement, the Agency, the Original Developer, the Phase I Developer and Phase II Developer agree as follows:

1. The total number of apartment units in the Project shall be 128, of which 116 shall be "Restricted Units" restricted to occupancy by Low Income Households at an Affordable Rent as defined in the DDA and the Regulatory Agreements attached hereto as Exhibit G-1 and G-2.
2. The Project will be developed in two phases as shown in Schedule of Performance (Exhibit C-1).
3. As part of this Reformation of Agreement, the Original Developer assigns and transfers to the Phase I Developer and the Phase II Developer and the Phase I Developer and Phase II Developer accept all right, title, interest, and obligations of and to the DDA. The Original Developer and the Phase I Developer and Phase II Developer, without waiver or limitation, agree to take any and all actions required to bind the Developer to the DDA (and all

applicable attachments thereto) as requested by the Agency. All references in the DDA to the Original Developer (including the definition of "Developer") shall be replaced by, and mean each of, the Phase I Developer and the Phase II Developer. The Phase I and Phase II Developers shall have no greater rights than the Original Developer under the Agreement.

4. The Agency Assistance under the DDA will be made as a loan instead of a grant in accordance with such documentation as approved by the Agency and the Developer. The total Agency Assistance shall be Five Million Six Hundred Fifty Five Thousand Dollars (\$5,655,000). The loan shall bear interest at 0% and shall have a term of 55 years. Prior to disbursing the Agency Assistance, the purchase price of the land valued at \$655,000 shall be deducted from the Agency Assistance. The remaining Agency Assistance of Five Million Dollars (\$5,000,000) shall be disbursed, only after the construction loan has been approved and recorded, and the Phase I Developer has provided Agency with evidence that all other sources of funding necessary for the development of the Phase I of the Project, including Low Income Housing Tax Credit Equity, have been secured and committed to Phase I of the Project, but in no event later than March 31, 2016.

5. The Commercial General Liability Insurance required shall be per occurrence minimums of \$1,000,000 and aggregate limits of not less than \$2,000,000 and the Commercial Automobile Liability Insurance shall have a limit of not less than \$1,000,000 per occurrence.

6. Notices to the Phase I Developer should be addressed as follows:

Fresno Edison Apartments, L.P.  
Housing Authority of the City of Fresno, California  
1331 Fulton Mall  
Fresno, California 93776-1985  
Attn: CEO/Executive Director  
Fax: 559-443-8495

7. Notices to the Phase II Developer should be addressed as follows:

Fresno Edison Apartments II, L.P.  
Housing Authority of the City of Fresno, California  
1331 Fulton Mall  
Fresno, California 93776-1985  
Attn: CEO/Executive Director  
Fax: 559-443-8495

8. Exhibit A to the DDA (Site Map); shall be revised as set forth in the attached as Exhibit A-1.

9. Exhibit B to the DDA (Scope of Development), shall be revised as set forth in the attached Exhibit B-1.

10. Exhibit C to the DDA (Performance Schedule) shall be revised as set forth in the attached Exhibit C-1.

11. Exhibit D to the DDA (Grant Deed) shall be revised as set forth in the attached Exhibit D-1 and Exhibit D-2.

12. Exhibit E to the DDA (Release of Construction Covenants/Certificate of Completion), shall be revised as set forth in the attached Exhibit E-1 and Exhibit E-2.

13. Exhibit F to the DDA (Basic Design) shall be revised as set forth in the attached Exhibit F-1.

14. Exhibit G to the DDA (Regulatory Agreement) shall be revised as set forth in the attached Exhibit G-1 and Exhibit G-2.

15. Exhibit H to the DDA (Developer Performance Guaranty) shall be revised as set forth in the attached Exhibit H-1 and Exhibit H-2.

16. Exhibit I (Summary of Terms) shall be added to the DDA as set forth in the attached Exhibit I.

17. All terms and provisions of the DDA not expressly reformed hereby shall remain in full force and effect.

18. If, for any reason, this Reformation of Agreement is found to be invalid or unenforceable, then this Reformation of Agreement shall be stricken and the DDA shall remain in full force and effect.

19. This Reformation of Agreement is contingent upon and shall not be effective with respect to the Phase I Developer until the Phase I Developer is granted Low Income Housing Tax Credits for Phase I. If Developer is not awarded Low Income Housing Tax Credits by December 1, 2015 for Phase I, this Reformation of Agreement shall be void.

20. The parties may sign this Reformation of Agreement in counterparts. Each counterpart, when executed and delivered, will be one instrument with the other counterparts.

[END -- SIGNATURES ON NEXT PAGE]

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

CITY OF FRESNO, a municipal corporation, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno

By: \_\_\_\_\_  
MARLENE MURPHEY  
Executive Director

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

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

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

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
TRACY PARVANIAN  
Deputy City Attorney

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

FRESNO EDISON APARTMENTS, L.P.,  
a California limited partnership

By: Silvercrest, Inc., a California non-profit corporation, its Managing General Partner

By: \_\_\_\_\_  
PRESTON PRINCE  
Secretary/Treasurer

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

By: Fresno Edison Apartments AGP, LLC, a California limited liability company, its Administrative General Partner

By: Housing Authority of the City of Fresno, California, its managing member

By: \_\_\_\_\_  
PRESTON PRINCE  
CEO/Executive Director

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

By: Edison Plaza Partners, L.P.,  
a California limited partnership, its member

By: The Penstar Group  
Its General Partner

By: Thomas G. Richards  
Its: President

By: Jackson J&J, LLC (dba H.A. W. Fifty Six)  
Its: General Partner

By: James Hendricks  
Its: Managing Member

FRESNO EDISON APARTMENTS II, LP,  
a California limited partnership

By: Silvercrest, Inc.,  
a California non-profit corporation,  
its Managing General Partner

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Name: Preston Prince  
Title: Secretary/Treasurer

By: Fresno Edison Apartments AGP II, LLC, a  
California limited liability company, its  
Administrative General Partner

By: Housing Authority of the City of Fresno,  
California, its managing member

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Name: Preston Prince  
Title: CEO/Executive Director

By: Edison Plaza Partners, L.P.,  
a California limited partnership, member

By: The Penstar Group  
Its General Partner

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By: Thomas G. Richards  
Its: President

By: Jackson J&J, LLC (dba H.A. W. Fifty  
Six)  
Its: General Partner

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By: James Hendricks  
Its: Managing Member

Exhibit A-1: Reformed Site Map  
Exhibit B-1: Reformed Scope of Development  
Exhibit C-1: Reformed Schedule of Performance  
Exhibit D-1: Reformed Grant Deed – Phase I  
Exhibit D-2: Reformed Grand Deed – Phase II  
Exhibit E-1: Reformed Release of Construction Covenant/Certificate of Completion – Phase I  
Exhibit E-2: Reformed Release of Construction Covenant/Certificate of Completion – Phase II  
Exhibit F-1: Reformed Basic Design

Exhibit G-1: Reformed Regulatory Agreement – Phase I  
Exhibit G-2: Reformed Regulatory Agreement – Phase II  
Exhibit H-1: Reformed Developer Performance Guaranty – Phase I  
Exhibit H-2: Reformed Developer Performance Guaranty – Phase II  
Exhibit I: Summary of Transaction

**Exhibit "A-1"**

**Reformed Site Map**

**Phase I Parcel:**

**Phase II Parcel:**



**Exhibit “B-1”**

**Reformed Scope of Development**

**Phase I Parcel:**

**Phase II Parcel:**

**Exhibit "C-1"**

**Reformed Performance Schedule**

**Phase I Parcel:**

**Phase II Parcel:**

**Exhibit "D-1"**

**Reformed Grant Deed – Phase I**

**Exhibit "D-2"**

**Reformed Grant Deed – Phase II**

**Exhibit “E-1”**

**Reformed Release of Construction Covenants and Certificate of Completion – Phase I**

**Exhibit "E-2"**

**Reformed Release of Construction Covenants and Certificate of Completion – Phase II**

**Exhibit “F-1”**  
**Reformed Basic Design**

**Phase I:**

**Phase II:**

**EXHIBIT G-1**

**Reformed Regulatory Agreement – Phase I**

FRESNO EDISON PARTNERS, L.P. DDA

FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

HOUSING SUCCESSOR TO THE  
REDEVELOPMENT AGENCY  
OF THE CITY OF FRESNO  
2344 Tulare Street  
Fresno, CA 93721  
Attn: Executive Director

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(Space Above This Line for Recorder's Office Use Only)

**REGULATORY AGREEMENT AND  
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF FRESNO, a municipal corporation as HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO ("Agency"), and FRESNO EDISON APARTMENTS, L.P., a California limited partnership ("Owner").

**RECITALS:**

A. Pursuant to the Disposition and Development Agreement by and between Agency and Edison Plaza Partners, L.P. ("Original Developer") dated March 9, 2011 and the Reformation of Disposition and Development Agreement dated January 24, 2012, between the Agency and the Original Developer as further reformed by Second Reformation of Disposition and Development Agreement dated \_\_\_\_\_, 2015 among the Agency, Original Developer, Fresno Edison Apartments II, L.P. ("Phase II Owner") and Owner (as reformed, the "DDA"), Agency has provided to Owner and Phase II Owner real property and financial assistance in the amount of Five Million Six Hundred Fifty Five Thousand Dollars (\$5,655,000.00) (collectively, the "Agency Assistance"), all for the purpose of assisting Owner and Phase II owner in the acquisition of real property and the development of a residential apartment complex thereon wherein the units shall be rented to very low and lower income households, on that certain real property located in Fresno, County of Fresno, State of California, more particularly described in Attachment "1" hereto and incorporated herein by reference (the "Site").

B. Pursuant to the DDA, Owner and Phase II Owner have agreed to develop, construct, one hundred twenty-eight (128) rental apartment housing project to be built over two phases consisting of 116 low income units and 10 market rate units (hereinafter referred to collectively as the "Project") on the Site. The Project is referred to in the DDA as the "Project," and is further described in the Scope of Development/Project Budget attached to the DDA.

C. Agency and Owner now desire to place restrictions upon the use of 54 units of the first phase of the Project ("Phase I"), in order to ensure that such units of Phase I of the



Project shall be operated continuously as a rental apartment housing project available generally for rental by very low and lower income persons for **the term of this Agreement**.

D. It is the intent of the parties that the title vested in Owner by the Grant Deed for the Site dated \_\_\_\_\_ ("Grant Deed"), recorded concurrently herewith in Office of the County Recorder for the County of Fresno be subject **to this Regulatory Agreement, and that the terms hereof shall be binding on the Owner and its successors in interest in the Site for so long as the Regulatory Agreement shall remain in effect.**

#### AGREEMENT:

NOW, THEREFORE, the Owner and Agency declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of the Agency, the residents of the City of Fresno, and every person renting a dwelling unit on the Site.

#### A. DEFINITIONS.

1. Affordable Lower Income Rent. As used in this Agreement, the term "Affordable Lower Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to **rent as set forth by Health & Safety Code Section 50053**, or its successor, which is currently thirty percent (30%) of sixty percent (60%) of the Fresno County Median Income adjusted for the family size appropriate for the Unit.

2. Affordable Rent. As used in this Agreement, the term "Affordable Rent" shall refer to Affordable Low Income Rent.

3. Affordable Very Low Income Rent. As used in this Agreement, the term "Affordable Very Low income Rent" shall mean annual **rentals whose amount does not exceed** the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of fifty percent (50%) of the Fresno County Median Income adjusted for the family size appropriate for the Unit.

4. Eligible Tenant. As used in this Agreement, the term "Eligible Tenant" shall refer to a Lower Income Tenant.

5. Fresno County Median Income. For purposes of this Agreement, the "Fresno County Median Income" shall be determined by reference to the regulations published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093, or its successor.

6. Lower Income Tenant. As used in this Agreement, the term "Lower Income Tenant" shall mean those tenants whose household income does not exceed eighty percent (80%) of the Fresno County Median Income.

7. Project Manager. As used in this Agreement, the term "Project Manager" shall refer to that entity, to be designated by Owner and approved by Agency, who shall be

responsible for operating and maintaining Phase I of the Project in accordance with the terms of this Agreement. Prior to Agency's approval, Owner shall act as Project Manager.

8. Resident Manager. As used in this Agreement, the term "Resident Manager" shall refer to that individual (or those individuals) who may reside in Phase I of the Project and who are responsible for day-to-day management of Phase I of the Project.

9. Unit. As used in this Agreement, the term "Unit" shall refer to any of the fifty-four (54) residential units reserved for Eligible Tenants or the Resident Manager.

10. Very Low Income Tenant. As used in this Agreement, **the term "Very Low Income Tenant"** shall mean those tenants whose income does not exceed fifty percent (50%) of the Fresno County Median Income.

B. RESIDENTIAL RENTAL PROPERTY. The Owner hereby agrees that Phase I of the Project is to be owned, managed, and operated generally as a project for lower income residential rental purposes for a term equal to fifty-five (55) years, commencing upon the date of the recordation of the Certificate of Completion for the Site in accordance with the DDA (the "Term"). To that end, and for the term of this Agreement, the Owner hereby represents, covenants, warrants and agrees as follows:

1. Purpose. The Site is being acquired and Phase I of **the Project** constructed for the purpose of providing very low and lower income rental housing and the Owner shall own, manage, and operate Phase I of the **Project as a project to provide very low and lower income rental housing** comprised of several interrelated buildings or structures, together with any functionally related and subordinate facilities.

2. Residential Use. None of the Units in Phase I of the Project will at any time be utilized on a transient basis or used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park without the Agency's prior consent which consent may be given or withheld in its sole and absolute discretion.

3. Conversion of Project. No part of Phase I of the Project will at any time be owned by a cooperative housing corporation, nor shall the Owner take any steps in connection with the conversion to such ownership or **uses to condominiums, or to any other** form of ownership, without the prior written approval of Agency which approval may be given or withheld in its sole and absolute discretion.

4. Preference to Eligible Tenants. All of the Units will be available for rental in accordance with the terms of this Agreement, and **the Owner shall not give preference to any** particular class or group in renting the Units in Phase I of the Project, except to the extent that the Units are required to be leased or rented to Eligible Tenants and except as provided in Section C.6 below.

5. Resident Manager. One, and only one, Unit in the Project may be occupied by a Resident Manager.

6. Liability of Owner. Owner and Resident Manager shall not incur any liability under this Agreement as a result of fraud **or intentional misrepresentation by a tenant**.

C. OCCUPANCY OF PROJECT BY ELIGIBLE TENANTS. Owner hereby represents, warrants, and covenants as follows:

1. Occupancy. Except as expressly provided herein, throughout the term of this Agreement the occupancy of the 54 Restricted Units in Phase I of the Project (excluding the Resident Manager Unit) shall be restricted to Eligible Tenants, and qualified members of the Eligible Tenant's household.

2. Expiration of Occupancy and Rent Restrictions. The **Units shall be** subject to the restrictions contained in this Section C for the Term of this Agreement. All tenants residing in the Units during the final two (2) years of the Term shall be given notice of the expiration of the Term at least once every six (6) months during the final two years. After the expiration of the Term, the rents payable on the Units may be raised to market rates.

3. Rental Rates. Owner hereby agrees to rent those Restricted Units occupied by Lower Income Tenants at no greater than **Affordable Lower Income Rent**, and to rent those Units occupied by Very Low Income Tenants at no greater than Affordable Very Low Income Rent.

4. Occupancy By Eligible Tenant. A Unit occupied by an Eligible Tenant shall be treated as occupied by an Eligible Tenant until a recertification of such tenant's income in accordance with Section C.8 below demonstrates that such tenant no longer qualifies as an Eligible Tenant

5. Income Computation Certificate. Immediately prior to an Eligible Tenant's occupancy of a Unit, Owner shall obtain and maintain on file an Income Computation and Certification form (which form shall be approved in **advance by the Agency**) from each such Eligible Tenant dated immediately prior to the date of **initial occupancy in Phase I of the Project** by such Eligible Tenant. In addition, the Owner will provide such further information as may be reasonably required in the future by the Agency. Owner shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income as is satisfactory to the Agency; or (v) such other information as may be requested by the Agency. A copy of each such Income Computation and Certification shall be filed with the Agency prior to the occupancy of a Unit by an Eligible Tenant whenever possible, but in no event more than thirty (30) days after initial occupancy by said tenant.

6. Rental Priority. During the term of this Agreement, and subject to compliance with state and federal fair housing laws, Owner shall use its best efforts to lease vacant Units reserved for Eligible Tenants in the following order of priority: (i) displaced persons entitled to a preference pursuant to California Health and Safety Code Section 33411.3 or successor statute, with highest priority in this category to residents of Fresno; (ii) residents of the City of Fresno; and (iii) other persons meeting **the eligibility requirements of this Agreement**. Owner shall and Agency may maintain a list (the "Housing List") of persons who have notified Owner and/or Agency of their desire to rent a Unit in Phase I of the Project and who have incomes, which would qualify them as an Eligible Tenant, and Owner shall offer to rent Units on the above-referenced priority basis. Should multiple tenants be equally eligible and qualified to

rent a Unit, Owner shall rent available Units to Eligible Tenants on a first-come, first-served basis.

7. Renting Vacant Units. When a Unit becomes available as a result of a tenant vacation, Owner shall rent the Unit to an Eligible Tenant in accordance with the order of priority set forth in Section C.6.

8. Income Recertification. Immediately prior to the first anniversary date of the occupancy of a Unit by an Eligible Tenant and on each anniversary date thereafter, Owner shall recertify the income of such Eligible Tenant by obtaining a completed Income Computation and Certification based upon the current income of each occupant of the Unit. Owner shall provide the Agency with a copy of each such recertification with the next submission of Certificate of Continuing Program Compliance pursuant to Section C.10.

9. Terminating Ineligible Tenant. The tenant may be evicted for good cause as defined by Section 42 of the Internal Revenue Service regulations.

10. Certificate of Continuing Program Compliance. Upon **the issuance of the** Certificate of Completion and annually by March 15 of each year, or at any time upon the written request of Agency, Owner shall advise the Agency of **the occupancy of Phase I of the Project** by delivering a Certificate of Continuing Program Compliance in the form attached hereto as Attachment "2" certifying: (i) the number of Units **of Phase I of the Project which were occupied** or deemed occupied pursuant to Section C.1 by an Eligible Tenant during such period, and (ii) to the knowledge of Owner either (a) no unremedied default has occurred under this Agreement, (b) a default has occurred, in which event the Certificate shall describe the nature of the default and set forth the measures being taken by the Owner to remedy such default.

11. Maintenance of Records. Owner shall maintain complete and accurate records pertaining to the Units, and shall permit any duly authorized representative of the Agency to inspect the books and records of Owner pertaining to Phase I of the Project including, but not limited to, those records pertaining to the **occupancy of the Units**.

12. Reliance on Tenant Representations. Each lease shall contain a provision to the effect that Owner has relied on the income certification and supporting information supplied by the tenant in determining qualification for occupancy of the Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

13. Conflicts. The leasing preference provision set forth in Section C.6 and termination or non-renewal provisions set forth in Sections C.8 and C.9 shall apply only in the event, and to the extent, such provisions are not in conflict with Internal Revenue Code provisions or IRS regulations.

14. Agency Remedy For Excessive Rent Charge.

a. It shall constitute a default for Owner to charge or accept for a Unit rent amounts in excess of the amount provided for in Section C.3 of this Agreement. In the event that Owner charges or receives such higher rental amounts, in addition to any other remedy Agency shall have for such default, Owner shall be required to pay to Agency the entire amount of rent received in excess of the amount permitted pursuant to this Agreement.

b. It shall constitute a default for Owner to rent any **Unit to a tenant** who is not an Eligible Tenant for the particular Unit pursuant to the rental rate requirements set forth in Section C.3 of this Agreement. In the event Owner rents a Unit to an ineligible tenant, in addition to any other equitable remedy Agency shall **have for such default, Owner, for each** separate violation shall be required to pay to Agency an amount equal to (i) two times the greater of (A) the total rent Owner received from such ineligible tenant, or (B) the total rent Owner was entitled to receive for renting that Unit, plus (ii) any relocation expenses incurred by Agency or City as a result of Owner having rented to such ineligible person.

c. It shall constitute a default for Owner to rent any **of the Units** in violation of the leasing preference requirements of **Sections C.6 of this Agreement so long as** such leasing preference requirements are not in violation of any state or federal fair housing laws. In the event Owner rents a Unit in violation **of the leasing preference requirements**, in addition to any other equitable remedy Agency shall **have for such default, Owner, for each** separate violation shall be required to pay Agency an amount equal to two (2) months of rental charges for the Unit with the highest rent. The terms of this Section C.14 shall not apply if Owner rents to an ineligible person as a result of such person's fraud or misrepresentation.

THE PARTIES HERETO AGREE THAT THE AMOUNTS SET FORTH IN SUBPARAGRAPHS (a) THROUGH (c) OF THIS SECTION C.14 (THE "DAMAGE AMOUNTS") CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL **DAMAGES THAT** AGENCY WOULD SUFFER DUE TO THE DEFAULTS BY OWNER SET FORTH IN SUBPARAGRAPHS (a) THROUGH (c), CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO AGENCY AND ACCOMPLISHMENT OF AGENCY'S PURPOSE OF ASSISTING IN THE PROVISION OF AFFORDABLE HOUSING TO ELIGIBLE TENANTS THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE AMOUNTS SET FORTH IN THIS SECTION C.14 SHALL BE THE SOLE MONETARY DAMAGES REMEDY FOR THE DEFAULTS SET FORTH IN THIS SECTION C.14, BUT NOTHING IN THIS SECTION C.14 SHALL BE INTERPRETED TO LIMIT AGENCY'S REMEDY FOR SUCH DEFAULT TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIAL AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO HAS EXPLAINED THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT **OR PRIOR TO THE** TIME EACH EXECUTED THIS AGREEMENT.

OWNER'S INITIALS: \_\_\_\_\_

AGENCY'S INITIALS: \_\_\_\_\_

15. Section 8 Tenants. Owner shall accept as tenants on the same basis as all other Eligible Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of **the United States Housing Act of 1937, or** its successor. Owner shall not apply selection criteria to Section 8 certificate holders that are more burdensome than criteria applied to all other Eligible Tenants.



D. MAINTENANCE.

1. Maintenance Obligation. Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of **asphalt or concrete paving using the same type** of material originally installed, to the end that such pavings at all times be kept in a level and smooth condition. In addition, Owner shall be required to maintain the Property in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general **welfare or that such a condition of** deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

2. Parking and Driveways. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times. No vehicles or other obstruction shall project into any of such driveways or traffic aisles. Vehicles associated with the operation of the Site, including delivery vehicles, vehicles of employees and vehicles of persons with business on the Site shall park solely on the Site.

3. Tenant Compliance. Owner shall provide any proposed tenants of any portion of the Site with a copy of this Agreement and shall, prior to entering into any lease agreement, have the proposed tenant execute an affidavit agreeing to comply with the provisions of this Agreement. All lease agreements **shall be in writing and shall contain** provisions, which make compliance with the conditions of this Agreement express covenants of the lease.

4. Right of Entry. In the event Owner fails to maintain the Site in the above-mentioned condition, and satisfactory progress is not made in correcting the condition within thirty (30) days from the date of written notice from Agency, City or Agency may, at their option, and without further notice to Owner, declare the unperformed maintenance to constitute a public nuisance. Thereafter, either Agency or City, their **employees, contractors, or agents, may cure** Owner's default by entering upon the Site and performing the necessary landscaping and/or maintenance. The Agency or City shall give Owner, its representative or the residential manager reasonable notice of the time and manner of **entry, and entry shall only be at such** times and in such manner as is reasonably necessary **to carry out this Regulatory Agreement.** Owner shall pay such costs as are reasonably incurred by Agency or City for such maintenance, including attorneys' fees and costs.

5. Lien. If such costs are not reimbursed within thirty (30) days after Owner's receipt of notice thereof, the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate of the lower of ten percent (10%) per annum or the legal maximum until paid. Any and all delinquent amounts, together with said interest, costs, and reasonable attorney's fees, shall be an obligation of Owner as well as a lien and charge, with power of sale, upon the property interests of Owner, and the rents, issues and profits of such

property. City and/or Agency may bring an action at law against Owner obligated to pay any such sums or foreclose the lien against Owner's property interests. Any such lien may be enforced by sale by the City or Agency following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, et seq., of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership interest or leasehold or subleasehold estate in and to any Site approved by Agency pursuant to the DDA, and any purchaser at any foreclosure or trustee's sale (as well as any deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title **free from any such monetary lien, but** otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure, assessed hereunder to the purchaser at the foreclosure sale, as owner of the subject Site after the date of such foreclosure sale, shall become a lien upon such Site upon recordation of a Notice of Assessment or Notice of Claim of Lien as herein provided.

#### E. MANAGEMENT.

1. Approval of Project Manager; Designation of Resident Manager. Subject to the terms and conditions contained hereinbelow, Owner shall at all times during the operation of Phase I of the Project pursuant to this Agreement retain an entity to perform the management and/or supervisory functions ("Project Manager") with respect to the operation of Phase I of the Project including day-to-day administration, maintenance and repair. Owner shall, before execution or any subsequent amendment or replacement thereof, submit and obtain Agency's written approval of a management contract ("Management Contract") entered into between Owner and a Project Manager acceptable to Agency. Subject to any regulatory or licensing requirements of any other applicable governmental agency, the Management Contract may be for a term of up to fifteen (15) years and may be renewed for successive terms in accordance with its terms, but may not be amended or modified without the written consent of Agency. The Management Contract shall also provide that the Project Manager shall be subject to termination for failure to meet project maintenance **and operational standards set forth herein or** in other agreements between Owner and Agency. Owner shall promptly terminate any Project Manager, which commits or allows such failure, unless the failure is cured within a reasonable period in no event exceeding 60 days from Project Manager's receipt of notice of the failure from Owner or Agency. Owner's obligation to retain **a Project Manager shall remain in force** and effect for the same duration as the use covenants set forth in Section B of this Agreement. Notwithstanding anything to the contrary in this Section, Phase I of the Project may be self-managed by Owner with the prior approval of the Agency Executive Director. Any change in the Project Manager shall be approved, in writing, by the Executive Director, which approval shall not be unreasonably withheld.

Pursuant to this Section E.1, the Agency or Executive Director shall reasonably approve or disapprove the proposed Project Manager and management contract. Unless the proposed Project Manager or management contract is disapproved within ten (10) business days following receipt of all information reasonably requested regarding such Project Manager, the Project Manager shall be deemed approved.

In addition to the Project Manager, one Resident Manager shall be designated as necessary by Owner or Project Manager, with written **notice to Agency of the Resident Manager's** name, address and telephone number.

2. Serious Mismanagement. In the event of "Serious Mismanagement" (as that term is defined below) of Phase I of the Project, Agency shall have the authority to require that such Serious Mismanagement cease immediately, and further to require the immediate replacement of the Project Manager or Resident Manager. For purposes of this Agreement, the term "Serious Mismanagement" shall mean management of Phase I of the Project in a manner, which violates the terms and/or intent of this Agreement and/or the Management Contract to operate an affordable housing complex of the highest standard, and shall include, but is not limited to, the following:

- a. Knowingly leasing to ineligible tenants or tenants whose income exceeds the prescribed levels;
- b. Knowingly allowing the tenants to exceed the prescribed occupancy levels without taking immediate steps to stop such overcrowding;
- c. Repeatedly failing to timely maintain Phase I of the Project and the Site in the manner required by this Agreement;
- d. Repeatedly failing to timely submit the reports as required by this Agreement or failing to submit materially complete reports;
- e. Fraud in connection with any document or representation relating to this Agreement or embezzlement of Project monies; and
- f. Failing to fully cooperate with the City's Police Department in maintaining a crime-free environment on the Site.

G. COMPLIANCE WITH LAWS.

1. State and Local Laws. Owner shall comply with all ordinances, regulations, and standards of the City and Agency applicable to the Site. Owner shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

2. Lease Approval. Agency shall have the right but is **not required to** approve any lease forms, revisions, amendments, or modification made to same, used by the Project Manager or Resident Manager for leasing Units within the Site.

H. INSURANCE.

1. Duty to Procure Insurance. Owner covenants and agrees for itself, and its assigns and successors-in-interest in the Site that from completion of Phase I of the Project as evidenced by City's issuance of a certificate of **occupancy, and continuing thereafter until the** expiration of the Term of this Agreement, Owner or such successors and assigns shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Owner and Agency, and shall provide Agency evidence reasonably acceptable to Executive Director, insurance policies meeting the minimum requirements set forth below:



a. Commercial General Liability insurance with respect to the Site and the operations of or on behalf of Owner, in an amount not less than One Million Dollars (\$1,000,000) per occurrence including products, completed operations, contractual, bodily injury, personal injury, death and property damage liability, subject to such increases in amount as Agency may reasonably require from time to time. **The insurance to be provided by Owner** may provide for a deductible or self-insured retention of not more than Ten Thousand Dollars (\$10,000), with such maximum amount to increase at the same rate as the periodic increases in the minimum amount of total insurance coverage set forth above.

b. With respect to the improvements and any fixtures and furnishings to be owned by Owner on the Site, All Risk Property **insurance against fire, extended coverage**, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in Fresno County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall not require coverage for earthquake. Agency shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

c. All policies of insurance required to be carried by **Owner shall be** written by responsible and solvent insurance companies licensed in the State of California and having a policy-holder's rating of A or better, in the most recent edition of "Best's Key Rating Guide -- Property and Casualty." A copy of each paid-up policy evidencing such insurance (appropriately authenticated by the insurer) or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required herein, and containing the provisions specified herein, shall be delivered to Agency prior to its issuance of the Certificate of Completion for Phase I of the Project and thereafter, upon renewals, not less than thirty (30) days prior to the expiration of coverage. Agency may, at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Owner hereunder. In no event shall the limits of any policy be considered as limiting the liability of Owner hereunder.

d. Each insurance policy required to be carried by Owner pursuant to this Agreement shall contain the following endorsements, provisions, or clauses:

(1) The insurer will not cancel or materially alter the **coverage** provided by such policy in a manner adverse to the interest of the insured without first giving Agency a minimum of thirty (30) days prior written notice by certified mail, return receipt requested; and

(2) A waiver by the insurer of any right to subrogation **against** Agency, its agents, employees, or representatives, which arises or might arise by reason of any payment under such policy or policies or by reason of any act or omission of Agency, its agents, officers, members, officials, employees, or representatives.

(3) The City, Agency, their respective agents, officers, members, officials, employees, volunteers, and representatives shall be named insureds on the Commercial General Liability policies.

(4) The City and Agency shall be loss payees on the All **Risk** Property insurance policies.

(5) Coverage provided by these policies shall be primary and non-contributory to any insurance carried by the City, Agency, their officers, officials, employees, volunteers, agents, or representatives.

(6) Failure to comply with reporting provisions shall not affect coverage provided to City, Agency, their officers, employees, volunteers, agents, or representatives.

2. Failure to Procure Insurance. If Owner fails to procure and maintain the above-required insurance despite its availability, then Agency, in addition to any other remedy which Agency may have hereunder for Owner's failure **to procure, maintain, and/or pay for the** insurance required herein, may (but without any obligation to do so) at any time or from time to time, after thirty (30) days written notice to Owner, procure such insurance and pay the premiums therefor, in which event Owner shall immediately repay Agency all sums so paid by Agency together with interest thereon at the maximum legal rate.

I. OBLIGATION TO REPAIR.

1. Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to Section 1.3 below, if Phase I of the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Owner, Owner shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of Phase I of the Project to substantially the same condition as Phase I of the Project is required to be maintained in pursuant to this Agreement, and Owner shall complete the same as soon as possible thereafter so that Phase I of the Project can continue to be operated and occupied as an affordable housing project in accordance with this Agreement. Subject to extensions of time for "force majeure" events described in the DDA, in no event shall the repair, replacement, or restoration period exceed one (1) year from the date Owner obtains insurance proceeds unless Agency's Executive Director, in his or her sole and **absolute discretion, approves a longer period** of time. Agency shall cooperate with Owner, at no expense to Agency, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies or **lenders with jurisdiction over the Property** do not permit the repair, replacement, or restoration, Owner may elect not to repair, replace, or restore Phase I of the Project by giving notice to Agency (in which event Owner shall be entitled to all insurance proceeds but Owner shall be required to remove all debris from the Site) or Owner may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the City, Agency, and the other governmental agency or agencies with jurisdiction.

If Owner fails to obtain insurance as required by the DDA or this Agreement (and Agency has not procured such insurance and charged Owner for the cost), Owner shall be obligated to reconstruct and repair any partial or total damage to Phase I of the Project and improvements located on the Site in accordance with **this Section 1.1.**

2. Continued Operations. During any period of repair, **Owner shall continue,** or cause the continuation of, the operation of Phase I of the Project to the extent reasonably practicable from the standpoint of prudent business **management.**

3. Limitation on Obligation to Repair. If any casualty occurs to Phase I of the Project during the term of this Regulatory Agreement and the cost of restoration of Phase I of the Project exceeds One Hundred Thousand dollars (\$100,000) **more than the insurance** proceeds available to Owner for such restoration (if Owner maintains all insurance required by this Regulatory Agreement and inclusive of any deductible or self-insured retention amounts), then Owner shall not be required to restore Phase I **of the Project, but this Regulatory Agreement shall not be affected.**

J. LIMITATION ON TRANSFERS. The Owner covenants that Owner shall not transfer the Site or any of its interests therein except as provided in this Section.

1. Transfer Defined. As used in this Section, the term "Transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A Transfer shall also include the transfer to any person or group of persons acting in concert of **more than twenty-five percent (25%) (in the aggregate)** of the present ownership and/or control of any person or entity constituting Owner or its general partners, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the **beneficiaries are limited to members of the transferor's immediate family, or among the entities constituting Owner or its general partners or their respective shareholders.** In the event any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner, is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of such corporation, of beneficial interests of such trust; in the event that any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of such limited or general partnership interest; in the event that any **entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner** is a joint venture, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

2. Agency Approval of Transfer Required. Owner shall not Transfer the Site or any of Owner's rights hereunder, or any interest **in the Site or in the improvements thereon,** directly or indirectly, voluntarily or by operation of law, **except as provided below, without the** prior written approval of Agency, and if so purported to be Transferred, the same shall be null and void. In considering whether it will grant approval of any Transfer by Owner of its interest in the Site, Agency shall consider factors such as (i) **whether the completion and operation of** Phase I of the Project is jeopardized; (ii) the financial credit, strength, and capability of the proposed transferee to perform Owner's obligations hereunder; and (iii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of specific written agreement by Agency, no transfer by Owner of all or any portion of its interest in the Site (including without limitation a transfer not requiring Agency approval hereunder) shall be deemed to relieve it or any successor party from the obligation to complete Phase I of the Project or any other obligations under this Agreement. In addition, no attempted transfer of any of Owner's obligations hereunder shall be effective unless and until the successor party executes and delivers to Agency **an assumption agreement in a form** approved by the Agency assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following:

(a) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing, but Owner shall notify Agency in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site.

(b) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance **on the debt incurred to finance the** acquisition of the Site and construction of improvements on the Site, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors.

(c) The conveyance or dedication of any portion of the site (or sites) to the City of Fresno or other governmental agency.

(d) After recordation of the Certificate of Completion, **any mortgage**, deed of trust, sale/lease-back, or other form of conveyance for financing provided that the principal amount of the loan does not exceed eighty-five percent (85%) of the value of the land and improvements thereon.

(e) The granting of easements to any appropriate governmental agency or utility to facilitate the development of the Site.

(f) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of **the Internal Revenue Code of 1986, as** amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or **corporation which acquires the control of the** voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(g) A sale or transfer of forty-nine percent (49%) or more ownership interest to a member of the transferor's immediate family, a trust, testamentary or otherwise, in which immediate family members of the transferor are the sole beneficiaries, or a corporation or partnership in which the immediate family members or shareholders of the transferor have controlling majority interest of more than fifty-one percent (51%).

(h) A change in the respective percentage ownership interests exclusively of the present owners of Owner (as of the date of this Agreement), but this shall not authorize the transfer of any interest to any person or entity who is not a present owner of Owner.

(i) A sale or transfer to a Qualified Tax Credit Investor.

(j) Notwithstanding anything to the contrary contained in this Agreement, Developer shall have the right, at its option, to have the Site granted from Agency to a nonprofit general partner who is subsequently admitted to the Phase I Owner.

(k) A sale or transfer of general partner interests to a nonprofit general partner.

(l) Mechanic's liens removed prior to foreclosure or liens for current year property taxes not paid.

K. ENCUMBRANCES PROHIBITED. Prior to issuance of the Certificate of Completion by Agency as provided in the DDA, the Grantee shall not place or suffer to be placed on the Site any lien or encumbrance other than mortgages, deeds of trust, sales and leases back or any other form of conveyance required for financing of the acquisition of the Site, the construction of improvements on the Site, and any other expenditures necessary and appropriate to develop the Site, except as specifically provided in the DDA and attachments thereto.

L. ENFORCEMENT. In the event Owner defaults in the performance or observance of any covenant, agreement or obligation **of Owner pursuant to this Agreement, and** if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by Agency, or, in the event said default cannot be cured within said time period, Owner has failed to commence to cure such default within said thirty (30) days and thereafter fails to diligently prosecute said cure to completion, then Agency shall declare an "Event of Default" to have occurred hereunder, and, **at its option, may take one or more of the** following steps:

1. By mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of this Agreement; or

2. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and **agreements of Owner hereunder; or**

3. Enter the Site and cure the Event of Default as provided in Section E hereof; or

4. Impose, through Agency's Executive Director, an administrative fine for each day the violation continues. The amount of the fine shall be Twenty-Five dollars (\$25.00) per day, unless the violation is deemed a major violation, in which case the fine shall be Seventy-Five dollars (\$75.00) per day. A "major" violation shall be one, which affects adjacent property or the health and safety of persons. Owner may appeal the assessment of any fine to the City Council who may reverse, modify, or uphold **the decision of the Executive Director.** In making this decision, the City Council shall determine whether the violation exists and whether the amount of the fine is appropriate under the circumstances.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

M. NONDISCRIMINATION. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Owner, or any person claiming under or



through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site, or any part thereof (except as permitted by this Agreement).

N. FORM OF NONDISCRIMINATION CLAUSES IN AGREEMENTS. Subject to the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA, which may modify the following nondiscrimination clauses, **the following shall apply: Owner shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:**

a. Deeds: In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, **ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed,** nor shall the grantee itself, or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. Leases: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, **establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased.**"

c. Contracts: In contracts the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

The foregoing nondiscrimination covenants shall remain in effect in perpetuity.

O. COVENANTS TO RUN WITH THE LAND. Owner hereby subjects the Site to the covenants, reservations, and restrictions set forth in **this Agreement. Agency and Owner hereby**

declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Site; provided, however, **that on the termination of this Agreement said covenants, reservations, and restrictions shall expire.** All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency for the entire term of this Agreement, without regard to whether the Agency is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

Agency and Owner hereby declare their understanding **and intent that the burden of the covenants set forth herein touch and concern the land in that Owner's legal interest in the Site is rendered less valuable thereby.** Agency and Owner hereby further declare their understanding and intent that the benefit of such covenants touch **and concern the land by enhancing and increasing the enjoyment and use of Phase I of the Project by Eligible Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Agency was formed.**

Owner, in exchange for the Agency entering into the **DDA, hereby agrees to hold, sell,** and convey the Site subject to the terms of this Agreement. Owner also grants to the Agency and the City the right and power to enforce the terms of this Agreement against the Owner and all persons having any right, title, or interest in **the Site or any part thereof, their heirs,** successive owners and assigns.

P. **INDEMNIFICATION.** Owner agrees for itself and its successors and assigns to indemnify, defend, and hold harmless Agency, City, and their respective officers, members, officials, employees, agents, volunteers, and representatives from and against any loss, liability, claim, or judgment relating in any manner to Phase I of the Project excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of Agency, City, or their respective officers, officials, employees, members, agents, volunteers, or representatives. Owner, while in possession of the **Site, and each successor or assign of Owner while in possession of the Site, shall remain fully obligated for the payment of property taxes and assessments in connection with the Site. The foregoing indemnification, defense,** and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

Q. **ATTORNEYS' FEES.** In the event that a party to this **Agreement brings an** action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition, a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

R. **AMENDMENTS.** This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Fresno.

S. NOTICE. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Fed-Ex, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

Agency:	Redevelopment Agency of the City of Fresno 2344 Tulare Street, Suite 200 Fresno, CA 93721 Attn: Executive Director
Copy to:	Agency Counsel 2600 Fresno Street Fresno, CA 92612 Attn: Deputy City Attorney
Owner:	FRESNO EDISON APARTMENTS, L.P. Housing Authority of the City of Fresno, California 1331 Fulton Mall Fresno, California 93776-1985 Attn: CEO/Executive Director Fax: 559-443-8495
Phase II Owner:	FRESNO EDISON APARTMENTS II, L.P. Housing Authority of the City of Fresno, California 1331 Fulton Mall Fresno, California 93776-1985 Attn: CEO/Executive Director Fax: 559-443-8495

The notice shall be deemed given three (3) business **days after the date of mailing, or, if** personally delivered, when received, or if by overnight courier; of the time of delivery shown.

T. SEVERABILITY/WAIVER/INTEGRATION.

1. Severability. If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

2. Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

3. Integration. This Agreement contains the entire Agreement between the parties and neither party relies on any warranty or **representation not contained in this Agreement**.

U. FUTURE ENFORCEMENT. The parties hereby agree that should the Agency cease to exist as an entity at any time during the term of this Agreement, the City of Fresno



shall have the right to enforce all of the terms and conditions herein, unless the Agency had previously specified another entity to enforce this **Agreement**.

V. GOVERNING LAW. This Agreement shall be governed by **the laws of the State** of California.

W. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Agency and Owner have executed this Regulatory Agreement and Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

FRESNO EDISON APARTMENTS, LP,  
a California limited partnership

By: Silvercrest, Inc.,  
a California non-profit corporation,  
its Managing General Partner

\_\_\_\_\_  
Name: Preston Prince  
Title: Secretary/Treasurer

By: Fresno Edison Apartments AGP, LLC,  
A California Limited Liability Company,  
its Administrative General Partner

By: Housing Authority of the City of  
Fresno, California, its managing member

\_\_\_\_\_  
Name: Preston Prince  
Title: CEO/Executive Director

By: Edison Plaza Partners, L.P.,  
a California limited partnership, its member

By: The Penstar Group  
Its General Partner

\_\_\_\_\_  
By: Thomas G. Richards  
Its: President

By: Jackson J&J, LLC (dba H.A. W. Fifty Six)  
Its: General Partner

\_\_\_\_\_  
By: James Hendricks  
Its: Managing Member

CITY OF FRESNO, a Municipal corporation, in  
its capacity as Housing Successor to the  
Redevelopment Agency of the City of Fresno

By: \_\_\_\_\_  
MARLENE MURPHEY  
Executive Director

[END OF SIGNATURES]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

) ss.

COUNTY OF )

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

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

) ss.

COUNTY OF )



to which this certificate is  
attached, and not the  
truthfulness, accuracy, or  
validity of that document.

STATE OF CALIFORNIA     )

) ss.

COUNTY OF                     )

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

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

ATTACHMENT 1  
SITE/PROPERTY DESCRIPTION

ATTACHMENT 2  
CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

**EXHIBIT G-2**

**Reformed Regulatory Agreement – Phase II**

FRESNO EDISON PARTNERS II, L.P. DDA

FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

HOUSING SUCCESSOR TO THE  
REDEVELOPMENT AGENCY  
OF THE CITY OF FRESNO  
2344 Tulare Street  
Fresno, CA 93721  
Attn: Executive Director

---

(Space Above This Line for Recorder's Office Use Only)

**REGULATORY AGREEMENT AND  
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF FRESNO, a municipal corporation as HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO ("Agency"), and FRESNO EDISON APARTMENTS II, L.P., a California **limited partnership** ("Owner").

**RECITALS:**

A. Pursuant to the Disposition and Development Agreement by and between Agency and Edison Plaza Partners, L.P. ("Original Developer") dated March 9, 2011 and the Reformation of Disposition and Development Agreement dated January 24, 2012, between the Agency and the Original Developer as further reformed by Second Reformation of Disposition and Development Agreement dated \_\_\_\_\_, 2015 among the Agency, Original Developer, Fresno Edison Apartments, L.P. ("Phase I Owner") and Owner (as reformed, the "DDA"), Agency has provided to Owner and Phase I Owner real **property and financial assistance in the** amount of Five Million Six Hundred Fifty Five Thousand Dollars (\$5,655,000.00) (collectively, the "Agency Assistance"), all for the purpose of assisting Owner and Phase I owner in the acquisition of real property and the development of **a residential apartment complex thereon** wherein the units shall be rented to very low and lower income households, on that certain real property located in Fresno, County of Fresno, State of **California, more particularly described in** Attachment "1" hereto and incorporated herein by reference (the "Site").

B. Pursuant to the DDA, Owner and Phase I Owner have agreed to develop, construct, one hundred twenty-eight (128) rental apartment housing project to be built over two phases consisting of 116 low income units and 10 market rate units (hereinafter referred to collectively as the "Project") on the Site. The Project is referred to in the DDA as the "Project," and is further described in the Scope of Development/Project Budget attached to the DDA.

C. Agency and Owner now desire to place restrictions upon the use of 64 units of the second phase of the Project ("Phase II"), in order to ensure that such units of Phase II of the



Project shall be operated continuously as a rental apartment housing project available generally for rental by very low and lower income persons for **the term of this Agreement**.

D. It is the intent of the parties that the title vested in Owner by the Grant Deed for the Site dated \_\_\_\_\_ ("Grant Deed"), recorded concurrently herewith in Office of the County Recorder for the County of Fresno be subject **to this Regulatory Agreement, and that the terms hereof shall be binding on the Owner and its successors in interest in the Site for so long as the Regulatory Agreement shall remain in effect.**

#### AGREEMENT:

NOW, THEREFORE, the Owner and Agency declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of the Agency, the residents of the City of Fresno, and every person renting a dwelling unit on the Site.

#### A. DEFINITIONS.

1. Affordable Lower Income Rent. As used in this Agreement, the term "Affordable Lower Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to **rent as set forth by Health & Safety Code Section 50053**, or its successor, which is currently thirty percent (30%) of sixty percent (60%) of the Fresno County Median Income adjusted for the family size appropriate for the Unit.

2. Affordable Rent. As used in this Agreement, the term "Affordable Rent" shall refer to Affordable Low Income Rent.

3. Affordable Very Low Income Rent. As used in this Agreement, the term "Affordable Very Low income Rent" shall mean annual **rentals whose amount does not exceed** the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of fifty percent (50%) of the Fresno County Median Income adjusted for the family size appropriate for the Unit.

4. Eligible Tenant. As used in this Agreement, the term "Eligible Tenant" shall refer to a Lower Income Tenant.

5. Fresno County Median Income. For purposes of this Agreement, the "Fresno County Median Income" shall be determined by reference to the regulations published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093, or its successor.

6. Lower Income Tenant. As used in this Agreement, the term "Lower Income Tenant" shall mean those tenants whose household income does not exceed eighty percent (80%) of the Fresno County Median Income.

7. Project Manager. As used in this Agreement, the term "Project Manager" shall refer to that entity, to be designated by Owner and approved by Agency, who shall be

responsible for operating and maintaining Phase II of the Project in accordance with the terms of this Agreement. Prior to Agency's approval, Owner shall act as Project Manager.

8. Resident Manager. As used in this Agreement, the term "Resident Manager" shall refer to that individual (or those individuals) who may reside in Phase II of the Project and who are responsible for day-to-day management of Phase II of the Project.

9. Unit. As used in this Agreement, the term "Unit" shall refer to any of the sixty-four (64) residential units reserved for Eligible Tenants or the Resident Manager.

10. Very Low Income Tenant. As used in this Agreement, **the term "Very Low Income Tenant"** shall mean those tenants whose income does not exceed fifty percent (50%) of the Fresno County Median Income.

B. RESIDENTIAL RENTAL PROPERTY. The Owner hereby agrees that the Phase II of the Project is to be owned, managed, and operated as a project for lower income residential rental purposes for a term equal to fifty-five (55) **years, commencing upon the date of the** recordation of the Certificate of Completion for the Site in accordance with the DDA (the "Term"). To that end, and for the term of this Agreement, the Owner hereby represents, covenants, warrants and agrees as follows:

1. Purpose. The Site is being acquired and Phase II of the Project constructed for the purpose of providing very low and lower income rental housing and the Owner shall own, manage, and operate Phase II of the Project as a project to provide very low and lower income rental housing comprised of several interrelated buildings or structures, together with any functionally related and subordinate facilities.

2. Residential Use. None of the Units in Phase II of the Project will at any time be utilized on a transient basis or used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park without the Agency's prior consent which consent may be given or withheld in its sole and absolute discretion.

3. Conversion of Project. No part of Phase II of the Project will at any time be owned by a cooperative housing corporation, nor shall the Owner take any steps in connection with the conversion to such ownership or **uses to condominiums, or to any other** form of ownership, without the prior written approval of Agency which approval may be given or withheld in its sole and absolute discretion.

4. Preference to Eligible Tenants. All of the Units will be available for rental in accordance with the terms of this Agreement, and **the Owner shall not give preference to any** particular class or group in renting the Units in Phase II of the Project, except to the extent that the Units are required to be leased or rented to Eligible Tenants and except as provided in Section C.6 below.

5. Resident Manager. One, and only one, Unit in the Project may be occupied by a Resident Manager.

6. Liability of Owner. Owner and Resident Manager shall not incur any liability under this Agreement as a result of fraud or **intentional misrepresentation by a tenant**.

C. OCCUPANCY OF PROJECT BY ELIGIBLE TENANTS. Owner hereby represents, warrants, and covenants as follows:

1. Occupancy. Except as expressly provided herein, throughout the term of this Agreement the occupancy of 64 Restricted Units in **Phase II of the Project (excluding the Resident Manager Unit)** shall be restricted to Eligible Tenants, and qualified members of the Eligible Tenant's household.

2. Expiration of Occupancy and Rent Restrictions. The **Units shall be** subject to the restrictions contained in this Section C for the Term of this Agreement. All tenants residing in the Units during the final two (2) years of the Term shall be given notice of the expiration of the Term at least once every six (6) months during the final two years. After the expiration of the Term, the rents payable on the Units may be raised to market rates.

3. Rental Rates. Owner hereby agrees to rent those Restricted Units occupied by Lower Income Tenants at no greater than **Affordable Lower Income Rent**, and to rent those Units occupied by Very Low Income Tenants at no greater than **Affordable Very Low Income Rent**.

4. Occupancy By Eligible Tenant. A Unit occupied by an Eligible Tenant shall be treated as occupied by an Eligible Tenant until a recertification of such tenant's income in accordance with Section C.8 below demonstrates that such tenant no longer qualifies as an Eligible Tenant

5. Income Computation Certificate. Immediately prior to an Eligible Tenant's occupancy of a Unit, Owner shall obtain and maintain on file an Income Computation and Certification form (which form shall be approved in **advance by the Agency**) from each such Eligible Tenant dated immediately prior to the date of **initial occupancy in Phase II of the Project** by such Eligible Tenant. In addition, the Owner will provide such further information as may be reasonably required in the future by the Agency. Owner shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income as is satisfactory to the Agency; or (v) such other information as may be requested by the Agency. A copy of each such Income Computation and Certification shall be filed with the Agency prior to the occupancy of a Unit by an Eligible Tenant whenever possible, but in no event more than thirty (30) days after initial occupancy by said tenant.

6. Rental Priority. During the term of this Agreement, and subject to compliance with state and federal fair housing laws, Owner shall use its best efforts to lease vacant Units reserved for Eligible Tenants in the following order of priority: (i) displaced persons entitled to a preference pursuant to California Health and Safety Code Section 33411.3 or successor statute, with highest priority in this category to residents of Fresno; (ii) residents of the City of Fresno; and (iii) other persons meeting **the eligibility requirements of this Agreement**. Owner shall and Agency may maintain a list (the "Housing List") of persons who have notified Owner and/or Agency of their desire to rent a Unit in Phase II of the Project and who have incomes, which would qualify them as an Eligible Tenant, and Owner shall offer to rent Units on the above-referenced priority basis. Should multiple tenants be equally eligible and qualified to

rent a Unit, Owner shall rent available Units to Eligible Tenants on a first-come, first-served basis.

7. Renting Vacant Units. When a Unit becomes available as a result of a tenant vacation, Owner shall rent the Unit to an Eligible Tenant in accordance with the order of priority set forth in Section C.6.

8. Income Recertification. Immediately prior to the first anniversary date of the occupancy of a Unit by an Eligible Tenant and on each anniversary date thereafter, Owner shall recertify the income of such Eligible Tenant by obtaining a completed Income Computation and Certification based upon the current income of each occupant of the Unit. Owner shall provide the Agency with a copy of each such recertification with the next submission of Certificate of Continuing Program Compliance pursuant to Section C.10.

9. Terminating Ineligible Tenant. The tenant may be evicted for good cause as defined by Section 42 of the Internal Revenue Service regulations.

10. Certificate of Continuing Program Compliance. Upon the issuance of the Certificate of Completion for Phase II of the Project and annually by March 15 of each year, or at any time upon the written request of Agency, Owner shall advise the Agency of the occupancy of Phase II of the Project by delivering a Certificate of Continuing Program Compliance in the form attached hereto as Attachment "2" certifying: (i) the number of Units of Phase II of the Project which were occupied or deemed occupied pursuant to Section C.1 by an Eligible Tenant during such period, and (ii) to the **knowledge of Owner either (a) no unremedied default has occurred under this Agreement, (b) a default has occurred, in which event the Certificate shall describe the nature of the default and set forth the measures being taken by the Owner to remedy such default.**

11. Maintenance of Records. Owner shall maintain complete and accurate records pertaining to the Units, and shall permit any duly authorized representative of the Agency to inspect the books and records of Owner pertaining to Phase II of the Project including, but not limited to, those records pertaining to the occupancy of the Units.

12. Reliance on Tenant Representations. Each lease shall contain a provision to the effect that Owner has relied on the income certification and supporting information supplied by the tenant in determining qualification for occupancy of the Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

13. Conflicts. The leasing preference provision set forth in Section C.6 and termination or non-renewal provisions set forth in Sections C.8 and C.9 shall apply only in the event, and to the extent, such provisions are not in conflict with Internal Revenue Code provisions or IRS regulations.

14. Agency Remedy For Excessive Rent Charge.

a. It shall constitute a default for Owner to charge or accept for a Unit rent amounts in excess of the amount provided for in Section C.3 of this Agreement. In the event that Owner charges or receives such higher rental amounts, in addition to any other remedy Agency shall have for such default, Owner shall be required to pay to Agency the entire amount of rent received in excess of the amount permitted pursuant to this Agreement.

b. It shall constitute a default for Owner to rent any **Unit to a tenant** who is not an Eligible Tenant for the particular Unit pursuant to the rental rate requirements set forth in Section C.3 of this Agreement. In the event Owner rents a Unit to an ineligible tenant, in addition to any other equitable remedy Agency shall **have for such default, Owner, for each** separate violation shall be required to pay to Agency an amount equal to (i) two times the greater of (A) the total rent Owner received from such ineligible tenant, or (B) the total rent Owner was entitled to receive for renting that Unit, plus (ii) any relocation expenses incurred by Agency or City as a result of Owner having rented to such ineligible person.

c. It shall constitute a default for Owner to rent any **of the Units in** violation of the leasing preference requirements of **Sections C.6 of this Agreement so long as** such leasing preference requirements are not in violation of any state of federal fair housing laws. In the event Owner rents a Unit in violation **of the leasing preference requirements,** in addition to any other equitable remedy Agency shall **have for such default, Owner, for each** separate violation shall be required to pay Agency an amount equal to two (2) months of rental charges for the Unit with the highest rent. The terms of this Section C.14 shall not apply if Owner rents to an ineligible person as a result of such person's fraud or misrepresentation.

THE PARTIES HERETO AGREE THAT THE AMOUNTS SET FORTH IN SUBPARAGRAPHS (a) THROUGH (c) OF THIS SECTION C.14 (THE "DAMAGE AMOUNTS") CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL **DAMAGES THAT** AGENCY WOULD SUFFER DUE TO THE DEFAULTS BY OWNER SET FORTH IN SUBPARAGRAPHS (a) THROUGH (c), CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO AGENCY AND ACCOMPLISHMENT OF AGENCY'S PURPOSE OF ASSISTING IN THE PROVISION OF AFFORDABLE HOUSING TO ELIGIBLE TENANTS THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE AMOUNTS SET FORTH IN THIS SECTION C.14 SHALL BE THE SOLE MONETARY DAMAGES REMEDY FOR THE DEFAULTS SET FORTH IN THIS SECTION C.14, BUT NOTHING IN THIS SECTION C.14 SHALL BE INTERPRETED TO LIMIT AGENCY'S REMEDY FOR SUCH DEFAULT TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIAL AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO HAS EXPLAINED THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT **OR PRIOR TO THE** TIME EACH EXECUTED THIS AGREEMENT.

OWNER'S INITIALS: \_\_\_\_\_

AGENCY'S INITIALS: \_\_\_\_\_

15. Section 8 Tenants. Owner shall accept as tenants on the same basis as all other Eligible Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of **the United States Housing Act of 1937, or** its successor. Owner shall not apply selection criteria to Section 8 certificate holders that are more burdensome than criteria applied to all other Eligible Tenants.



D. MAINTENANCE.

1. Maintenance Obligation. Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of **asphalt or concrete paving using the same type** of material originally installed, to the end that such pavings at all times be kept in a level and smooth condition. In addition, Owner shall be required to maintain the Property in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general **welfare or that such a condition of** deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

2. Parking and Driveways. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times. No vehicles or other obstruction shall project into any of such driveways or traffic aisles. Vehicles associated with the operation of the Site, including delivery vehicles, vehicles of employees and vehicles of persons with business on the Site shall park solely on the Site.

3. Tenant Compliance. Owner shall provide any proposed tenants of any portion of the Site with a copy of this Agreement and shall, prior to entering into any lease agreement, have the proposed tenant execute an affidavit agreeing to comply with the provisions of this Agreement. All lease agreements **shall be in writing and shall contain** provisions, which make compliance with the conditions of this Agreement express covenants of the lease.

4. Right of Entry. In the event Owner fails to maintain the Site in the above-mentioned condition, and satisfactory progress is not made in correcting the condition within thirty (30) days from the date of written notice from Agency, City or Agency may, at their option, and without further notice to Owner, declare the unperformed maintenance to constitute a public nuisance. Thereafter, either Agency or City, their **employees, contractors, or agents, may cure** Owner's default by entering upon the Site and performing the necessary landscaping and/or maintenance. The Agency or City shall give Owner, its representative or the residential manager reasonable notice of the time and manner of **entry, and entry shall only be at such** times and in such manner as is reasonably necessary **to carry out this Regulatory Agreement.** Owner shall pay such costs as are reasonably incurred by Agency or City for such maintenance, including attorneys' fees and costs.

5. Lien. If such costs are not reimbursed within thirty (30) days after Owner's receipt of notice thereof, the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate of the lower of ten percent (10%) per annum or the legal maximum until paid. Any and all delinquent amounts, together with said interest, costs, and reasonable attorney's fees, shall be an obligation of Owner as well as a lien and charge, with power of sale, upon the property interests of Owner, and the rents, issues and profits of such

property. City and/or Agency may bring an action at law against Owner obligated to pay any such sums or foreclose the lien against Owner's property interests. Any such lien may be enforced by sale by the City or Agency following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, et seq., of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership interest or leasehold or subleasehold estate in and to any Site approved by Agency pursuant to the DDA, and any purchaser at any foreclosure or trustee's sale (as well as any deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title **free from any such monetary lien, but** otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure, assessed hereunder to the purchaser at the foreclosure sale, as owner of the subject Site after the date of such foreclosure sale, shall become a lien upon such Site upon recordation of a Notice of Assessment or Notice of Claim of Lien as herein provided.

#### E. MANAGEMENT.

1. Approval of Project Manager; Designation of Resident Manager. Subject to the terms and conditions contained hereinbelow, Owner shall at all times during the operation of Phase II of the Project pursuant to this Agreement retain an entity to perform the management and/or supervisory functions ("Project Manager") with respect to the operation of Phase II of the Project including day-to-day administration, maintenance and repair. Owner shall, before execution or any subsequent amendment **or replacement thereof, submit and** obtain Agency's written approval of a management contract ("Management Contract") entered into between Owner and a Project Manager acceptable **to Agency. Subject to any regulatory or** licensing requirements of any other applicable governmental agency, the Management Contract may be for a term of up to fifteen (15) years and may be renewed for successive terms in accordance with its terms, but may not be amended or modified without the written consent of Agency. The Management Contract shall also provide **that the Project Manager shall be subject** to termination for failure to meet project maintenance and operational standards set forth herein or in other agreements between Owner and Agency. Owner shall promptly terminate any Project Manager, which commits or allows such failure, unless the failure is cured within a reasonable period in no event exceeding 60 days from Project Manager's receipt of notice of the failure from Owner or Agency. Owner's obligation to retain a Project Manager shall remain in force and effect for the same duration as the use covenants set forth in Section B of this Agreement. Notwithstanding anything to the contrary in this Section, Phase II of the Project may be self-managed by Owner with the prior approval of the Agency Executive Director. Any change in the Project Manager shall be approved, **in writing, by the Executive Director, which** approval shall not be unreasonably withheld.

Pursuant to this Section E.1, the Agency or Executive Director shall reasonably approve or disapprove the proposed Project Manager and management contract. Unless the proposed Project Manager or management contract is disapproved within ten (10) business days following receipt of all information reasonably requested regarding such Project Manager, the Project Manager shall be deemed approved.

In addition to the Project Manager, one Resident Manager shall be designated as necessary by Owner or Project Manager, with written **notice to Agency of the Resident Manager's name, address and telephone number.**

2. **Serious Mismanagement.** In the event of "Serious Mismanagement" (as that term is defined below) of Phase II of the Project, Agency shall have the authority to require that such Serious Mismanagement cease immediately, and further to require the immediate replacement of the Project Manager or Resident Manager. For purposes of this Agreement, the term "Serious Mismanagement" shall mean management of Phase II of the Project in a manner, which violates the terms and/or intent of this Agreement and/or the Management Contract to operate an affordable housing complex of the highest standard, and shall include, but is not limited to, the following:

- a. Knowingly leasing to ineligible tenants or tenants whose income exceeds the prescribed levels;
- b. Knowingly allowing the tenants to exceed the prescribed occupancy levels without taking immediate steps to stop such overcrowding;
- c. Repeatedly failing to timely maintain Phase II of the Project and the Site in the manner required by this Agreement;
- d. Repeatedly failing to timely submit the reports as required by this Agreement or failing to submit materially complete reports;
- e. Fraud in connection with any document or representation relating to this Agreement or embezzlement of Project monies; and
- f. Failing to fully cooperate with the City's Police Department in maintaining a crime-free environment on the Site.

F. **COMPLIANCE WITH LAWS.**

1. **State and Local Laws.** Owner shall comply with all ordinances, regulations, and standards of the City and Agency applicable to the Site. Owner shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

2. **Lease Approval.** Agency shall have the right but is **not required to** approve any lease forms, revisions, amendments, or modification made to same, used by the Project Manager or Resident Manager for leasing Units within the Site.

G. **INSURANCE.**

1. **Duty to Procure Insurance.** Owner covenants and agrees for itself, and its assigns and successors-in-interest in the Site that from completion of Phase II of the Project as evidenced by City's issuance of a certificate of **occupancy, and continuing thereafter until the** expiration of the Term of this Agreement, Owner or such successors and assigns shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Owner and Agency, and shall provide Agency evidence reasonably acceptable to Executive Director, insurance policies meeting the minimum requirements set forth below:



a. Commercial General Liability insurance with respect to the Site and the operations of or on behalf of Owner, in an amount not less than One Million Dollars (\$1,000,000) per occurrence including products, completed operations, contractual, bodily injury, personal injury, death and property damage liability, subject to such increases in amount as Agency may reasonably require from time to time. **The insurance to be provided by Owner** may provide for a deductible or self-insured retention of not more than Ten Thousand Dollars (\$10,000), with such maximum amount to increase at the same rate as the periodic increases in the minimum amount of total insurance coverage set forth above.

b. With respect to the improvements and any fixtures and furnishings to be owned by Owner on the Site, All Risk Property **insurance against fire, extended coverage**, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in Fresno County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall not require coverage for earthquake. Agency shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

c. All policies of insurance required to be carried by **Owner shall be** written by responsible and solvent insurance companies licensed in the State of California and having a policy-holder's rating of A or better, in the most recent edition of "Best's Key Rating Guide -- Property and Casualty." A copy of each paid-up policy evidencing such insurance (appropriately authenticated by the insurer) or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required herein, and containing the provisions specified herein, shall be delivered to Agency prior to its issuance of the Certificate of Completion for Phase II of the Project and thereafter, upon renewals, not less than thirty (30) days prior to the expiration of coverage. Agency may, at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Owner hereunder. In no event shall the limits of any policy be considered as limiting the liability of Owner hereunder.

d. Each insurance policy required to be carried by Owner pursuant to this Agreement shall contain the following endorsements, provisions, or clauses:

(1) The insurer will not cancel or materially alter the **coverage** provided by such policy in a manner adverse to the interest of the insured without first giving Agency a minimum of thirty (30) days prior written notice by certified mail, return receipt requested; and

(2) A waiver by the insurer of any right to subrogation **against** Agency, its agents, employees, or representatives, which arises or might arise by reason of any payment under such policy or policies or by reason of any act or omission of Agency, its agents, officers, members, officials, employees, or representatives.

(3) The City, Agency, their respective agents, officers, members, officials, employees, volunteers, and representatives shall be named insureds on the Commercial General Liability policies.

(4) The City and Agency shall be loss payees on the All **Risk** Property insurance policies.

(5) Coverage provided by these policies shall be primary and non-contributory to any insurance carried by the City, Agency, their officers, officials, employees, volunteers, agents, or representatives.

(6) Failure to comply with reporting provisions shall not affect coverage provided to City, Agency, their officers, employees, volunteers, agents, or representatives.

2. Failure to Procure Insurance. If Owner fails to procure and maintain the above-required insurance despite its availability, then Agency, in addition to any other remedy which Agency may have hereunder for Owner's failure **to procure, maintain, and/or pay for the** insurance required herein, may (but without any obligation to do so) at any time or from time to time, after thirty (30) days written notice to Owner, procure such insurance and pay the premiums therefor, in which event Owner shall immediately repay Agency all sums so paid by Agency together with interest thereon at the maximum legal rate.

#### H. OBLIGATION TO REPAIR.

1. Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to Section 1.3 below, if Phase II of the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Owner, Owner shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of Phase II of the Project to substantially the same condition as Phase II of the Project is required to be maintained in pursuant to this Agreement, and Owner **shall complete the same as soon as possible** thereafter so that Phase II of the Project **can continue to be operated and occupied as** an affordable housing project in accordance with this Agreement. Subject to extensions of time for "force majeure" events described in the DDA, in **no event shall the repair, replacement, or restoration period exceed one (1) year** from the date Owner obtains insurance proceeds unless Agency's Executive Director, in his or her sole and **absolute discretion, approves a longer period** of time. Agency shall cooperate with Owner, at no expense to Agency, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies or **lenders with jurisdiction over the Property** do not permit the repair, replacement, or restoration, Owner may elect not to repair, replace, or restore Phase II of the Project by giving notice to **Agency (in which event Owner shall be entitled** to all insurance proceeds but Owner shall be required to remove all debris from the Site) or Owner may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the City, Agency, and the other governmental agency or agencies with jurisdiction.

If Owner fails to obtain insurance as required by the DDA or this Agreement (and Agency has not procured such insurance and charged Owner for the cost), Owner shall be obligated to reconstruct and repair any partial or total damage to Phase II of the Project and improvements located on the Site in accordance with **this Section 1.1.**

2. Continued Operations. During any period of repair, **Owner shall continue,** or cause the continuation of, the operation of Phase II of the Project to the extent reasonably practicable from the standpoint of prudent business **management.**

3. Limitation on Obligation to Repair. If any casualty occurs to Phase II of the Project during the term of this Regulatory Agreement and the cost of restoration of Phase II of the Project exceeds One Hundred Thousand dollars **(\$100,000) more than the insurance** proceeds available to Owner for such restoration (if Owner maintains all insurance required by this Regulatory Agreement and inclusive of any deductible or self-insured retention amounts), then Owner shall not be required to restore Phase II of the Project, but this Regulatory Agreement shall not be affected.

I. LIMITATION ON TRANSFERS. The Owner covenants that Owner shall not transfer the Site or any of its interests therein except as provided in this Section.

1. Transfer Defined. As used in this Section, the term "Transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A Transfer shall also include the transfer to any person or group of persons acting in concert of **more than twenty-five percent (25%) (in the aggregate)** of the present ownership and/or control of any person or entity constituting Owner or its general partners, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the **beneficiaries are limited to members of the** transferor's immediate family, or among the entities constituting Owner or its general partners or their respective shareholders. In the event any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner, is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of such corporation, of beneficial interests of such trust; in the event that any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of such limited or general partnership interest; in the event that any **entity constituting Owner, its successor or the** constituent partners of Owner or any successor of Owner is a joint venture, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

2. Agency Approval of Transfer Required. Owner shall not Transfer the Site or any of Owner's rights hereunder, or any interest **in the Site or in the improvements thereon**, directly or indirectly, voluntarily or by operation of law, **except as provided below, without the** prior written approval of Agency, and if so purported to be Transferred, the same shall be null and void. In considering whether it will grant approval of any Transfer by Owner of its interest in the Site, Agency shall consider factors such as (i) **whether the completion and operation of** Phase II of the Project is jeopardized; (ii) the financial credit, strength, and capability of the proposed transferee to perform Owner's obligations hereunder; and (iii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of specific written agreement by Agency, no transfer by Owner of all or any portion of its interest in the Site (including without limitation a transfer not requiring Agency approval hereunder) shall be deemed to relieve it or any successor party from the obligation to complete Phase II of the Project or any other obligations under this Agreement. In addition, no attempted transfer of any of Owner's obligations hereunder shall be effective unless and until the successor party executes and delivers to Agency **an assumption agreement in a form** approved by the Agency assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following:

(a) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing, but Owner shall notify Agency in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site.

(b) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance **on the debt incurred to finance the** acquisition of the Site and construction of improvements on the Site, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors.

(c) The conveyance or dedication of any portion of the site (or sites) to the City of Fresno or other governmental agency.

(d) After recordation of the Certificate of Completion, **any mortgage**, deed of trust, sale/lease-back, or other form of conveyance for financing provided that the principal amount of the loan does not exceed eighty-five percent (85%) of the value of the land and improvements thereon.

(e) The granting of easements to any appropriate governmental agency or utility to facilitate the development of the Site.

(f) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of **the Internal Revenue Code of 1986, as** amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or **corporation which acquires the control of the** voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(g) A sale or transfer of forty-nine percent (49%) or more ownership interest to a member of the transferor's immediate family, a trust, testamentary or otherwise, in which immediate family members of the transferor are the sole beneficiaries, or a corporation or partnership in which the immediate family members or shareholders of the transferor have controlling majority interest of more than fifty-one percent (51%).

(h) A change in the respective percentage ownership interests exclusively of the present owners of Owner (as of the date of this Agreement), but this shall not authorize the transfer of any interest to any person or entity who is not a present owner of Owner.

(i) A sale or transfer to a Qualified Tax Credit Investor.

(j) Notwithstanding anything to the contrary contained in this Agreement, Developer shall have the right, at its option, to have the Site granted from Agency to a nonprofit general partner who is subsequently admitted to the Phase II Owner.

(k) A sale or transfer of general partner interests to a nonprofit general partner.

(l) Mechanic's liens removed prior to foreclosure or liens for current year property taxes not paid.

J. ENCUMBRANCES PROHIBITED. Prior to issuance of the Certificate of Completion by Agency as provided in the DDA, the Grantee shall not place or suffer to be placed on the Site any lien or encumbrance other than mortgages, deeds of trust, sales and leases back or any other form of conveyance required for financing of the acquisition of the Site, the construction of improvements on the Site, and any other expenditures necessary and appropriate to develop the Site, except as specifically provided in the DDA and attachments thereto.

K. ENFORCEMENT. In the event Owner defaults in the performance or observance of any covenant, agreement or obligation of **Owner pursuant to this Agreement**, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by Agency, or, in the event said default cannot be cured within said time period, Owner has failed to commence to cure such default within said thirty (30) days and thereafter fails to diligently prosecute said cure to completion, then Agency shall declare an "Event of Default" to have occurred hereunder, and, **at its option, may take one or more of the** following steps:

1. By mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of this Agreement; or

2. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and **agreements of Owner hereunder**; or

3. Enter the Site and cure the Event of Default as provided in Section E hereof; or

4. Impose, through Agency's Executive Director, an administrative fine for each day the violation continues. The amount of the fine shall be Twenty-Five dollars (\$25.00) per day, unless the violation is deemed a major violation, in which case the fine shall be Seventy-Five dollars (\$75.00) per day. A "major" violation shall be one, which affects adjacent property or the health and safety of persons. Owner may appeal the assessment of any fine to the City Council who may reverse, modify, or uphold **the decision of the Executive Director**. In making this decision, the City Council shall determine whether the violation exists and whether the amount of the fine is appropriate under the circumstances.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

L. NONDISCRIMINATION. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Owner, or any person claiming under or



through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site, or any part thereof (except as permitted by this Agreement).

M. FORM OF NONDISCRIMINATION CLAUSES IN AGREEMENTS. Subject to the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA, which may modify the following nondiscrimination clauses, **the following shall apply: Owner shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin of any person.** All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. Deeds: In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, **ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed,** nor shall the grantee itself, or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. Leases: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, **establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased.**"

c. Contracts: In contracts the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself, or any person claiming under or through ii, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

The foregoing nondiscrimination covenants shall remain in effect in perpetuity.

N. COVENANTS TO RUN WITH THE LAND. Owner hereby subjects the Site to the covenants, reservations, and restrictions set forth **in this Agreement. Agency and Owner hereby**

declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Site; provided, however, **that on the termination of this Agreement said covenants, reservations, and restrictions shall expire.** All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency for the entire term of this Agreement, without regard to whether the Agency is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

Agency and Owner hereby declare their understanding **and intent that the burden of the covenants set forth herein touch and concern the land in that Owner's legal interest in the Site is rendered less valuable thereby.** Agency and Owner hereby further declare their understanding and intent that the benefit of such covenants touch **and concern the land by enhancing and increasing the enjoyment and use of Phase II of the Project by Eligible Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Agency was formed.**

Owner, in exchange for the Agency entering into the **DDA, hereby agrees to hold, sell,** and convey the Site subject to the terms of this Agreement. Owner also grants to the Agency and the City the right and power to enforce the terms of this Agreement against the Owner and all persons having any right, title, or interest in **the Site or any part thereof, their heirs,** successive owners and assigns.

O. **INDEMNIFICATION.** Owner agrees for itself and its successors and assigns to indemnify, defend, and hold harmless Agency, City, and their respective officers, members, officials, employees, agents, volunteers, and representatives from and against any loss, liability, claim, or judgment relating in any manner to Phase II of the Project excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of Agency, City, or their respective officers, officials, employees, members, agents, volunteers, or representatives. Owner, while in possession of the **Site, and each successor or assign of Owner while in possession of the Site, shall remain fully obligated for the payment of property taxes and assessments in connection with the Site. The foregoing indemnification, defense,** and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

P. **ATTORNEYS' FEES.** In the event that a party to this **Agreement brings an** action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition, a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

Q. **AMENDMENTS.** This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Fresno.

R. NOTICE. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Fed-Ex, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

Agency:                      Redevelopment Agency  
                                     of the City of Fresno  
                                     2344 Tulare Street, Suite 200  
                                     Fresno, CA 93721  
                                     Attn: Executive Director

Copy to:                      Agency Counsel  
                                     2600 Fresno Street  
                                     Fresno, CA 92612  
                                     Attn: Deputy City Attorney

Owner:                        FRESNO EDISON APARTMENTS II, L.P.  
                                     Housing Authority of the City of Fresno, California  
                                     1331 Fulton Mall  
                                     Fresno, California 93776-1985  
                                     Attn: CEO/Executive Director  
                                     Fax: 559-443-8495

Phase I Owner:              FRESNO EDISON APARTMENTS, L.P.  
                                     Housing Authority of the City of Fresno, California  
                                     1331 Fulton Mall  
                                     Fresno, California 93776-1985  
                                     Attn: CEO/Executive Director  
                                     Fax: 559-443-8495

The notice shall be deemed given three (3) business **days after the date of mailing**, or, if personally delivered, when received, or if by overnight courier; of the time of delivery shown.

S. SEVERABILITY/WAIVER/INTEGRATION.

1. Severability. If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

2. Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

3. Integration. This Agreement contains the entire Agreement between the parties and neither party relies on any warranty or **representation not contained in this Agreement**.

T. FUTURE ENFORCEMENT. The parties hereby agree that should the Agency cease to exist as an entity at any time during the term of this Agreement, the City of Fresno



shall have the right to enforce all of the terms and conditions herein, unless the Agency had previously specified another entity to enforce this **Agreement**.

U. GOVERNING LAW. This Agreement shall be governed by **the laws of the State** of California.

V. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Agency and Owner have executed this Regulatory Agreement and Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

FRESNO EDISON APARTMENTS II, LP,  
a California limited partnership

By: Silvercrest, Inc.,  
a California non-profit corporation,  
its Managing General Partner

\_\_\_\_\_  
Name: Preston Prince  
Title: Secretary/Treasurer

By: Fresno Edison Apartments AGP II, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Housing Authority of the City of Fresno,  
California, its managing member

\_\_\_\_\_  
Name: Preston Prince  
Title: CEO/Executive Director

By: Edison Plaza Partners, L.P.,  
a California limited partnership, its member

By: The Penstar Group  
Its General Partner

\_\_\_\_\_  
By: Thomas G. Richards  
Its: President

By: Jackson J&J, LLC (dba H.A. W. Fifty Six)  
Its: General Partner

\_\_\_\_\_  
By: James Hendricks  
Its: Managing Member

CITY OF FRESNO, a Municipal corporation, in  
its capacity as Housing Successor to the  
Redevelopment Agency of the City of Fresno

By: \_\_\_\_\_  
MARLENE MURPHEY  
Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

) ss.

COUNTY OF )

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

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

) ss.

COUNTY OF )

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

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA     )

) ss.

COUNTY OF                     )

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

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA     )

) ss.

COUNTY OF                     )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their

authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

[SEAL]

---

Notary Public

**EXHIBIT “H-1”**  
**REFORMED DEVELOPER PERFORMANCE GUARANTY – PHASE I**

*[Signatures appear on the following pages]*

**EXHIBIT “H-2”**

**REFORMED DEVELOPER PERFORMANCE GUARANTY – PHASE II**

## EXHIBIT "I"

### SUMMARY OF TRANSACTION

#### **SUMMARY REPORT CONCERNING THE DISPOSITION AND DEVELOPMENT AGREEMENT, AS REFORMED, AMONG THE CITY OF FRESNO, A MUNICIPAL CORPORATION AS HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO (THE "AGENCY"), FRESNO EDISON APARTMENTS, LP, A CALIFORNIA LIMITED PARTNERSHIP, FRESNO EDISON APARTMENTS II, LP, A CALIFORNIA LIMITED PARTNERSHIP AND EDISON PLAZA PARTNERS, LP, A CALIFORNIA LIMITED PARTNERSHIP**

FRESNO EDISON APARTMENTS, LP, a California limited partnership (the "Phase I Developer" and FRESNO EDISON APARTMENTS II, LP, a California limited partnership, (the "Phase II Developer" and together with the Phase I Developer, the "Developer"), proposes that the Agency convey land to it for its construction of a mixed income/multi-family housing project consisting of 128 units, a community center, play yards, swimming facility, community garden, open space, and the associated landscaping, parking improvements, on-site developments, and off-site improvements. This summary report has been prepared in compliance with Health and Safety Code Section 33433 of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the "Law"). Section 33433 requires an agency, before selling or leasing land for redevelopment that it acquired either directly or indirectly with tax increment money, to hold a public hearing and make available for public inspection and copying at a cost not to exceed the cost of duplication a report that contains the following:

A. A copy of the proposed sale agreement. The agreement, a Disposition and Development Agreement, as reformed, ("D&DA"), is attached and incorporated herein.

B. A summary (this Report) which describes and specifies the following:

a. The cost of the D&DA to the Agency. Costs include, for instance, land acquisition costs, clearance costs, relocation costs, costs of any on or off-site improvements that the Agency will provide, and interest on any loans or bonds that the agency may use to finance the agreement.

b. The estimated value of the property interest to be conveyed, determined at the highest and best uses permitted under the urban renewal (redevelopment) plan, the Southwest Fresno General Neighborhood Renewal Area Project within the [Merger 2] Project Area ("Merger 2") described in the Plan is referred to herein as the "Project Area".

c. The estimated reuse value of the property interest to be conveyed, determined at the use and with the conditions, covenants, and development costs required by the D&DA. The reuse value is the purchase price the Developer will pay after considering the terms of the D&DA. If the price is less than the fair market value of the property interest, determined at the highest and best use consistent with the Plan, then the Agency must explain the reasons for the difference.

d. An explanation of why the sale of the property will help eliminate blight, with reference to all supporting facts and materials relied on for the explanation.



## A. PROPOSED AGREEMENT

The D&DA contains the terms governing the Agency's sale of certain real properties located at California Avenue and Walnut Street collectively, the "Property", consisting of an estimated 6.9 acres owned by the Agency. It obligates the Developer to construct a mixed income/multi-family housing project consisting of a **128 affordable and market rate units, a community center, play yards, swimming facility, community garden, open space, and the associated landscaping, parking improvements, and on-site improvements.** The Agency Board/City Council may revise or modify the D&DA terms at the public hearing on the D&DA. This hearing was held March 8, 2011 at 1:30PM, in the City Council Chambers, at 2600 Fresno Street, after the Housing and Community Development **Commission met on March 7, 2011 at 5:00 p.m.** to review the project and D&DA and prepare recommendations to the Agency/Council.

## B. SUMMARY OF THE PROPOSED AGREEMENT

The D&DA covers each development phase, including predisposition, disposition, construction, and post-construction. It requires that certain conditions precedent be satisfied before the Agency is obligated to perform. Here the Agency will be variously obligated to convey the Property. The following summarizes key provisions of the D&DA.

- **Site Description.** The Property consists of twenty-nine (29) parcels located in the Southwest Fresno General Neighborhood Renewal Area.

The twenty-nine parcels are located at the northwest corner of Florence and Walnut Streets. The subject property is square in shape, and contains an estimated six and nine-tenth (6.9) acres. The property is currently vacant and all existing structures/improvements have been demolished. The topography is level. Offsite improvements along Walnut include concrete curb, gutter and sidewalk along the street frontage, as well as old-fashioned, pole-mounted street lights. Available public utilities include natural gas and electricity from PG&E, water and sewer from the city of Fresno, and telephone service from SBC. The Property is identified on the Fresno County Assessor's Parcel Maps as Parcels **APN's 477-142-01T thru 06T, 477-142-12T thru 21T, 477144-01T thru 06T, 09T, 12T thru 16T and 31T,** various addresses on E. Lorena Avenue, E. Geary Street, and E. Florence Avenue. The property has been zoned C-P Commercial Office by the City of Fresno intended to **encourage residential use in conjunction** with professional office and commercial land uses.

- **Project Description.** The Developer proposes to construct 128 affordable and market rate units, a community center, play yards, swimming facility, community garden, open space, and the associated landscaping, parking improvements, and on-site improvements on the combined parcels to be conveyed hereunder.

- **Project amenities will include a 4,500 square foot Community Center, 4 play yards, green space and community garden.**

- **Proposed Property Transaction.** The Agency proposes to sell the Property to the Developer, subject to the covenants and conditions of the D&DA. The Agency proposes to sell the Property to the Developer for \$655,000 subject to the development obligations, a right of reverter, and covenants running with the land, including maintenance and nondiscrimination provisions.

- Agency Obligations Under the D&DA. Under the terms of the proposed D&DA, the Agency's obligations are to sell the Property to the Developer for \$655,000 and to pay the escrow and title costs. The Agency will withhold such sum from the loans to be made pursuant to the D&DA before any disbursements thereof through an acquisition escrow in accordance with the terms and conditions as set forth in the D&DA.

- "AS IS" Sale and Environmental Remediation. The Developer will be accepting the Property in "AS-IS" condition, with all faults, including environmental conditions, if any. After that the Developer will indemnify the Agency, and its related parties against all claims and expenses including, without limitation, legal costs arising from any condition on the Property. An environmental assessment of the Project, satisfying CEQA requirements, has been/will be completed in conjunction with the City Planning and Development Department's processing of the conditional use permit application for the Project. The Developer has inspected the Property, and will have access to the Property for any other investigations that the Developer may deem advisable for due diligence purposes.

- Entitlements. The Developer will pay the full cost of the Project conditional use permit application fee, and will pay any other required entitlement fees to the City Planning and Development Department.

- Assurance of Performance. The D&DA requires the Developer, at its expense, to furnish the Agency with labor, material and performance bonds or other evidence, satisfactory to the Agency's Executive Director of the Developer's ability to complete the Project.

- Agency Approval of Plans and Drawings. The D&DA gives the Agency discretionary approval over development-related items for the proposed Project. Development-related items include, without limitation, building permits, conditional use permits, site plans, building plans, basic concept drawings, elevation and other drawings showing architectural style, design and features, landscaping plans (prepared by a professional landscape architect), and finish grading plans (prepared by a licensed civil engineer).

- Construction Timing and Right of Reentry. The D&DA requires the Developer to begin and complete construction by specified dates. The D&DA permits the Agency to extend these time frames for causes beyond the Developer's control, other than causes related to financing and marketing. To assure that the Developer is not acquiring the Property for speculative purposes, the D&DA requires the Developer to complete the Phased Project by the dates specified in the D&DA. If the Developer does not comply with this and other construction covenants, the Agency may reenter and retake title to the Property/portions thereof.

- Compliance with Law. The D&DA requires the Developer to comply with all local, state, and federal laws in developing and constructing the Project, and establishes that the Agency is not responsible for the Developer's failure to comply with the law. This provision applies to the payment of prevailing wages, competitive bidding and other matters.

- Anti-Discrimination. The D&DA contains the anti-discrimination provisions required by state law and sets forth deed restrictions assuring compliance with these provisions in perpetuity.

- Land Use and Ownership Covenants. The D&DA requires the Developer to use the Property for Project purposes and for no other purposes without the Agency's prior written consent, and to use the Property in conformity with all laws including, without limitation, the

Plan. Currently, the uses permitted under the Plan **are commercial mixed uses**. The designation encourages the development of commercial, professional office or mixed use office/commercial uses.

- **Maintenance.** The D&DA requires the Developer and its successors to maintain retained portions of the Property in first class condition for the life of the Plan. This obligation includes building facades, landscaping, and off-street parking areas. The D&DA permits the Agency to lien the Property to enforce the maintenance obligation.

- **Assignment.** Until the Developer completes the Project and the Agency records a Release of Construction Covenants, the D&DA prohibits the Developer from assigning, selling, leasing or transferring the Property or its rights/obligations under the D&DA without the prior approval of the Agency. The Agency will consider sale or assignment or other transfers of the Project if the transferee is qualified and enters an assumption agreement acceptable to Agency.

- **Lender Protection Clauses.** D&DA provisions protect the holder of any security financing interest, give the holder the right to cure any default, but do not obligate the holder to construct the Project. If the holder decides to complete the Project, it must enter an assumption agreement. If the holder fails to complete the Project the Agency has the right to cure.

- **Insurance.** The D&DA requires commercial liability, fire, worker's compensation, and builder's risk insurance policies typical of commercial projects.

- **Indemnification.** The D&DA requires that the Developer indemnify the Agency and all affiliated parties for any claims or damages arising out of the D&DA and the Project, except where the claims or damages result solely from the active negligence or willful misconduct of the Agency. This indemnification covers any act of the Developer and its agents and representatives related to the Project, its design, the physical condition of the Property, its use, operation, and maintenance, etcetera. Additionally, the D&DA requires each contractor and subcontractor to indemnify Agency and its affiliates.

- **Defaults.** The D&DA defines events resulting in a default and the circumstances under which the Agency and Developer may terminate the D&DA before and after close of escrow. After the escrow closes and the Developer has title to the Property, the Agency's primary remedy is the right to reenter and assume control of the Property, subject to any security interests permitted under the D&DA.

## C. FINANCIAL SUMMARY

Over the last 30 years the City (at times during when City acted as Agency) and the Agency, completed assembly of the Agency owned, unoccupied, vacant property consisting of twenty-nine (29) parcels comprising the Property. The Agency will clear and grub and thereupon sell the property to the Developer for \$655,000. The Developer also shall design, construct and install required off-site improvements at its sole cost and expense. These off-sites (Off-Sites) shall generally consist of standard curbs/curb ramp, gutter, sidewalk, pedestrian walkway, bus bay, streetlight(s)/related undergrounding, driveway approach, traffic signal(s), and median island(s) as required by the City of Fresno.

1. **Property Acquisition, Relocation and Clearance.** The total cost for assembly, relocation, and clearance of the property is approximately \$1,915,000, variously based on the

appraised value and negotiated agreement price with **the owners**. **The City, at times during** which the City acted as the Agency, assembled (including relocation and clearance) a portion of the estimated 6.9 acre property at an historic cost of **approximately \$781,000**. **The Agency in its** own right assembled, relocated and cleared the balance of the estimated 6.9 acre property at a total cost of approximately \$1,134,000.

2. Public Improvements, On-Site/Off-Site. The Developer is agreeing to construct and be financially responsible for the construction of **required public Off-Sites in conjunction with** the development of this Project.

3. Demolition. There is no currently scheduled demolition, the property is vacant. The Agency will sell the Property "AS IS"

4. Title and Closing Costs. The Agency will pay the escrow fees, recording fees, and documentary stamp taxes, if any, to convey the Property to Developer. The Agency will pay the premium for a CLTA lender's policy of title **insurance insuring its deed trust interest** in the Property as described in the D&DA. The Agency or the Developer will pay any other escrow-associated costs according to the custom and **practice in Fresno County**. **These costs** are estimated at \$2,000.

5. Miscellaneous Costs. The Agency will incur miscellaneous administrative costs including legal review and personnel costs.

#### D. VALUE OF INTEREST TO BE CONVEYED

1. Highest and Best Use. The Plan incorporates as its **land use plan, the City's** general and specific plans. The consideration for the Site is not less than the fair market value of the Site at its highest and best use under the Plan. The Planning and Development Department of the City of Fresno is reviewing the project development to ensure the proposed development and use is consistent with the City's adopted land use policy.

2. Fair Market Value. The Property is currently vacant. It contains an estimated six and nine-tenth (6.9) acres, and is assessed under twenty-nine assessor's parcel numbers. In November 2010, an MAI Appraisal report was prepared **by an independent broker, whereunder** the Property was valued at \$ 108,623.55 per acre.

3. Fair Reuse Value. To determine the reuse value of the Site as conditioned by the D&DA, several factors must be considered. These include the profitability of the Project to the Developer, development costs and the revenues of the Project. This value is unique to the proposed Project and must be based on the expected economic performances of the proposed Project as it is structured in the D&DA. This Project business structure includes conditions, covenants, restrictions, limitations, and constraints placed on the Project through the D&DA which exceed those typically encountered in the unrestricted market.

The Agency proposes to sell the Property to the Developer at \$655,000 for the twenty-nine parcels, a value that the Agency has determined is not less than the fair reuse value of the Property. The proposed use is multi income housing **development that includes the covenants,** conditions, restrictions, criteria and development costs authorized or imposed under the D&DA on development and use of the Project and the Property.

Under the D&DA, the Developer will assume developmental risk normally encountered in constructing a similar Project outside the Project Area, and will be bound by the covenants, conditions, and restrictions imposed by the D&DA.

Development risks under the D&DA include the following:

- **Sale and assignment restrictions;**
- **Agency's restrictions on the use of the Property;**
- **Agency's right to review and approve design;**
- **All risks associated with an "AS IS" purchase, such as the physical condition of the Property, including any environmental conditions;**
- **Requirements to improve the Property consistent with the D&DA;**
- **Requirements to complete construction by a certain date;**
- **Requirements to maintain the Property, subject to the Agency's enforcement through a lien procedure; and**
- **The Agency's right to reenter and retake the Property on failure to construct within the time limit, a provision that is unique to public agencies under California Redevelopment Law.**

#### E. BLIGHT ALLEVIATION

The Redevelopment Agency of the City of Fresno (Agency) is engaged in activities necessary to execute and carry out the Southwest Fresno General Renewal Area Plan. The Ordinance No. 69-13 adopted on February 14, 1969 adopted finding that the Project Area suffers from significant remaining physical and economic blighting conditions as specified therein. Included in the Plan were findings that (1) the Project Area is a blighted area, the redevelopment of which is necessary to effectuate the public purposes in the California Community Redevelopment Law. The Project area predominantly urbanized was characterized by and suffered from a combination of significant blighting physical and economic conditions, including, among others: buildings that are obsolete and aged; buildings which have inadequate parking; incompatible uses; vacant buildings and lots; lots of irregular form and shape and of inadequate size for property usefulness which are under multiple ownership; depreciated or stagnant property values and impaired low lease rates; a high crime rate; and inadequate public improvements, parking, and; (2) the combination of blighting conditions were so prevalent and so substantial that they continue to cause a reduction of, or lack of, proper utilization of the Project Area and affects the Project Area as a whole to such an extent that it is a serious physical and economic burden on the City that cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

The Property is not currently developed and utilized and has been so for several years. The proposed Project will help alleviate blight by returning the Property to a productive use. The Project will result in the addition of commercial/office-public/retail mixed used development.



#### F. CONSISTENCY WITH THE PROJECT AREA IMPLEMENTATION PLAN

On December 2, 2010, the Agency adopted Resolution 1766, approving an updated Five-Year Implementation Plan for the Merger No. 2 Project Areas that includes the Southwest Fresno General Renewal Area. The Five-Year Implementation Plan outlines a redevelopment program designed to facilitate reinvestment in the Project Area, and to eliminate physical and economic blighting influences. This includes redeveloping vacant and underutilized properties.

The Project is consistent with the basic programs contained in the Implementation Plan to help alleviate blight within the Southwest Fresno General Renewal Area.

*The Fresno Edison Apartments Project includes the construction of new mixed income/multi-family housing encouraging potential development of other properties in the area.*

The Proposed Project will upgrade the existing street scape and provide attractive buildings, on-site landscaping and parking improvements in place of unproductive land.

Further, the Project is consistent with the goals and objectives of the Implementation Plan because it will develop underdeveloped property to an intensive use. It will increase the aesthetics and visibility of the Property, thereby revitalizing the Project Area. The Property is underutilized; it has been underutilized for over 30 years, The Project will fill a visual gap in the frontages along Florence and Walnuts Streets thus contributing to the visual and economic vitality of the immediate area.

#### **SUMMARY REPORT**

This Summary Report has been prepared in compliance with California Health and Safety Code Section 33433. A photocopy of this Report may be obtained from the Agency Secretary or City Clerk by paying the usual photocopy fee regularly charged by the Agency and City.

#### **ATTACHMENTS:**

- ☐ Public Hearing Notice
- ☐ Disposition and Development Agreement

Account: 6217600RED Class: 894 Last user: JALONZO

Ad Start: 3/02/11 Ad Stop: 3/09/11 Total Cost: \$1318.68 Run Days: wednesday

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## PUBLIC NOTICE

#43413

## PUBLIC NOTICE

NOTICE IS HEREBY GIVEN PURSUANT TO COMMUNITY REDEVELOPMENT LAW of the following hearing to consider the disposition and development of property pursuant to the proposed Disposition and Development Agreement (the "Agreement") between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO (the "Agency") and PUBLIC PLAZA PARTNERS, L.P., a California limited partnership (the "Developer").

The property consists of twenty-nine (29) vacant parcels, located at, south of Avenue, east of Pumas, west of Walnut and north of Florence (APNs 477-142-011 through 051, 477-142-121 through 211, 477-144-011 through 051, 051, 121 through 131 and 311) are together approximately 7 acres. The proposed project is anticipated to include mid-family housing units, community center and open space, play areas and the associated landscaping, parking improvements, on site developments, and any off-site improvements. Interested parties are scheduled to meet regarding this matter.

REDEVELOPMENT AGENCY AND COUNCIL  
OF THE CITY OF FRESNO, JOINT PUBLIC HEARING

DATE: Thursday, March 10, 2011  
TIME: 8:30am  
PLACE: City Hall Council Chambers  
2600 Fresno Street  
Fresno City Hall, Second Floor

The purpose of the joint public hearing is to receive testimony from the public regarding the proposed disposition of property set forth in the proposed Agreement. All interested parties are invited and encouraged to attend the meeting and express their opinions for or against this item.

Comments may be mailed before the above meetings to Terry Cox, c/o Redevelopment Agency, 2344 Tulare Street, Suite 200, Fresno, CA 93721. A copy of the proposed Agreement and a summary containing estimates, facts and other information about the transaction as required by law, are available for inspection and copying at the City Clerk's office, City Hall, 2600 Fresno Street, during regular office hours. This information is also available at the Fresno County Library, 2420 Mariposa Street. Questions should be directed to Terry Cox at (559) 621-2260.

If you challenge the item listed above at meeting, you may be limited to making only those points for or against the subject at the above-stated public hearing, or to written correspondence submitted to the City Council or Agency at, or before, the public hearing. Further, you must exhaust any administrative remedies before bringing a writ challenge to the City Council's or Agency's action on this item.

Dated: February 28, 2011

By: BARBARA MULHONEY  
Executive Director  
Redevelopment Agency

FUC: March 2A, 2011)