

Exhibit "A"
First Amendment to 2006 Owner Participation Agreement

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

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

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

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

By: _____
Name: Marlene Murphey
Its: Executive Director
Date: _____

FIRST AMENDMENT TO OWNER PARTICIPATION AGREEMENT

by and between

City of Fresno
a municipal corporation

and

City of Fresno,
in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno,

and

Martin Luther King Square, LP

regarding

Martin Luther King Square Apartments
816 Florence Avenue, Fresno, CA 93706
APN: 478-030-54, 478-114-36, 478-114-37

FIRST AMENDMENT TO OWNER PARTICIPATION AGREEMENT

This First Amendment to the Owner Participation Agreement (Amendment), by and between the City of Fresno, a municipal corporation, acting through its Planning and Development Department - Housing and Community Development Division (City), the City of Fresno, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno (FHS), and Martin Luther King Square, LP, a California limited partnership (Developer) is effective this ____, day of April, 2021.

RECITALS

WHEREAS, the City, FHS and Martin Luther King Square, LLC, a California limited liability company (Original Developer) entered into an Owner Participation Agreement on April 12, 2006, recorded in the Fresno County Recorder's Office on April 28, 2006, as document number 2006-0090189 (Agreement) attached as Exhibit "A"; and

WHEREAS, the City, FHS and Original Developer entered into a Declaration of Restrictions Agreement on April 28, 2006, recorded in the Fresno County Recorder's Office on April 28, 2006, as document number 2006-0090190 (Regulatory Agreement) attached as Exhibit "B"; and

WHEREAS, Original Developer converted to a limited partnership, known as Martin Luther King Square, LP which was filed with the California Secretary State on December 19, 2012; and

WHEREAS, the Agreement and the Regulatory Agreement entered into by the City and FHS did not provide for subordination of the Agreement upon refinancing of the property finance structure; and

WHEREAS, the City agrees to subordinate its \$500,000 HOME Investment Partnerships (HOME) loan and the Regulatory Agreement to allow Developer an opportunity to refinance the property; and

WHEREAS, FHS agrees to subordinate its \$500,000 Housing Set Aside (FHS) loan and the Regulatory Agreement to allow Developer an opportunity to refinance the property; and

WHEREAS, the Developer has agreed to provide a full payoff of both the HOME Loan and FHS Loan at the time of the refinance and to use loan proceeds to make capital improvements to the structures and property; and

WHEREAS, the Developer has agreed to timely provide written notice to City and FHS of any and all notices of default on its senior mortgage; and

WHEREAS, the City, FHS and the Developer wish to amend the Agreement in order to authorize the City and FHS to subordinate to a senior mortgage lender.

AMENDMENT

NOW THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree that the Agreement is amended as follows:

1. The Agreement shall be amended to authorize City and FHS to subordinate this Agreement, the HOME Loan, the FHS Loan, and the Regulatory Agreement to a senior mortgage lender.
2. The HOME Loan and the FHS Loan shall be paid off, in full, at the time of Developer's refinance.
3. Developer shall use its loan proceeds to make capital improvements including, but not limited to repairing dry rot throughout the property and painting the exterior structures.
4. Developer shall timely provide City and FHS written notice of any and all notices of default involving its senior mortgage.
5. In the event of any conflict between the body of this Amendment and any Exhibit or Attachment hereto, the terms and conditions of the body of this Amendment shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the Parties, provided for within the body of this Amendment, shall be null and void.
6. Except as expressly provided herein, the Agreement shall remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the authorized agents of the parties hereto have executed this First Amendment to the Owner Participation Agreement, at Fresno, California, the day, and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: _____
Name: Thomas Esqueda
Title: City Manager
(Attach notary certificate of acknowledgment)

Date: _____

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

By: _____
Name: Marlene Murphey
Title: Executive Director
(Attach notary certificate of acknowledgment)

Date: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Tracy Parvanian
Name: Tracy Parvanian
Title: Senior Deputy City Attorney
Date: 4-8-21

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Name: _____
Title: Deputy

Attachments:
Exhibit A: Owner Participation Agreement
Exhibit B: Regulatory Agreement

MARTIN LUTHER KING SQUARE, LP,
a California limited partnership

By: Hearthstone Housing Foundation
a California Nonprofit corporation
Managing General partner

By: _____
Name: _____
Title: _____
(Attach Notary certificate of acknowledgment)
Date: _____

By: Bayside Multi, LLC
a Delaware limited liability company
Administrative General partner

By: Bayside Communities, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____
(Attach Notary certificate of acknowledgment)
Date: _____

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a California municipal corporation

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Name: Thomas Esqueda
Title: City Manager
(Attach notary certificate of acknowledgment)

Date: _____

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

By: _____
Name: Marlene Murphey
Title: Executive Director
(Attach notary certificate of acknowledgment)

Date: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Name: Tracy Parvanian
Title: Senior Deputy City Attorney

Date: _____

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Name:
Title: Deputy

Attachments:
Exhibit A: Owner Participation Agreement
Exhibit B: Regulatory Agreement

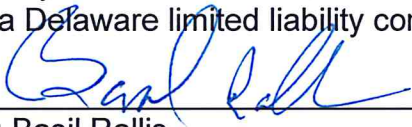
MARTIN LUTHER KING SQUARE, LP,
a California limited partnership

By: Hearthstone Housing Foundation
a California Nonprofit corporation
Managing General partner

By: _____
Name: Socorro Vasquez
Title: Executive Director
(Attach Notary certificate of acknowledgment)
Date: _____

By: Bayside Multi, LLC
a Delaware limited liability company
Administrative General partner

By: Bayside Communities, LLC
a Delaware limited liability company

By:  _____
Name: Basil Rallis
Title: President and COO
(Attach Notary certificate of acknowledgment)
Date: 4/8/2021

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.

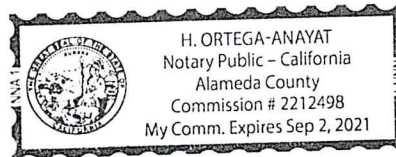
State of California
County of Contra Costa

On April 8, 2021 before me,
H. Ortega-Anayat, Notary Public (here insert name and title of the officer),
personally appeared Basil P. Rallas
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature [Signature] (Seal)



IN WITNESS WHEREOF, the authorized agents of the parties hereto have executed this First Amendment to the Owner Participation Agreement, at Fresno, California, the day, and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: _____
Name: Thomas Esqueda
Title: City Manager
(Attach notary certificate of acknowledgment)

Date: _____

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

By: _____
Name: Marlene Murphey
Title: Executive Director
(Attach notary certificate of acknowledgment)

Date: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Name: Tracy Parvanian
Title: Senior Deputy City Attorney

Date: _____

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Name:
Title: Deputy

Attachments:
Exhibit A: Owner Participation Agreement
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a California limited partnership

By: _____
Hearthstone Housing Foundation
a California Nonprofit corporation
Managing General partner

By: _____
Name: Socorro Vasquez
Title: Executive Director
(Attach Notary certificate of acknowledgment)
Date: _____

By: _____
Bayside Multi, LLC
a Delaware limited liability company
Administrative General partner

By: _____
Bayside Communities, LLC
a Delaware limited liability company

By: _____
Name: Basil Rallis
Title: President and COO
(Attach Notary certificate of acknowledgment)
Date: _____

ACKNOWLEDGMENT

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State of California
County of Orange)

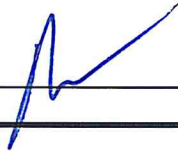
On 4/8/2021 before me, Ashley Walker, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature



(Seal)



Exhibit “A”
Owner Participation Agreement

71

Recording Requested By:
First American Title

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

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



FRESNO County Recorder
Robert C. Werner

DOC- 2006-0090189

Acct 5-First American Title Insurance Company

Friday, APR 28, 2006 11:09:52

Ttl Pd \$0.00

Nbr-0002167986

JZG/R3/1-71

1534390

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO

By: Martine M. King
Its: Executive Director

Dated: 4/12/06

OWNER PARTICIPATION AGREEMENT

by and between

Redevelopment Agency of the City of Fresno,
a public body, corporate and politic

and

City of Fresno
a California Municipal corporation

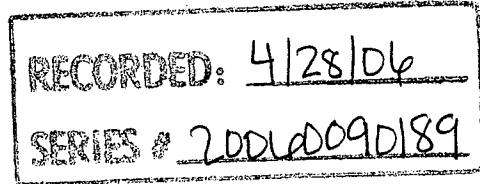
and

Martin Luther King Square, LLC
a California limited liability company

[Rehabilitation of Martin Luther King Square Apartments]

RECORDED AT THE REQUEST OF
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Redevelopment Agency of the City of Fresno
2344 Tulare St., Suite 200
Fresno, Ca. 93721
Attention: Executive Director



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recording fee pursuant to Government Code Section 6103.

REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO

By: Martene [Signature]
Its: Executive Director

Dated: 4/12/06

OWNER PARTICIPATION AGREEMENT

by and between

Redevelopment Agency of the City of Fresno,
a public body, corporate and politic

and

City of Fresno
a California Municipal corporation

and

Martin Luther King Square, LLC
a California limited liability company

[Rehabilitation of Martin Luther King Square Apartments]

ATTACHMENTS

1. Exhibit A: Legal Description of OPA Properties:
2. Exhibit B: Intentionally Omitted
3. Exhibit C: Schedule of Performance/Payment Schedule
4. Exhibit D: Declaration of Restrictions
5. Exhibit E: Certificate of Completion
6. Exhibit F(1): Promissory Note - Fresno RDA
Exhibit F(2): Promissory Note - City of Fresno
7. Exhibit G: Intentionally Omitted

OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT ("Agreement") is entered as of the Effective Date (defined in this Agreement), between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic, ("Agency" or "RDA"), the CITY OF FRESNO, a California municipal corporation, ("City"), and MARTIN LUTHER KING SQUARE, LLC, a California limited liability company, ("Owner")

RECITALS

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

- A. By authority granted under California Redevelopment Law ("CRL"), the Agency has prepared and is responsible for carrying out the Urban Renewal Plan(s) for the Southwest Fresno Neighborhood General Renewal Project, as amended, (collectively the "Plan".)
- B. To the extent provided in/allowed by the CRL including Cal. H.&S.C. Sections 33334.2, 33449, and as provided by Resolution(s) No. [N/A] adopted by the [N/A] on [N/A], and as provided by the General Plan and Implementation Plans, and limited to the terms and conditions therein, the Agency may, outside of any Plan area, make improvements upon, construct and improve structures in order to provide housing for persons and families of low or moderate income, including related on-site and off-site improvements, provided the following finding of fact are made: [N/A.]
- C. The Agency administers the Low and Moderate Income Housing Fund established pursuant to Cal. H.&S. C. Sections 33334.2 et seq.
- D. The Agency shall permit owner participation in the redevelopment of property in the Plan area in conformity with the Plan and all owner participation rules and criteria, to the extent provided by Cal. H.&S.C. Sections 33339, 33339.5, 33380 and 33381.
- E. The CITY has received a HOME Investment Partnerships Program (hereinafter referred to as "HOME Program") grant from the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD"), under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (hereinafter referred to as the "HOME Act".)
- F. Owner holds, or agrees to acquire at its sole cost and expense and according to the Schedule for Performance attached as Exhibit "C" and incorporated herein, all rights, title and interest in fee to the certain real property located within the territorial jurisdiction of the Agency, described in Exhibit "A," attached hereto and incorporated

herein, (the "Property"), including improvements thereon known as Martin Luther King Square Apartments, a 92-unit family rental property located at 911 East Belgravia Avenue Fresno California, ("MLK Square".)

G. Owner proposes to undertake rehabilitation of MLK Square.

H. Owner agrees to undertake exterior and interior improvements of MLK Square in accordance with the Rehabilitation Budget Worksheet attached to the Exhibit "C" Schedule of Performance/Payment Schedule including but not limited to install stucco and/or siding, replace carports, repaint units, install landscaping, replace windows, replace carpeting/flooring, install all new appliances and countertops, install window blinds, install closet doors, resurface and re-stripe parking lot, refinish bathtubs, add children's play area and construct new laundry facility.

I. Owner has made a good faith attempt but has been unable to obtain commercial or private means of financing the Units at the same level of affordability and quantity, such that the Project is not feasible cannot be completed and restricted to the affordable rental housing purposes and uses provided for under the Law absent the financial support of the Agency.

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

K. The Agency is willing to assist Owner's rehabilitation of the Project by making available to Owner a loan of Housing Set Aside (Tax Increment) Funds (the "RDA Loan") in such amounts and upon such terms and conditions are as specified in the California Community Redevelopment Law, this Agreement, the related Loan Documents and the Declaration of Restrictions.

L. The City is willing to assist the Owner's rehabilitation of the Project by making available to Owner a loan of HOME Program Funds (the "City Loan") in such amounts and upon such terms and conditions are as specified in the HOME Act, this Agreement, the related Loan Documents and the Declaration of Restrictions.

M. The RDA Loan and the City Loan (collectively the "Loan(s)") shall be paid through an escrow established by the Owner at its sole cost and expense with First American Title Guaranty Company. The Loans and performance of the affordability and other covenants and restrictions set forth in this Agreement shall be evidenced in covenants and restrictions running with the land as more fully provided hereunder.

N. The Housing and Community Development Commission reviewed the Project and this Agreement on March 9, 2005 and recommended that Council approve it.

O. The Plan program has been environmentally assessed under Program Environmental Impact Report # 10124 for the Merger # 2 Project by joint City Council Resolution 98-190 and Agency Resolution 1487 adopted on June 30, 1998 and has been determined to have or cause no adverse or reportable conditions or effects pursuant to the California Environmental Quality Act/National Environmental Protection Act and the HOME Funds have been approved by the City for release pursuant to 24 CFR Part 58.

P. The Agency and City have found that the Project: (i) will have a positive influence in the Plan Area, and surrounding environs, (ii) is in the vital and best interests of the Agency and City, and the health, safety, and welfare of City residents, (iii) complies with applicable federal, state, and local laws and requirements, (iv) will help eliminate blight, (v) will improve, and preserve the community's supply of low and moderate income housing available at affordable rent as provided in 24 CFR 92.252 and as defined by Cal. H.&S.C. Sections 50052.5 and 50053, to persons and families of very low or low income, as defined in Cal. H.&S.C. Section 50093 of Code; (vi) will be available to meet the replacement housing provisions in Cal. H.&S.C. Section 33413; (vii) will apply funds solely within the respective Plan areas except to the extent otherwise provided herein and allowed by Law; (viii) including all planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of low and moderate income housing; (ix) will comply with all owner participation rules and criteria of the Agency and the Plan; and (x) will comply with any and all applicable review and other requirements of the City's Historical Preservation Commission.

Q. The Owner has finally determined and warrants to the Agency/City that this Agreement and the Project constitutes routine programmatic/grantee lender activities utilizing available and allocated program/grantee funding, outside the reach of California Constitution Article XXXIV and enabling legislation.

AGREEMENT

1. DEFINITIONS. Besides definitions contained elsewhere in this Agreement, the definitions in this Section will govern the construction, meaning, application and interpretation of the various terms used in this Agreement.

1.1 "Acquisition" means purchase of the Property and Improvements in fee title.

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

1.3 "Affirmative Marketing" means a good faith effort to attract eligible persons of all racial, ethnic and gender groups, in the housing market area, to rent the proposed Housing Unit(s) on the eligible Property, as hereinafter defined, including without limitation, requirements of 24 CFR 92.350, 24 CFR 92.351, in order to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market in the rental of Project Units and including City's "Affirmative Marketing Policy" document as amended from time to time.

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

1.5 "Affordable Rental Housing" means those 91¹ Project units rehabilitated with Loan proceeds which shall be available at affordable rent as provided by 24 CFR 92.252 and as defined/provided by Cal. H. &S.C. Section 50052.5, to persons and families of very low and low income, as defined in Cal. H. &S.C. Section 50093 of Code, which requirements shall be enforceable variously by covenants running with the land.

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

1.7 "Agency/City" means Agency and City, jointly and severally.

1.8 "Agreement" means this Owner Participation Agreement between the Agency, City and the Owner.

1.9 "Applicable Federal Rate" means the federal long-term rate as set forth in Section 1247 (d)(1) of the Internal Revenue Code.

1.10 "Budget" means the Budget/Financial Plan for the Project including rehabilitation, financing and related costs.

1.11 "Certificate of Completion" means that Certificate issued in the form attached as Exhibit "E" to Owner by Agency and City evidencing completion of the Project for purposes of this Agreement.

1.12 "City" means the City of Fresno, a California municipal corporation.

1.13 "Conditions Precedent of Agency and City" means the conditions precedent

¹ Parties acknowledge and agree that [1] unit of the 92 total Project units will be made available to Owner's onsite Project manager/employee.

to the effectiveness of this Agreement against the Agency and City.

1.14 "Day" whether or not capitalized, means a calendar day, unless stated otherwise.

1.15 "Declaration of Restrictions" means the declaration of restrictions, substantially in the form of Exhibit "D" containing all conditions, covenants, and restrictions required by the HOME Act/Program, the Law, any other applicable laws and regulations, the Plan, and this Agreement, running with the Property and the Improvements thereon and burdening such for the term stated in said Declaration of Restrictions, and subordinate to the deed(s) of trust of Citicorp USA, INC. a Delaware corporation and a wholly owned subsidiary of Citibank, N.A. ("Citicorp"), including its respective successors or assigns as provided for in this Agreement, pursuant to those certain subordination findings contained in Joint Agency/City Resolution No. 2005-94/1659.

1.16 "Deed of Trust" means that standard, last position (subordinate to Citicorp including its respective successors or assigns as provided for in this Agreement) deed of trust including assignment of rents and security agreement given by Owner as trustor to Agency and City as beneficiaries issued through an escrow established by Owner at its sole cost and expense with a title company acceptable to Agency, recorded against the Property, insured in the full amount of the Loans advanced by Agency and City to Owner, as well as any amendments to, modifications of and restatements of said deed of trust. The terms of any such deed of trust are hereby incorporated into this Agreement by this reference.

1.17 "Default" means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.

1.18 "Director" means the Executive Director of the Agency.

1.19 "Effective Date" means close of escrow.

1.20 "Eligible Costs" means those Project costs in the Budget, incurred by Owner before the CITY issues the Certificate of Completion, and related to Property acquisition and Project pre-development/development costs for which Tax Increment Funds and HOME Funds may be used as specified in 24 CFR 92.205 and 92.206, and not disallowed by 24 CFR 92.214, provided, however, that costs incurred in connection with any activity that is determined to be ineligible by the State, HUD or the City shall not constitute Eligible Costs.

1.21 "Environmental Laws" means any federal, state, or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup

of any Hazardous Materials or Waste including, without limitation, any state or federal lien or "superlien" law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.

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

1.23 "Funding Source" means the construction loan made by Citicorp including its respective successors or assigns as provided for in this Agreement, and any other financing sources for the Project except Loan funds, hereby approved by the Agency and City and contained in the Budget.

1.24 "Financing Plan" means the Budget including sources and uses of funds sufficient for Owner to complete the Improvements according to the Schedule for Performance.

1.25 "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated biphenyls, (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (i) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), or (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.*); provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential rental housing or associated buildings and grounds, or typically used in household activities, in a manner typical of other residential rental housing developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Sections 25249.8 *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products,

NutraSweet and saccharine.

1.26 "Home Program Funds or "Home Funds" means HOME Act monies held and administered by the City a portion of which shall be made available as the Loan to Owner for Eligible Costs and expenses incurred by Owner in pursuit of the Project, in such amounts, and upon such terms and conditions, as are specified hereinunder.

1.27 "Household" means one or more persons occupying a Unit.

1.28 "Housing Set-Aside Funds" or "Tax Increment Funds" means those California Health and Safety Code Section 33334.2 monies held and administered by the Agency a portion of which shall be made available as the Loan to Owner for eligible costs and expenses incurred by Owner in pursuit of the Project, in such amounts, and upon such terms and conditions, as are specified hereinunder.

1.29 "Improvements" mean the rehabilitation that Owner will complete on the Property including the associated fencing, and landscaping improvements.

1.30 "Law" means all applicable federal, state and local laws and regulations including the HOME Act, 24 CFR Part 92 and the Community Redevelopment Law of the State (California Health and Safety Code Sections 33000 *et seq.*).

1.31 "Loan(s)" means the RDA Loan not to exceed \$500,000, and the City Loan not to exceed \$500,000, provided by the Agency and City respectively to the Owner upon the terms and conditions provided for in this Agreement.

1.32 "Loan Documents" are collectively this Agreement, the Note(s), the Deed of Trust and all related escrow and other documents/instruments as they may be amended, modified or restated from time to time along with all exhibits and attachments thereto, relative to the Loans.

1.33 "Manager" means the City of Fresno, Housing Manager.

1.34 "Marketing Plan" means any Affirmative Marketing plan required by Law, provided by Owner and acceptable to the Agency and City.

1.35 "Material Change" means a change, modification, revision or alteration to the Loan Documents that significantly deviates from those previously approved by the Agency and City, provided that fully (a) funded change(s) which normally occur in budget line items as a typical project progresses through construction shall not constitute (a) Material Change(s).

1.36 "Note(s)" means the promissory notes each in a principal amount not to exceed \$500,000, in the form of Exhibits "F1" and "F2" hereto, given by Owner as promisor, in favor of Agency and City respectively as promisees, evidencing the Loans and performance of the Affordable Rental Housing and other covenants and restrictions set forth in this Agreement, secured by a standard subordinated (to the Citicorp loan documents and any Use Agreements or other restrictions imposed by the U.S. Department of Housing and Urban Development) Deed of Trust recorded against the Property, insured in the full amount of the Loans as well as any amendments to, modifications of and restatements of said Notes. The terms of the Notes are hereby incorporated into this Agreement by this reference.

1.37 "Owner" means Martin Luther King Square, LLC, a California limited liability company.

1.38 "Plan" means the SWGRNA as now or after this amended.

1.39 "Project" means the rehabilitation of 92 Units including the 91 Units assisted hereunder and including Improvements upon the Property and the associated interior and exterior improvements as specified hereunder and preservation of the Improvements and the Property for rental as Affordable Rental Housing for the fifty-five (55) year Affordability Period.

1.40 "Project Area" means the Property.

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

1.42 "Property" means the real property described in Exhibit "A" including MLK Square and all other improvements thereto.

1.43 "Release of Construction Restrictions" means a release of those construction covenants, conditions and restrictions contained in the Declaration of Restrictions, provided the Owner and those taking under or through Owner use the proceeds of the debt so secured to construct the Improvements, and devote the Property and the Project Improvements thereon to the purposes and uses specified in this Agreement and the Declaration of Restrictions.

1.44 "Residual Receipts" means in each operating year thirty-five percent (35%) of the sum of (i) all cash received by the Property from (A) rents, lease payments, and all sources generally considered in the apartment industry to be "other income", (B) payments from HUD under a Housing Assistance Program Section 8 Contract and a

Rental Supplement Assistance Program contract to the Project, and excluding (a) tenant security or other deposits, and (b) interest on reserves not available for distribution, and (ii) the net proceeds of any insurance (including rental interruption insurance), other than fire and extended coverage and title insurance, to the extent not reinvested, less the sum of (i) all cash expenditures, and all expenses unpaid but properly accrued, which have been incurred in the operation of the Project's business, including the management fee to the Project's property management agent, and excluding expenditures paid from any reserve account (whether or not such expenditure is deducted, amortized or capitalized for tax purposes), (ii) the Project related priority distribution to the Owner's equity investor member and incentive management fee to Owner's managing member, (iii) all payments on account of any loans (including unpaid principal and accrued interest) made for the benefit of the Project by the members of the Owner, (iv) payments towards the Developer Fee to A.F.Evans, (v) contributions to any prudent and reasonable cash reserves (excluding the residual receipts reserve) for working capital, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as may be reasonably required by the lenders to the Project and the investor members of the Owner for the operation of the Project not to exceed \$40,000 annually adjusted in proportion to the average increase of the following indices (a) the United States Bureau of Labor Statistics for Hourly Wage Rates of all workers in manufacturing, and (b) of all Commodity Wholesale Prices, said indices shall be re-defined to the mutual satisfaction of the parties in the event of change in form and basis of indices, all increases shall use the indices for calendar year 2001 as their base, and (vi) the payment of principal and interest, and any associated fees, expenses, and costs, with respect to any loans on the Project having a mortgage with a higher priority than the Loan made by the Agency and City.

1.45 "Schedule of Performance" means the schedule attached as Exhibit "C," setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may revise the Schedule of Performance from time to time on mutual written agreement of the Owner, the Director and the Manager, but any delay or extension of the Completion Date is subject to the requirements in this Agreement.

1.46 "Security Financing Interest" means a security interest which Owner grants in the Property and the Improvements thereon before the Agency and City issue and record a Release of Construction Restrictions, provided the Owner and those taking under or through Owner use the proceeds of the debt so secured to construct the Improvements, and devote the Property and the Project Improvements thereon to the purposes and uses specified in this Agreement and the Declaration of Restrictions.

1.47 "Unit" mean a dwelling unit of the rental housing constituting the Project.

2. **CONDITIONS PRECEDENT TO AGENCY/CITY PERFORMANCE UNDER THIS AGREEMENT.** The following are conditions precedent to the Agency/City obligation to perform under this Agreement. Until each and all of the conditions are satisfied or will be satisfied concurrent with the close of escrow on the Loan Documents, the Agency and City jointly and severally are not obligated to take any action, or provide any funding, under this Agreement. These conditions must be satisfied by the time stated. The Agency/City, in writing, may waive any condition or agree to extend the time for satisfaction. The Agency/City may terminate this Agreement as provided herein for the failure of a condition.

2.1 In accordance with the Schedule of Performance attached as Exhibit "C" and concurrently with the close of escrow on the Loan Documents, the Owner will provide a title report, recorded deed or other evidence acceptable to the Director and Manager that Owner owns the Property.

2.2 Owner has entered into, and provided Agency copies of surety bonds for the rehabilitation of MLK Square, and agreements with all funding sources and the general contractor for this Project including without limitation a copy of the HUD contract for the Section 8 Housing Vouchers and for Rental Supplement Assistance. All such funding source agreements shall contain a provision whereby the party(ies) to each such agreement, other than Owner and HUD, agree to make commercially reasonable efforts to (i) notify Agency/City immediately of any event of default by Owner thereunder; (ii) notify Agency/City immediately of termination or cancellation of the agreement; and (iii) provide Agency/City, upon request of Agency/City, an estoppel certificate certifying that the agreement is in full force and effect and Owner is not in default thereunder.

2.3 Owner has submitted evidence that the combined monies from the Funding Sources and the Loan are not less than the greater of the amount shown in the Budget or the amount which Agency/City determines is necessary to complete the Project. If Agency/City determines that said funds are not sufficient to complete the Project, Owner may satisfy this condition as directed by the Agency/City in writing.

2.4 In accordance with the Schedule of Performance attached as Exhibit "C" and prior to the close of escrow on the Loan Documents, the Owner will submit its Financing Plan to the Agency/City for review and approval. The purpose of the Agency/City's review is to confirm that Owner has sufficient funds available to complete the Improvements, and to maintain Project Improvements as this Agreement requires. After the Agency/City approves the Financing Plan, Owner will not make any Material Change in the Financing Plan without first submitting the change to the Agency/City for review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

2.5 Owner will provide credit reports, financial statements, and financial data, satisfactory to the Director and Manager, evidencing Owner's financial ability to complete the Improvements.

2.6 The Owner, at its expense, shall have investigated and determined all environmental, soil, seismic, and other surface and subsurface conditions of the Property, and the suitability of it for the Project. Owner's responsibility and due diligence includes, but is not limited to, determining the presence of Hazardous Materials. Both the Owner and the Agency/City will promptly give the other copies of all reports and test results. Owner will indemnify, defend, and hold the Agency/City harmless from any damages or claims arising out of Owner's inspections and tests.

2.7 In accordance with the Schedule of Performance, the Owner will submit to the Agency/City the following documents, each in form and content satisfactory to the Agency/City:

2.7.1 Contract with General Contractor.

2.7.2 Performance or Completion Bonds. A 100 percent Material and Labor Bond and 100 percent Performance Bond approved by the Agency/City and provided by General Contractor prior to performance of the work on Improvements.

2.7.3 Receipts for Permits. Copies of receipts showing that the Owner has paid for and pulled all necessary construction permits, or evidence that the permits can be pulled upon payment of the permit fees.

2.7.4 Should Property assessment/ inspection reveal any Hazardous Materials or environmental conditions requiring remediation, the Owner will promptly notify the Agency/City. Not later than ten (10) days from and after such notice, Owner shall, at its sole cost and expense, commence to make required submittals, develop required remedial action plans, and pursue remediation activities as to such Hazardous Materials or environmental conditions and to diligently prosecute such to completion as required by applicable federal, state and local law and in a manner and according a reasonable time frame agreeable to Agency/City. Without limitation, any remediation will be pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction. The work will be performed according to applicable environmental laws and any governmental requirements.

2.8 In accordance with the Schedule of Performance attached as Exhibit "C" and prior to the close of escrow on the Loan Documents, the Owner provides for the Agency/City's review and approval a preliminary title report showing the state of title of the Property and the Agency/City's lien priority, if any, subject to only the following exceptions: as acceptable to Agency/City.

2.9 Owner is not in default of this Agreement and all representations and warranties of Owner contained herein are true and correct in all material respects.

2.9.1 The Owner will have signed and delivered all documents required hereunder.

2.9.2 The Owner will have received all land use approvals and permits required by this Agreement.

2.9.3 The Owner will have provided proof of insurance as required by this Agreement.

2.9.4 The Agency/City will have approved the Financing Plan

2.9.5 In accordance with the Schedule of Performance attached as Exhibit "C" and concurrently with the close of escrow on the Loan Documents, the Owner is prepared to record this Agreement or, at the Agency/City's sole option, to record a memorandum of it.

2.9.6 Owner shall pay all costs of the Preliminary Title Report.

3. OWNER OBLIGATIONS AFTER SATISFACTION OF CONDITIONS PRECEDENT.
The following obligations of Owner will run with the land and survive this Agreement, and the recording of any Release of Construction Restrictions:

3.1 The Owner will take all commercially reasonable precautions to prevent the release into the environment of any Hazardous Materials in, on or under the Property. Owner will comply with all governmental requirements with respect to Hazardous Materials. In addition, the Owner shall install and use equipment and implement and follow procedures that are consistent with commercially reasonable standards for the disclosure, storage, use, removal and disposal of Hazardous Materials.

3.2 The Owner will notify the Agency/City and give the Agency/City a copy or copies of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Property including, without limitation, notices of violation, notices to comply, citations, inquiries, cleanup or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. Within 3 days after each incident, the Owner will report any unusual or potentially important incidents respecting the environmental condition of the Property to the Agency/City.

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

3.4 After the escrow closing, except to the extent of the active negligence or wilful misconduct of the Agency/City, Owner will indemnify, defend, and hold the Agency/City harmless from any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), arising out of (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to any use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property. This indemnity will include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination leak, spill, release or other adverse effect on the environment.

3.5 The status and qualifications of the Owner are of particular concern to the Agency/City. Because of Owner's status and qualifications, the Agency/City has entered this Agreement with Owner. From the Effective Date of this Agreement until the Declaration of Restrictions expires, no voluntary or involuntary successor-in-interest of the Owner will acquire any rights or powers under this Agreement, provided that the parties acknowledge the Owner shall hold the Property for rental as Affordable Rental Housing as provided in the Declaration of Restrictions, which Declaration of Restrictions shall be recorded and run with the land for the duration thereof. Notwithstanding anything to the contrary herein, the Owner shall have the right to transfer the ownership of the Property and/or the Improvements to another entity having experience in the ownership and operation of such property, as reasonably determined by the Agency/City, which approval shall not be unreasonably withheld, delayed or conditioned. For purposes of this Section, the Agency/City hereby approves (i) execution of an option agreement between Owner and Owner's managing member granting the managing member or wholly owned affiliate of the managing member an option to purchase the property; and (ii) the exercise of such option and transfer of the Property to the managing member of Owner or a wholly owned affiliate of the managing member of the Owner, provided the grantee shall take an assignment of and assume

this Agreement and the Loan Documents and all obligations and requirements thereunder and concurrently with such transfer and assignment the Owner may request from the Agency and City a release under the Loan Documents.

3.6 Owner shall cause to be opened an escrow for the Loan and the Loan Documents. Such escrow shall direct that the Loan shall close concurrently with the closing of the escrow, which closing shall otherwise be upon terms and conditions reasonably agreeable to Agency/City and contained in escrow instructions including this Agreement which shall constitute supplemental escrow instructions, provided that the escrow documents will include, without limitation and as applicable, parcel map(s), title report(s), loan agreement(s), the promissory note(s), the trust deed(s), any other security instruments, and Owner's written acknowledgment of and agreement to the Declaration of Restrictions attached hereto as Exhibit "D," including the Affordable Rental Housing covenants therein.

3.7 The Loan shall be nonrecourse to the Owner and all constituent members of the Owner.

4. DEVELOPMENT OF THE PROPERTY.

4.1 Except to any extent otherwise set forth herein, before Owner begins constructing the Improvements or undertakes any other work of improvement on the Property, the Owner, at its own cost and expense, will secure all land use and other entitlements, permits, and approvals that the Agency/City or any other relevant governmental agency requires for construction of the Project. Without waiver or limitation, the Owner will secure, and will pay all costs, charges and fees associated with, the following:

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

4.1.2 ADA/Barriers to the Disabled. The Project shall be rehabilitated and maintained to comply with all applicable federal, state and local accessibility requirements. For purposes of this Agreement the number of accessible dwelling units shall be (zero (0)) unless a greater number of units shall be required by law, whereupon such greater number of units shall apply. These Units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) or a standard that is equivalent or stricter. These mandates can be found in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). If any unit becomes vacant during the construction of the Project, the Owner shall take all reasonable efforts to make such vacant unit accessible or adaptable to a mobility impaired occupant.

4.1.3 The design and construction requirements of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended).

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

4.2 Owner, covenants and agrees that, in accordance with the requirements of 24 CFR 92.252 and 24 CFR Part 85, upon any uncured default by Owner within the meaning of Article 10.1 of this Agreement, the Agency/City may suspend or terminate this Agreement and all other agreements with Owner without waiver or limitation of rights/remedies otherwise available to the Agency/City.

4.3 Owner represents and warrants as of the date hereof that no official, officer, agent, or employee of the Agency/City directly or indirectly owns or controls any interest in Owner, and no person, directly or indirectly owning or controlling any interest in Owner, is an official, officer, agent, or employee of the Agency/City. Owner warrants, covenants and agrees that it shall comply with the Conflict of Interest requirements of 24 CFR 92.356 including, without limitation, that no officer, employee, agent or consultant of Owner (other than an employee or agent of Owner who occupies a unit as the project manager or maintenance worker) may occupy a Project Unit. Owner understands and acknowledges that no employee, agent, consultant, officer or elected official or appointed official of the Agency/City, who exercises or has exercised any functions or responsibilities with respect to the Project, or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for him or herself or for anyone with which that person has family or business ties, during his or her tenure or for one year thereafter. To the extent provided at 24 CFR 92.356(f), no owner, developer or sponsor of the Project, or officer, employee, agent or consultant thereof, may occupy a Project Unit.

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

4.5 Owner shall promptly and faithfully comply with, conform to and obey all present and future federal, state and local statutes, regulations, rules, ordinances and other legal requirements applicable by reason of this Agreement or otherwise to the Project including without limitation prevailing wage and public bidding requirements. The CITY's annual resolution setting out per diem wage rates is available from the

CITY's Construction Management Division. Owner acknowledges that the use of HOME Funds subjects the Project to extensive federal regulation and covenants and agrees that it shall comply with, conform to and obey (and take such steps as are required of Owner to enable the City to comply with, conform to and obey) all federal statutes, regulations, rules and policies applicable to the Program and the Project.

4.6 Owner shall discharge, bond, or insure over or otherwise release or collateralize to the Agency/City's reasonable satisfaction any mechanic's, laborer's, materialman's, warehouseman's, or other lien or stop notice filed against the Eligible Property or Project funding within twenty (20) days after the date the lien or stop notice is filed. If Owner fails to discharge, bond or otherwise satisfy the Agency/City with respect to any lien, encumbrance, charge or claim referred to in the Section above, then, in addition to any other right or remedy, the Agency/City may, but shall not be obligated to, discharge such lien, encumbrance, charge, or claim at Owner's expense. Owner hereby agrees to indemnify and hold the Agency/City harmless from liability for such liens, encumbrances, charges or claims together with all related costs and expenses.

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

4.8 Annually, beginning in the year following Agency/City's issuance of the Certificate of Completion, and continuing until the expiration of this Agreement, on such dates as are agreeable between the parties and consistent with all federal and state reporting requirements applicable to the Project, Owner, at its sole cost and expense, shall submit to Agency/City audited financial statements covering the income and expenses, and the financial transactions for the Project during Owner's prior fiscal year. Owner shall make available for examination at reasonable intervals and during normal business hours to Agency/City all books, accounts, reports, files and other papers or property with respect to all matters covered by this Agreement, and shall permit Agency/City to audit, examine and make excerpts or transcripts from such records. Agency/City may audit any conditions relating to this Agreement at the Agency/City's expense, unless such audit shows a significant discrepancy in information reported by Owner to Agency/City in which case Owner shall bear the cost of such audit. Owner shall also cooperate with Agency regarding audit requirements of the California Redevelopment Law including California Health and Safety Code Sections 33080 and 33080.1.

4.8.1 The Annual Report shall include for each rental Unit covered by this Agreement: the rent, the annual income and the Family size of the Household. The report shall also state the date the tenancy commenced for each rental Unit, certification from an officer of Owner that the Project is in compliance with the Affordable Rental Housing requirements, and such other information the Agency/City may be required by law to obtain. Owner shall provide any additional information reasonably requested by the Agency/City.

4.8.2 This section 4.8 shall survive expiration or termination of this Agreement.

4.9 Owner shall be accountable to Agency/City for all Loan funds disbursed to Owner pursuant to this Agreement. The Agency/City and the State shall have the right at all reasonable times to inspect or perform an audit of Owner's books, records and other documents pertaining to the Project or this Agreement and for up to four (4) years after the expiration or termination of this Agreement. Owner will cooperate fully with the Agency/City and the State in connection with any interim or final audit relating to the Project that may be performed. Owner will maintain books and records for the Project using generally accepted accounting principles. Owner agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with Loan funds and to keep all invoices, receipts and other documents related to expenditures financed with Loan funds for not less than four (4) years after the fiscal year in which such expenditures are incurred. Books and records must be kept accurate and current. For purposes of this section, "books, records and documents" include, without limitation, plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda and electronically stored versions of the foregoing. This section shall survive the expiration or termination of this Agreement.

4.10 The Owner shall acquire the Property, cause the issuance of all necessary discretionary governmental permits, approvals and entitlements, close any implicated escrow and begin/complete rehabilitation of the Improvements according to the Schedule of Performance, attached as Exhibit "C" hereto.

4.11 The Agency/City, acting through and in the discretion of its Director and Manager respectively, may extend the completion date for the time that it, in its sole discretion, determines reasonably necessary to overcome any delay if and to the extent that the delay is due to a cause which is beyond the Owner's reasonable control, and if Owner could not, with reasonable diligence, have foreseen and avoided the cause for delay. Such causes include, without limitation, acts of God, unusually severe weather or flood, war, riot or act of the public enemy, labor disputes, unavoidable inability to

secure labor, materials, supplies, tools or transportation, or acts or omissions of any governmental authority having jurisdiction. The Agency/City will not extend the completion date for acts or omissions occurring through the fault of the Owner, or for acts of the Agency/City permitted or contemplated by this Agreement. An extension of time as provided in this subsection will be the Owner's sole remedy for any delays in the Schedule of Performance or the Project completion date.

4.11.1 As a condition precedent to any extension, Owner will give the Agency/City notice within ten (10) days after any cause for delay occurs, stating the cause, and the additional time that Owner anticipates it needs to complete the Improvements. Any extension by the Agency/City must be in writing and signed by the Director and Manager or their respective designee(s), which approval shall not be unreasonably withheld, delayed or conditioned.

4.12 Subject to the Notes and to the extent of appropriated and available Loan funds in any Agency/City fiscal year hereunder, the Loans shall be disbursed to Owner at the close of escrow on the Loan Documents. As to the RDA Loan, interest at the Applicable Federal Rate shall accrue on all principal outstanding amortized over a 30 year period provided that in the event Project Section 8 funding is lost then interest shall thereupon accrue at 3% per annum. As to the City Loan, interest at the Applicable Federal Rate shall accrue on all principal outstanding amortized over a 30 year period. Each of the RDA Loan and the City Loan shall be due and payable from Project residual receipts and residual receipts reserve account (as defined in the Notes) at the times and in the amounts provided in the Notes. In the event residual receipts and the residual receipts reserve account are not sufficient to make any scheduled payment(s) the deficiency shall accrue with interest and be payable with the next scheduled Loan payment. The Owner shall bear all costs of the Project and the Improvements. All Loan funds provided by Agency and City shall be used solely for Eligible Costs of the Project and Improvements. In the event of any conflict between the Notes and this section, the Notes shall control. In any event, the entire outstanding principal and interest will be due (i) as to the RDA Loan, 30 years following the close of Escrow, (the "RDA Loan Maturity Date") and (ii) as to the City Loan, 30 years following the close of Escrow, (the "City Loan Maturity Date".) Each of RDA and City shall have the option to extend their respective Notes for an additional 25 years in the event full payment thereof is not made upon maturity.

4.13 The Owner will notify the Agency/City when the Owner deems the Project complete. Within ten (10) business days after such notice, the Agency/City will inspect the Improvements. When the Agency/City reasonably determines that the Owner has completed the Improvements as required in this Agreement, the Plan, and the Law, the Agency/City will furnish the Owner with a recordable "Certificate of Completion" in the form attached hereto as Exhibit "E". The Agency/City will not unreasonably delay, condition or refuse to issue the Certificate of Completion. The Certificate of Completion,

when recorded in the Official Records of Fresno County, will be a conclusive determination that Owner has satisfactorily completed the Improvements required under this Agreement. Any parties then owning or after that purchasing, leasing or otherwise acquiring any interest in the Property will not (because of that ownership, purchase, lease or acquisition) after the recording, incur any obligation or liability under this Agreement for rehabilitating the Improvements, but will take subject to the continuing covenants set forth in this Agreement including the Declaration of Restrictions.

4.13.1 If the Agency/City determines not to furnish the Certificate of Completion, after written request from the Owner, the Agency/City, within ten (10) days after receiving the Owner's written request, will give the Owner a written notice stating why it has decided not to issue the Certificate of Completion, or why it is delaying the issuance, and the reasonable actions that, in the Agency/City's opinion, the Owner must take before the Agency/City can issue the Certificate of Completion. The Agency/City's failure to give the notice within ten (10) days, however, will not cause the Owner to be entitled to the Certificate of Completion. The Certificate of Completion will not be evidence that Owner has complied with or satisfied Owner's obligations to any Security Financing Interest, mortgage or deed of trust holder, or any mortgage insurer. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

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

4.15 Owner and its contractors, subcontractors and service providers for the Project shall comply with all applicable local, state and federal requirements concerning equal employment opportunity and shall incorporate such requirements in all contracts for work on the Project.

4.16 Owner shall permit, facilitate and require its contractors to permit and facilitate observation and inspection at the job site by Agency/City and by public authorities during reasonable business hours and upon reasonable notice for the purpose of determining compliance with this Agreement.

4.17 Owner warrants, covenants and agrees that pursuant to 24 CFR 92.353, it will take all reasonable steps to minimize the displacement of any persons (families, individuals, businesses, nonprofit organizations and farms).

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

4.18 Annually, beginning in the year following Agency/City's issuance of the Certificate of Completion, and continuing until the expiration of the Agreement Owner shall submit proof of insurance as required by this Agreement.

4.19 All Leases used to rent the Units are subject to the following:

4.19.1 Owner shall include in leases for all Units, provisions which authorize Owner to immediately terminate the tenancy of any Household one or more of whose members misrepresented any fact material to the Household's qualification as a Household for low-income or very low-income family. Each such lease shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for low-income or very low-income family such Household's rent may be subject to increase to the amount payable by tenant under federal, state or local law, except that, consonant with the Law, tenants of Units that have been allocated low income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42.

4.19.2 In addition, the leases for Units shall provide that if the Project is subject to state or federal rules governing low income housing tax credits, the provision of those rules regarding continued occupancy by, and increases in rent for, Households whose incomes exceed the eligible income limitation shall apply in place of the provisions set forth in subsection 4.19.1 above.

4.19.3 Notwithstanding anything to the contrary contained herein or in any of the Loan Documents, the Agency/City acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Property, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall apply: For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the regulatory agreement with the California Tax Credit Allocation Committee, (i) none of

the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

4.20 With respect to the Project the Owner shall comply with the following:

4.20.1 Except to any extent otherwise provided in this Agreement, the Owner's Management Agent is specifically responsible for all management functions with respect to the Project without limitation, the selection of tenants, certification and re-certification of Household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. Agency/City shall have no responsibility for such management of the Project.

4.21 The following are conditions precedent to the Agency/City issuing the Certificate of Completion, and each submission will be in form and substance satisfactory to the Director.

4.21.1 Evidence that all mechanics' liens or material men's liens recorded against the Property or Improvements have been released or, if not released, sufficiently bonded (i.e. 150%) against as required by law.

4.22 Owner covenants and agrees that the Project shall constitute Affordable Rental Housing during the entire Affordability Period. In the event that Owner fails to comply the requirement to lease only to qualified Households during the period in which the Project must constitute Affordable Housing, Agency/City shall be entitled to enjoin Owner from leasing the Units in the Project, as Owner acknowledges that damages are not an adequate remedy at law for such breach.

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

5. INDEMNITY; INSURANCE.

5.1 The Owner shall indemnify, hold harmless and defend the Agency/City and each of their officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property

damage) incurred by the Agency/City, the Owner or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. The Owner's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages to the extent caused by the active negligence or by the willful misconduct of the Agency/City or any of their respective officers, officials, employees, agents or volunteers.

5.1.1 This section 5.1 shall survive termination or expiration of this Agreement.

5.2 Until the Agency/City issues the Certificate of Completion and the Certificate of Completion is recorded in the Official Records of Fresno County, the Owner shall pay for and maintain or cause to be paid and maintained in full force and effect all policies of insurance required hereunder with an insurance company or companies either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or (ii) authorized by the Agency/City. The following policies of insurance are required, and Owner will deliver proof of these policies before the closing escrow and starting rehabilitation:

5.2.1 Commercial General Liability. Insurance which shall include contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence.

5.2.2 Commercial Automobile Liability. Insurance, endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 per occurrence.

5.2.3 Workers' Compensation Insurance. As required under the California Labor Code.

5.2.4 Builders Risk Insurance. An amount to provide coverage to 100 percent of the replacement value the Improvements, including terms of labor and materials in place or to be used as part of the permanent construction, including surplus miscellaneous materials and supplies incidental to the work and such scaffolding, staging, towers, forms and equipment as are not owned or rented by the Owner, the cost of which is not included in the cost of work.

5.3 The above described policies of insurance shall be endorsed to provide an unrestricted 30-day written notice in favor of the Agency/City, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a 10-day written notice of such cancellation, change or reduction of

coverage. If any policy is due to expire during the term of this Agreement, the Owner shall provide a new certificate evidencing renewal of such policy not less than 15 days before the expiration date of the expiring policy. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, the Owner shall file with the Agency/City a certified copy of the new or renewal policy and certificates for such policy.

5.4 The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the Agency/City, its officers, officials, agents, employees and volunteers as an additional insured. Each policy shall be endorsed so that owner's insurance is primary and no contribution is required of the Agency/City. The Owner shall furnish the Agency/City with copies of the actual policies upon the request of the Agency/City, at any time.

5.5 If at any time the Owner fails to maintain the required insurance in full force and effect, Owner shall immediately discontinue all work under this Agreement until the Agency/City receives notice that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the Agency. Owner's failure to maintain any required insurance shall be sufficient cause for the Agency to terminate this Agreement.

5.6 If the Owner uses a general contractor for all or any portion of the work under this Agreement, the Owner shall require the general contractor to provide insurance protection in favor of the Owner and in favor of the Agency/City, its officers, officials, employees, agents and volunteers according to the terms of each of the preceding paragraphs, except that the general contractor's certificates and endorsements shall be on file with the Owner and Agency/City before any work begins on the Improvements.

5.7 For the Owner's design work or if Owner contracts the design work for any portion of the Improvements, the Owner shall require the architect and structural engineer to maintain the following insurance coverage:

5.7.1 Professional Liability Insurance. (Errors and omissions) with a limit of not less than \$1,000,000 per occurrence.

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

5.9 Owner will obtain and deliver labor and material bonds, payment, and performance bonds, issued by an insurance company admitted in California in good standing as a surety and meeting the criteria for Owner's other insurance under this Agreement. The bond will each be in an amount at least equal to 100% of Owner's estimated construction costs. The Agency/City, at the option of Director and Manager, instead of requiring performance and payment bonds, may consider and accept other evidence satisfactory to them, of the Owner's ability to complete the Improvements.

5.10 Until the Agency/City issues the Certificate of Completion, for purposes of assuring compliance with this Agreement, Agency/City will have access to the Property, after reasonable notice to the Owner (except in emergencies), without charge or fee, during normal construction hours. Agency/City representatives will comply with all safety rules while on the Project or the Property.

5.11 The Owner will design and construct the Improvements, and after that, prior to any allowable transfer or sale thereof, Owner will maintain the Property to be maintained according to all applicable laws including, without limitation, all applicable state labor standards, zoning and development standards, building, plumbing, mechanical and electrical codes, all provisions of the Fresno Municipal Code and all applicable access requirements. The Agency/City makes no representation about which, if any, of such laws, ordinances, regulations or standards apply to development of the Project.

6. SECURITY FINANCING AND RIGHTS OF HOLDERS.

6.1 Notwithstanding any other provision of this Agreement, Owner may not grant a security interest in the Property before the Agency/City issues and records a Certificate of Completion, absent written consent of Agency/City, provided that the Agency/City hereby approves the security interest of Citicorp including its respective successors or assigns as provided for in this Agreement, providing construction and permanent financing.

6.2 The holder of any Security Financing Interest is not obligated to perform Owner's rehabilitation obligations, or to guarantee the rehabilitation of Owner Improvements. However, any holder of a Security Financing may not devote the Property to any use, and may not construct any improvements on the separate parcels, except as authorized by this Agreement.

6.3 If a holder or the Owner gives a holder's address to the Agency/City and asks the Agency/City to notify the holder, the Agency/City will give a duplicate notice to the holder of any notice or demand that it gives to Owner of any Default. Within thirty (30) days after the receipt of the notice, each such holder of record will have the right, but

not the obligation, to cure the Owner's default or breach.

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

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

6.6 If (a) the Owner defaults under a Security Financing Interest before completing the Owner Improvements as described in the Recitals to this Agreement including the Rehabilitation Budget Worksheet referenced therein and attached to the Exhibit "C" Schedule of Performance/Payment Schedule, and (b) the holder does not assume Owner's construction obligations, then the Agency/City may cure the default before foreclosure. If the Agency/City cures the default, Owner will reimburse the Agency/City on demand for all costs and expenses it incurs to cure the default. The Agency/City may lien the Property to the extent of such costs and expenses. Any lien will be subordinate to any Security Financing Interest created for the sole purpose of obtaining funds to purchase and rehabilitate the Property, as authorized in this Agreement.

6.7 Until the Owner completes the Owner Improvements and the Agency/City records the Certificate of Completion, the Agency may cure Owner's default of other liens. Agency/City will not exercise the right until Owner has had a reasonable time to challenge, cure, or satisfy the liens or encumbrances. This provision does not prevent the Owner from contesting the validity or amount of a tax, assessment, lien or charge. In doing so, the Owner must act in good faith, the payment delay must not subject the Property to forfeiture or sale. If any such tax assessment or lien is contested by Owner then, before the tax, assessment, lien or charge is due and payable (without a late fee or penalty), the Owner must give reasonable security to the Agency/City for the lien or charge, and notify the Agency/City that it will appeal any property tax assessment.

6.8 Before Owner grants any Security Financing Interest in any parcel, Owner will cause the holder of a Security Financing Interest to insert or incorporate by reference the provisions of this Section 6 into the documents evidencing the Security Financing Interest.

7. CONTINUING OWNER OBLIGATIONS.

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

7.2 The Owner will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Owner's right to contest in good faith any taxes. The Owner will remove any levy or attachment on the Property or any part of it, or assure the satisfaction of the levy or attachment within a reasonable time. The Owner will notify the Agency/City prior to applying for or receiving any exemption from the payment of property taxes or assessments on any interest in or to the Property or the Improvements. Owner further agrees that the prior consent of the Agency/City shall be required if the basis for such exemption is other than for qualified property held by a nonprofit entity that has been determined to be exempt from federal and state income taxation, which consent shall not be unreasonably withheld.

8. COVENANTS AND RESTRICTIONS RUNNING WITH THE LAND. The following covenants shall run with the land and shall bind Owner, and Owner's successors in interest to the Property for the periods stated, and shall without regard to technical classification or designation, legal or otherwise, be fully binding for the benefit of the

Plan community and the Agency/City.

8.1 The Owner covenants for itself, its successors, assigns, and every successor in interest to the Property or any part of it that, after closing of any applicable escrow, during rehabilitation, and after completing the Improvements, the Owner shall devote the Property to the uses specified in the Plan and this Agreement for the life of the Plan. All uses of the Property including, without limitation, all activities Owner undertakes pursuant to this Agreement, shall conform to the Plan, owner participation rules and criteria of the Plan and the Agency/City and all applicable laws. Without waiver or limitation, each of the Units to be rehabilitated pursuant to this Agreement shall be maintained as Affordable Rental Housing pursuant to this Agreement and the Declaration of Restrictions.

8.2 The Owner and those taking under the Owner will maintain the Property and the and all Improvements on site in reasonably good -condition and repair (and, as to landscaping, if any, in a healthy condition), all according to the approved plans, as amended from time to time, and without limitation the Owner and those taking under the Owner shall: (i) maintain all on site Improvements according to all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the Improvements free from graffiti, (iii) keep the Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to the on-site Improvements; and (v) promptly replace dead and diseased plants and landscaping with comparable materials.

8.3 Agency/City will give Owner notice of any breach of this maintenance covenant. Agency/City and Owner will promptly after that meet and confer, and agree to the corrective actions and a schedule of performance. Owner must cure the default within the agreed schedule or within (a) 10 days after the Agency/City's notice for any default involving landscaping, graffiti, debris, waste material, or general maintenance, or within (b) 30 days after Agency/City's notice for any default involving building improvements, provided that if the Owner cannot reasonably cure the default within 30 days, then the Owner shall begin the cure within said 30 day period and diligently pursue it to completion. If Owner does not cure the default within those times, the Agency/City, without obligation to, may enter the Properties, cure the default, and protect, maintain, and preserve the Improvements and landscaping.

8.4 Agency/City may lien the Properties, or assess the Properties, for the Agency/City's expenses in protecting, maintaining, and preserving the on-site Improvements and aesthetics of the Properties, including up to a 15% administrative charge in the manner used by the Agency/City in the abatement of public nuisances. The notice and opportunity to cure provided for herein will substitute for the noticing, hearing, and nuisance abatement order used by the Agency/City. Owner will promptly

pay all such amounts to the Agency/City upon demand.

8.5 Through the later of (i) fifty-five years after issuance of the Certificate of Completion, (ii) the date of expiration of the longest running occupancy and rent affordability restriction placed on the Property with respect to any source of debt or equity financing for the Project Improvements which is recorded in the Official Records of Fresno County, the Owner covenants to use and operate the Property as Affordable Rental Housing pursuant to the Declaration of Restrictions.

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

8.7 The Owner covenants, for itself and any successors in interest and all persons claiming by through or under them, that it/they shall refrain from restricting the rental, sale or lease of the Property based on race, color, religion, sex, sexual preference, marital status, ancestry or national origin of any person. All deeds, leases, or contracts concerning the Property shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein, conveyed. The foregoing covenants shall run with the land."

In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and

all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

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

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

8.8 The Agency/City is the beneficiary of the covenants running with the land for itself and for protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants are provided, without regard to whether the Agency/City has been, remains, or is an owner of any land or interest in the Property or in the Project or Improvements. The Agency/City may exercise all rights and remedies, and maintain any actions or suits at law or in equity or other proceedings to enforce the covenants for itself or any other beneficiaries.

8.9 Owner warrants, covenants and agrees that it shall comply with the procedures for initial and annual income determinations at 24 CFR 92.203. Owner shall obtain, complete and maintain on file, immediately prior to initial occupancy, and annually thereafter, income certifications from each tenant Household renting any Unit. Owner shall make a good faith effort to verify that the income provided by an applicant or occupying Household in an income certification is accurate by taking one or more of the following steps as part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income verification form from the applicant's current employer; (3) obtain an income verification form from the Social Security Administration and California Department of Social Services if the applicant receives assistance from

either of such agencies; (4) obtain an income tax return for the most recent tax year, (5) if the applicant is unemployed and has no such tax return, obtain another form of independent verification, or (6) conduct a credit agency or similar search. Copies of tenant income certification and verification must be available for review by the Agency/City upon request.

8.10 Owner warrants, covenants and agrees that it shall comply with all applicable requirements of the Lead-Based Paint Poisoning Prevention Act of 42 U.S.C. 4821 et seq., 24 CFR Part 35 including the HUD 1012 Rule, and 24 CFR 982.401(j), including any amendments thereto, in the development of the Project. These requirements apply to all units and common areas in the Project. Owner shall incorporate or cause incorporation of this provision in all contracts and subcontracts for work performed on the Project, which involve the application of paint. Owner shall be responsible for all disclosure, inspection, testing, evaluation, control and abatement activities.

8.11 Owner warrants, covenants and agrees that it shall comply with all federal laws and regulations described in Subpart H of 24 CFR Part 92, including, without limitation, any requirement that Owner comply with the CITY's minority outreach program.

8.12 Owner warrants, covenants and agrees that, in addition to complying with the federal laws and regulations already cited in this Agreement, Owner has reviewed, and shall comply with, all other federal laws and regulations that apply to the HOME Program, including, without limitation, the following requirements:

8.12.1 The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), and all other regulations as identified in 24 CFR 58.6. The Project is not located in a tract identified by the Federal Emergency Management Agency as having special flood requirements.

8.12.2 The Project requirements, Subpart F of 24 CFR Part 92, as applicable and in accordance with the type of Project assisted, including, but not limited to, the limit on per-unit subsidy amount at 24 CFR 92.250.

8.12.3 The property standards at 24 CFR 92.251.

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

8.12.5 The provisions of Section 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of

Labor Regulations (29 CFR Part 5), in regards to the construction and management of the proposed Project.

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

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

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

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

8.12.10 The provision of Executive Orders 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24.

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

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

8.12.13 Executive Order 11063 on Equal Opportunity and Housing.

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

8.12.15 The Housing and Community Development Act of 1974.

8.13 Owner warrants, covenants and agrees that it is a secular entity and not a primarily religious organization and that it shall not engage in any prohibited activities described in 24 CFR 92.257. Subject to the foregoing, Owner does not intend to utilize HOME Funds to construct housing owned primarily by religious organizations or to assist primarily religious organizations in acquiring housing.

8.14 Owner understands and agrees that, if the Project is terminated before completion, either voluntarily or otherwise, such constitutes an ineligible activity and any

HOME Funds disbursed hereunder must be repaid to the City's HOME Investment Trust Fund in accordance with 24 CFR 92.503 (b).

9. DEFAULTS AND REMEDIES.

9.1 Subject to the extensions of time permitted under this Agreement, either party's failure to perform any material action or material covenant as required by this Agreement, following notice and failure to cure, is a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of, and the cure demanded. Except as otherwise expressly provided in this Agreement, the noticing party shall not begin any proceeding against the other party until the other party is given an opportunity to cure the Default. The other party will have thirty (30) calendar days after receiving the notice to cure the Default, or, if the party cannot reasonably cure the Default within such 30 days, the other party must begin to cure within the thirty (30) days and diligently pursue the cure to completion, whereupon there shall be no event of Default, provided, however, prior to declaring any default or taking any remedy permitted under the Agreement or applicable law based upon an alleged default hereunder or under any other Loan Document, the Agency/City shall deliver written notice to the Investor Member of Owner (the "Investor Member") of the Owner's failure to cure such default, and the Investor Member shall have an additional period of not less than (a) ten (10) days from the date of such notice to cure such alleged default if of a monetary nature, and (b) thirty (30) days from the date of such notice to cure such alleged default if of a non-monetary nature; provided, however, if in order to cure such a default the Investor Member must remove the managing member of Owner, the Investor Member shall so notify the Agency/City and so long as the Investor Member is diligently and continuously attempting to so remove such managing member, the Investor Member shall have until the date thirty (30) days after the effective date of the removal of the managing member to cure such default.

9.2 Subject to first giving the notice and opportunity to cure, a party may begin an action at law to enforce, or in equity to seek specific performance of, the terms of this Agreement, or to cure, correct, or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. A party must bring any legal action in the Superior Court of the County of Fresno, State of California, in an appropriate municipal court in Fresno County, or in the District of the United States District Court serving Fresno County.

9.3 If the Owner is not in Default under this Agreement prior to the close of escrow on the Loan Documents, and the Owner does not cause failure of the escrow to close, or if the Agency defaults and does not cure the Default within the permitted cure period after notice, then the Owner at Owner's option may terminate this Agreement by giving written notice of termination to the Agency/City. From the date the Agency/City receives the written notice of termination, this Agreement shall be deemed terminated

and neither party will have any further rights or obligations under this Agreement, except that the parties may pursue any other remedies they may have under this Agreement or in law or equity.

9.4 If the Agency/City is not in Default under this Agreement and before it issues the Certificate of Completion, any of the following occurs, the Agency/City may terminate this Agreement by written notice to the Owner, and no party will have any further rights or obligations under this Agreement, except the right to pursue any remedies available under this Agreement, at law, or in equity:

9.4.1 The Owner (or any successor in interest) assigns or attempts to assign the Agreement or any rights in it, or in the Property or the Project in violation of this Agreement, provided, however (i) addition of an investor member to the Owner, (ii) transfer of investor member interest to an entity controlled by CharterMac Capital LLC, or (iii) removal of the managing member of the Owner pursuant to the terms of the Amended and Restated Operating Agreement of the Owner is permitted and shall not constitute an assignment in violation of this Agreement; or

9.4.2 One or more of the Agency/City's Conditions Precedent set forth above is not fulfilled on or before the time set forth in this Agreement or the Schedule of Performance, and the Agency/City does not cause the failure, and such failure to perform is not cured within any period of time allowed under this Agreement; or

9.4.3 The Owner is otherwise in Default of this Agreement and fails to cure the Default within the time permitted in this Agreement.

9.5 The Agency/City's right to terminate shall be subject to and be limited by and shall not defeat, render invalid or limit:

9.5.1 Any Security Financing Interest permitted by this Agreement; and

9.5.2 Any rights or interests in this Agreement protecting Security Financing Interests.

9.6 If the Owner begins any legal action against the Agency/City, it shall serve process on the Agency/City by personal service on the Director and Manager respectively, or in any other manner the law permits. If the Agency/City begins any legal action against the Owner, it will serve process on the Owner by personal service on the Owner or Owner's Agent, or in any other manner the law permits.

9.7 Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and a party's exercise of one or more rights or remedies will not preclude the party's exercise, at the same or different times, of any

other rights or remedies for the same or any other Default of the other party.

9.8 A party's failure or delay in asserting any right or remedy will not be a waiver of any Default or of any right or remedy, and will not deprive the party of its right to begin and maintain any action or proceeding to protect, assert or enforce any right or remedy.

9.9 The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

10. GENERAL PROVISIONS.

10.1 Any notice, demand, or other communication permitted or required under this Agreement will be in writing and given by personal delivery, or by first-class U.S. mail, postage prepaid, to a party at its respective address below:

To RDA:

Fresno RDA
Attn: Executive Director
2344 Tulare St suite 200
Fresno 93721

To Owner:

Martin Luther King Square, LLC
c/o A.F. Evans Co. Inc.
1000 Broadway, Suite 300
Oakland, CA 94607

With copy to:

Jennifer Bell, Esq.
Goldfarb & Lipman
1300 Clay Street, 9th Floor
City Center Plaza
Oakland, CA 94612

To City:

HECD Housing Manager
2600 Fresno Street, Room 3076
Fresno, CA 93721-3605

To Investor Member of Owner:

c/o CharterMac Capital LLC
625 Madison Avenue
New York, New York 10022
Attn: Marc D. Schnitzer

10.2 A party may change its address for notices, demands and communications by giving notice of the new address as provided in this section. Any written notice, demand or communication shall be deemed received immediately if delivered personally, and shall be deemed received on the third day after it is postmarked if delivered by regular, registered or certified mail, or on the date of receipt, if return receipt is requested and available to confirm the date.

10.3 All of the terms, covenants and conditions of this Agreement shall be binding upon the Owner and its permitted successors and assigns. Whenever the term "Owner" is used in this Agreement, such term shall include Owner's successors and assigns as permitted under this Agreement.

10.4 The Agency/City may assign or transfer any of its interests, rights, or obligations hereunder at any time without the consent of the Owner.

10.5 No member, official or employee of the Agency/City shall be personally liable to the Owner, or any successor in interest to Owner, for any Default or breach by the Agency/City.

10.6 The relationship between the Agency/City on the one hand and the Owner on the other is that of redevelopment agency/HOME grantee and redeveloper respectively, as permitted by Law, and not that of a partnership or joint venture. The Agency/City and the Owner shall not be deemed or construed for any purpose to be the agent of the other. Except as expressly provided in this Agreement, the Agency/City shall have no rights, powers, duties or obligations with respect to the development, maintenance, management, or sale of the Property and the Improvements. The Owner shall indemnify, hold harmless, and defend the Agency/City from any claim arising from any claimed relationship of a partnership or joint venture between the Agency/City and the Owner respecting the Project, the Property and the Improvements, including the development, maintenance, management, or sale thereof. Notwithstanding the foregoing, the Agency/City retains the right at all times to inspect the books, records and other documents of the Owner pertaining to the Project and the Improvements including the maintenance and rental of the Units as pertinent to the purposes of this Agreement.

10.7 Whenever this Agreement references an action or approval required or permitted by the Agency/City, the Director and Manager and their respective designees are authorized to act for them unless this Agreement, the Law, Constitutional and/or local law provide otherwise, or the context otherwise requires.

10.8 This Agreement may be signed in multiple counterparts which, when signed by all parties, will be one binding agreement. The parties will sign three copies of this Agreement, each of which is deemed to be original.

10.9 This Agreement, includes the exhibits and attachments referenced in it, and the references incorporate into and make the exhibits a part of this Agreement. This Agreement contains the entire agreement between the parties relating to the transaction contemplated by this Agreement. This Agreement supersedes all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written. Each party enters this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any facts the party deems material. This Agreement includes pages 1 through 39 and Exhibits A through G.

10.10 If either party begins a lawsuit or arbitration proceeding, in law or equity, to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees, court costs, and legal expenses as determined by the court or tribunal having jurisdiction.

10.11 Waiver of any provision of this Agreement must be in writing and signed by a duly authorized representative of the party making the waiver. No other form of waiver, express or implied, shall be effective. Waiver of any provision shall apply only to that provision under the specific circumstances, and for that specific occasion. It shall not apply to any other provision or to the same provision under different circumstances or operate as a continuing waiver.

10.12 Any alteration, change or modification of or to this Agreement, to be effective, must be in writing, and signed by each party.

10.13 If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances is held invalid or unenforceable, the remainder of this Agreement and its application to persons or circumstances, other than those about whom or which it is held invalid or unenforceable, shall not be affected, and shall remain valid and enforceable to the fullest extent permitted by law.

10.14 Each party represents and warrants to the other that (a) each has read this Agreement, and (b) is signing this Agreement with full knowledge of any rights and obligations each may have, and (c) each has received independent legal advice from

their respective legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel, and (d) each has signed this Agreement without relying on any agreement, promise, statement or representation by or for the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

10.15 No member, official or employee of the Agency/City has or shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. The Owner represents and warrants that it has not paid or given, and will not pay or give, to any third-party any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys.

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

10.17 Owner shall reimburse Agency/City for all reasonable expenses and costs of collection and enforcement, including reasonable attorney's fees, incurred by Agency/City as a result of one or more events of Default by Owner under this Agreement.

10.18 The parties will execute such other and further documents, and will take any other steps, necessary, helpful, or appropriate to carry out the provisions of this Agreement.

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

10.20 Owner hereby covenants and warrants that it is a duly authorized and existing California limited liability company, in good standing; that it shall remain in good standing; that it has the full right, power and authority to enter into this Agreement and

to carry out all actions on its part contemplated by this Agreement; that the execution and delivery of this Agreement were duly authorized by proper action of the Owner and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions of the Owner's part contemplated by this Agreement, except as have been obtained and are in full force and effect; and that this Agreement constitutes the valid, binding and enforceable obligation of the Owner.

10.21 In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement will control except for the Note which shall be controlling as to terms and conditions of the Loan.

10.22 Owner agrees to cooperate with Agency/City and execute any documents reasonably required, promptly upon Agency's request, and to promptly effectuate the recordation of this Agreement, the Declaration of Restrictions, the Deed of Trust, and any other documents/instruments that the Agency requires to be recorded, in the Official Records of Fresno County, California, consistent with this Agreement.

///
///

<p>REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a California body corporate and politic</p> <p>By: <u>Marlene Murphy</u> Title: <u>Executive Director</u> Marlene Murphy</p> <p>CITY OF FRESNO a California municipal corporation</p> <p>By: <u>John Ruiz</u> Title: <u>Asst</u> John Ruiz</p> <p>ATTEST: REBECCA E. KLISCH CITY CLERK</p> <p>By: <u>Erika Feyva 6/14/06</u> Deputy</p> <p>APPROVED AS TO FORM: JAMES C. SANCHEZ INTERIM CITY ATTORNEY</p> <p>By: <u>[Signature]</u> Deputy</p>	<p>MARTIN LUTHER KING SQUARE, LLC, a California limited liability company</p> <p>By: A.F. EVANS COMPANY INC., a California corporation, Its Managing Member</p> <p>By: <u>John J. Robertson</u> Title: <u>Vice President</u> John J. Robertson</p>
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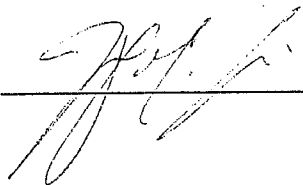
Exhibit A:	Legal Description of OPA Properties:
Exhibit B:	Budget/Financial Plan
Exhibit C:	Schedule of Performance/Payment Schedule
Exhibit D:	Declaration of Restrictions
Exhibit E:	Certificate of Completion
Exhibit F(1):	Promissory Note - Fresno RDA
Exhibit F(2):	Promissory Note - City of Fresno
Exhibit G:	Basic Design

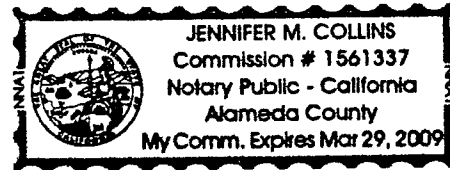
39

State of California)
)
County of Alameda)

On April 20, 2006 before me, Jennifer M. Collins, Notary Public, personally appeared John J. Robertson 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 signature(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.

Signature  (Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

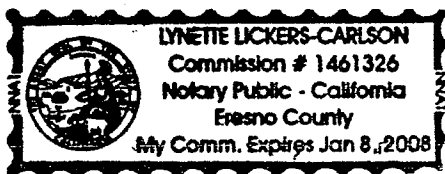
SS.

On April 10 2006,
Date

before me, Lynette Lickers-Carlson Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Markene Murphy
Name(s) of Signer(s)



☒ personally known to me

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

Place Notary Seal Above

WITNESS my hand and official seal

[Signature]
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

ACKNOWLEDGMENT

State of California

County of Fresno

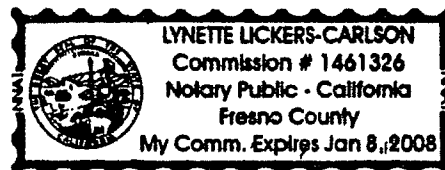
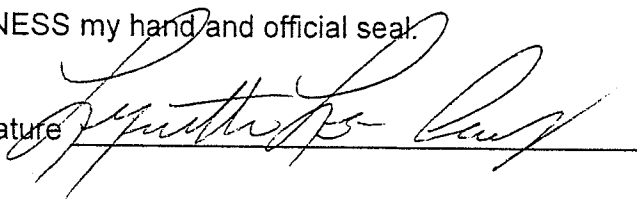
On April 12, 2006 before me, Lynette Lickers-Carlson, Notary Public,
(here insert name and title of the officer)

personally appeared Marlene Murpley

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 signature(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.

Signature



(Seal)

ACKNOWLEDGMENT

State of California
County of Fresno

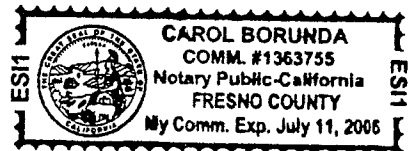
On April 12, 2006, before me, Carol Borunda, Notary Public,
(here insert name and title of the officer)

personally appeared Jon Ruiz

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

WITNESS my hand and official seal.

Signature Carol Borunda



(Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of FRESNO, County of FRESNO, State of California, described as follows:

PARCEL 1: APN 478-030-54

PARCEL D, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 72-36 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON AUGUST 8, 1972, IN BOOK 4 OF PRCEL MAPS PAGE(S) 10 AND 11 AND AS PER CERTIFICATE OF CORRECTION RECORDED MAY 9, 1973 IN BOOK 6162, PAGE 550 OF OFFICIAL RECORDS.

PARCEL 2: APN 478-114-36

PARCEL B, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 71-39 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON JUNE 27, 1972, IN BOOK 3 OF PARCEL MAPS PAGE(S) 86.

PARCEL 3: APN 478-114-37

PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 71-39 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON JUNE 27, 1972, IN BOOK 3 OF PARCEL MAPS PAGE(S) 86.

APN: 478-030-54 and 478-114-36 and 478-114-37

EXHIBIT "B"

Budget/Financial Plan

[Intentionally Omitted.]

EXHIBIT "C"

Development Timetable/Payment Schedule

*Actual Or Scheduled
Month / Year*

SITE

03/2005 Environmental Review Completed
05/2006 Site Acquired

LOCAL PERMITS

03/2005 Conditional Use Permit
N/A Variance
N/A Site Plan Review
N/A Grading Permit
07/2006 Building Permit

CONSTRUCTION FINANCING

03/2006 Loan Application
03/2006 Enforceable Commitment
06/2006 Closing and Disbursement

PERMANENT FINANCING

03/2006 Loan Application
03/2006 Enforceable Commitment
06/2006 Closing and Disbursement

OTHER LOANS AND GRANTS

/ Type and Source:

Permanent Financing – Fresno Redevelopment Agency

03/2006 Application
03/2006 Closing or Award

OTHER LOANS AND GRANTS

/ Type and Source:

Permanent Financing – City of Fresno

03/2006 Application
03/2006 Closing or Award

Tax Credit Allocation

 / Type and Source:

Tax Credit Allocation Committee

 / Application

 / Closing or Award

05/2006 *10% of Costs Incurred*

05/2006 *Construction Start*

10/2007 *Construction Completion*

 Placed In Service

 Occupancy of All Low-Income Units

Payment Schedule:

Loans to be disbursed through Project escrow per Agreement.

///

///

EXHIBIT "D"

DECLARATION OF RESTRICTIONS

Recording Requested and When Recorded Return to:

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

City of Fresno
Attn: Housing Manager
2600 Fresno St., Room 3076
Fresno, CA 93721

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

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this [] day of April 2006, by Martin Luther King Square, LLC, a California limited liability company, ("Declarant"), in favor of the Redevelopment Agency of the City of Fresno, a California public body corporate and politic, ("RDA") and the City of Fresno, a California municipal corporation, ("City"), jointly and severally. The RDA and City are collectively referred to as the "Beneficiaries".

WHEREAS, Declarant is the owner of the real estate in the county of Fresno, state of California, located at 911 East Belgravia Avenue, APNs [478-030-54 and 478-114-36 and 478-114-37], which is more particularly described in Exhibit "A", attached hereto and made a part hereof, including the improvements thereon (the "Property"); and

WHEREAS, Declarant and Beneficiaries have entered into a certain April [] 2006 Owner Participation Agreement, recorded as Instrument No [] in the Official Records of Fresno County, California, ("Agreement"), whereby Declarant agrees to rehabilitate and maintain certain rental housing affordable to low and very low-income families, subject to the terms and conditions set forth in the Agreement; and

WHEREAS, in addition to the covenants and conditions contained in the

Agreement, the Declarant has agreed at the special instance and request of the Beneficiaries and upon good and sufficient consideration, to impose certain California Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.) and HOME Act (Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended; 24 CFR Part 92) affordability requirements upon 91 Units upon the Property funded under the Agreement, which affordability restrictions must be enforceable for a fifty-five (55) year period; and

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

NOW THEREFORE, Declarant declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the Martin Luther King Square Project, the City's HOME Program obligations and activities, the RDA's Community Redevelopment Law and Plan Area obligations including RDA's obligations set forth at California Health & Safety Code sections 33334.2 et seq. and 33413 (a) with respect to housing set aside funds and replacement dwelling units at affordable rent within the jurisdiction of the RDA. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, will inure to the benefit of the Beneficiaries, and will be enforceable by them jointly and severally. Any purchaser under a contract of sale or other transferee of an interest covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration for the period of fifty-five (55) years running from and after recordation of Beneficiaries' Certificate of Completion constituting the Affordability Period.

1. Declarations. Declarant hereby declares that the Property is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Property, the Martin Luther King Square Project, the City's HOME Program obligations set forth at Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended; 24 CFR Part 92, the RDA's Community Redevelopment Law and Plan Area obligations including RDA's obligations set forth at California Health & Safety Code sections 33334.2 et seq. and 33413 (a) regarding housing set aside funds and replacement dwelling units at affordable rent within the

jurisdiction of the RDA, and are established and agreed upon for the purpose of enhancing and protecting the value of the Property and in consideration the Agreement and the above recitals. All terms not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

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

a. Declarant for itself and its successor(s) on title covenants and agrees that from the date of recordation of Beneficiaries's Certificate of Completion until the expiration of the Affordability Period it shall cause the 91 Project Units funded under the Agreement to be used as Affordable Rental Housing and affordable replacement dwellings as provided for in the Agreement. Unless otherwise provided in the Agreement, the term affordable rental housing shall include without limitation compliance with the following requirements:

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

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

Income Requirements. Each of the 91 Units constituting Affordable Rental Housing upon the Property may be leased only to (a) natural person(s), fourteen (14) of which may have annual household incomes at the time of initial occupancy not greater than sixty percent (60%) and seventy-seven

(77) of which may have annual household income at the time of initial occupancy is not greater than fifty percent (50%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent with the rules established by the California Tax Credit Allocation Committee for the Martin Luther King Square Project and applicable HOME Act/California Redevelopment Law.

Injunctive Relief and Recapture. Should any of the 91 Units constituting Affordable Rental Housing upon the Property not continue to be, at the time of initial occupancy, the principal residence of a Household that qualifies as a low-income or very low-income Household, during the period of Affordability, such Unit(s) shall be made available for subsequent lease only to Households that qualify as a low-income or very low-income for use as the Household's principal residence.

b. Item (a) above is hereinafter referred to as the Covenant and Restriction.

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

4. Acceptance and Ratification. All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the Covenant and Restriction. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Covenant and Restriction, as such may be amended or supplemented from time to time, is accepted and ratified by such future owners, tenant or occupant, and such Covenant and Restriction shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Covenant and Restriction was recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. Provided, however, if this Declaration has been subordinated to a deed of trust and the Property is transferred by foreclosure to the holder of the deed of trust or an assignee of such holder, who is not Declarant or an affiliate of Declarant, then this Declaration shall be of no further force and effect except

that if the Property is subsequently transferred to any party prior chargeable with this Declaration, then the Declaration shall revive.

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

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

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

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

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

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

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

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

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

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

///

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

"DECLARANT"
MARTIN LUTHER KING SQUARE, LLC
a California limited liability company

By A.F. Evans Company, Inc.
A California corporation,
Its managing member

By: _____
Name: _____
Title: _____

EXHIBIT "E"

CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

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

City of Fresno
2600 Fresno St., Room 3076
Fresno, CA 93721
Attention: Housing Manager

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

Redevelopment Agency

By: _____

Its: _____

Dated: _____

City of Fresno

By: _____

Its: _____

Dated: _____

Certificate of Completion

Recitals:

A. By an Owner Participation Agreement (the "Agreement") dated April [] 2006, between Martin Luther King Square, LLC, a California limited liability company, ("Owner"), in favor of the Redevelopment Agency of the City of Fresno, a California public body corporate and politic, ("RDA"), and the City of Fresno, a California municipal corporation, ("City"), Owner agreed to rehabilitate an Affordable Rental Housing Project upon the premises legally described in Attachment "A" hereto (the "Property") and preserve such as rental housing for Low-Income and Very Low-Income Families with the assistance of RDA Housing Set Aside Funds and City HOME Program Funds while meeting the applicable Affordable Housing, income targeting and other requirements of the HOME Act (Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended; 24 CFR Part 92) and Community Redevelopment Law set forth at California Health and Safety Code Sections 33000 et seq., for a fifty-five (55) year Affordability Period according to the terms and conditions of the Agreement.

B. The Agreement or a memorandum of it was recorded April [], 2006 as Instrument No [] in the Official Records of Fresno County, California.

C. Under the terms of the Agreement, after Owner completes the construction on the Property, Owner may ask the RDA and City to record a Certificate of Completion.

D. Owner has asked RDA and City to furnish Owner with a recordable Certificate of Completion.

E. The issuance of this Certificate of Completion by the City and RDA is conclusive evidence that the Owner has completed the construction on the Property as set forth in the Agreement.

///

NOW THEREFORE:

1. RDA and City certify that Owner commenced the rehabilitation work on the Project on [____], and completed the rehabilitation work on the Project on [____], and has done so in full compliance with the Agreement.

2. This Certificate of Completion is not evidence of Owner's compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project. Nothing contained herein modifies any provision of the Agreement.

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

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

IN WITNESS WHEREOF, the Redevelopment Agency of the City of Fresno and the City of Fresno have executed this Certificate of Completion as of this [____] day of [____] 200[____].

Redevelopment Agency of the City of Fresno

By: _____

Its: _____

City of Fresno

By: _____

Its: _____

Martin Luther King Square, LLC, a California limited liability company, the owner of record of the Property, consents to recording this Certificate of Completion against the Property described herein.

Dated: _____

MARTIN LUTHER KING SQUARE,
LLC, a California limited liability
company,

By A.F. Evans Company, Inc.
A California corporation,
Its managing member

By: _____

Name: _____

Title: _____

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

ATTEST:
CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Deputy

By: _____
Deputy

Dated: _____

Dated: _____

EXHIBIT "F(1)"

PROMISSORY NOTE (FRESNO RDA)

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

PROMISSORY NOTE

\$500,000

Fresno, California April [] 2006

For value received, the undersigned, Martin Luther King Square, LLC, a California limited liability company, ("Borrower"), promises to pay to the order of the Redevelopment Agency of the City of Fresno ("Lender"), the sum of Five Hundred Thousand Dollars (\$500,000), to the extent that such funds are loaned to Borrower (and said interest and principal payments shall commence on said dates), with interest on the unpaid principal balance running from the date first written above at the then Applicable Long-Term Federal Rate as set forth in Section 1247 (d)(1) of the Internal Revenue Code provided that said rate shall decrease to 3% per annum from and after any loss of Project Section 8 funding; payable periodically from Project Residual Receipts and the Residual Receipts Reserve Fund as defined hereunder in accordance with the Owner's Participation Agreement dated April [] 2006, entered into between Borrower and Lender, ("Agreement"), and in accordance with the payment schedule contained in the Agreement and this Note, with all principal and interest due and payable on or before thirty (30) years from the date of this Note, ("Maturity Date"), on which date the unpaid balance of principal with unpaid interest thereon shall be due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws. In the event this Note is not paid in full upon the Maturity Date Lender is hereby granted the sole option to extend this Note for an additional term of 25 years.

This is a residual receipts note. Principal and interest payments in the amount of Thirty-One Thousand Seven Hundred Fifty-One Dollars (\$31,751) per year are due on May 31, 2007 and each successive year thereafter until the Maturity Date upon which all principal and interest shall be due and payable (prorated amounts to be paid for the

first and last year of the Note). In order to ensure the continuing availability of Residual Receipts and in addition any other security provided hereunder, beginning on the first anniversary of the Agreement and annually thereafter Borrower shall deposit into an interest earning residual receipts reserve account benefiting solely the Lender ("Residual Receipts Reserve") the sum of Two Thousand Five Hundred Dollars (\$2500), provided that the Residual Receipts Reserve (including principal and interest) shall not exceed the outstanding balance (including principal and interest) due under this Note. Annual payments under this Note are due only from Residual Receipts of the Martin Luther King Square Project as described in the Agreement and to the extent that Residual Receipts are not sufficient then from the Residual Receipts Reserve. If there are not sufficient Residual Receipts and Residual Receipts Reserve funds to make any annual payment hereunder or portion thereof, said unpaid payment/portion thereof shall be added to the principal and bear like interest. Any failure to make a payment required hereunder shall constitute a default under this Note.

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

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

Maturity Date means that date that is thirty (30) years from the date of this Note.

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note, and executed in favor of and delivered to the Lender ("Deed of Trust"), through Escrow # 103273, insured by First American Title Guaranty Company as an ALTA or CLTA (no worse than 3rd) position lien. Repayment of this Note shall be non-recourse to the Owner and all constituent members of the Owner.

Time is of the essence. It will be a default under this Note if Borrower defaults under the Agreement, any other Loan Documents, and if Borrower fails to pay when due any sum payable under this Note. In the event of a default by Borrower, the Borrower shall pay a late charge equal to 2% of any outstanding payment. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest and then to principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the Loan Documents give rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind.

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

All payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate, and in the absence of that designation, then to Lender at its address of record provided in the Agreement.

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

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

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

The Deed of Trust provides as follows:

DUE ON SALE—CONSENT BY BENEFICIARY. Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Land, or any interest in the Land. A "sale or transfer" means the conveyance of Land or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Land, or by any other method of conveyance of Land interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member or to an entity whose general or managing partner or managing member is controlled directly or indirectly by the Project tax credit investor, CharterMac Capital LLC. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

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

If any one or more of the provisions in this Note is held to be invalid, illegal, or

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

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

The Loan shall be non-recourse to the Borrower and all constituent members of the Borrower.

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

Martin Luther King Square, LLC,
a California limited liability company,

By A.F. Evans Company, Inc.
A California corporation,
Its managing member

By: _____
Name: _____
Title: _____

EXHIBIT "F(2)"

PROMISSORY NOTE (CITY OF FRESNO)

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

PROMISSORY NOTE

\$500,000

Fresno, California April [_____] 2006

For value received, the undersigned, Martin Luther King Square, LLC, a California limited liability company, ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation ("Lender"), the sum of Five Hundred Thousand Dollars (\$500,000), to the extent that such funds are loaned to Borrower (and said interest and principal payments shall commence on said dates), with interest on the unpaid principal balance running from the date first written above at the then Applicable Long-Term Federal Rate as set forth in Section 1247 (d)(1) of the Internal Revenue Code payable periodically from Project Residual Receipts and the Residual Receipts Reserve Fund as defined hereunder in accordance with the Owner's Participation Agreement dated April [_____] 2006 entered into between Borrower and Lender, ("Agreement"), and in accordance with the payment schedule contained in the Agreement, with all principal and interest due and payable on or before thirty (30) years from the date of this Note, ("Maturity Date"), on which date the unpaid balance of principal with unpaid interest thereon shall be due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisement laws. In the event this Note is not paid in full upon the Maturity Date Lender is hereby granted the sole option to extend this Note for an additional term of 25 years.

This is a residual receipts note. Principal and interest payments in the amount of Thirty-One Thousand Seven Hundred Fifty-One Dollars (\$31,751) per year are due on

May 31, 2007 and each successive year thereafter until the Maturity Date upon which all principal and interest shall be due and payable (prorated amounts to be paid for the first and last year of the Note). In order to ensure the continuing availability of Residual Receipts and in addition any other security provided hereunder, beginning on the first anniversary of the Agreement and annually thereafter Borrower shall deposit into an interest earning residual receipts reserve account benefiting solely the Lender ("Residual Receipts Reserve") the sum of Two Thousand Five Hundred Dollars (\$2500), provided that the Residual Receipts Reserve (including principal and interest) shall not exceed the outstanding balance (including principal and interest) due under this Note. Annual payments under this Note are due only from Residual Receipts of the Martin Luther King Square Project as described in the Agreement and to the extent that Residual Receipts are not sufficient then from the Residual Receipts Reserve. If there are not sufficient Residual Receipts and Residual Receipts Reserve funds to make any annual payment hereunder or portion thereof, said unpaid payment/portion thereof shall be added to the principal and bear like interest. Any failure to make a payment required hereunder shall constitute a default under this Note.

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

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

Maturity Date means that date that is thirty (30) years from the date of this Note .

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note, and executed in favor of and delivered to the Lender ("Deed

of Trust"), through Escrow # 103273, insured by First American Title Guaranty Company as an ALTA or CLTA (no worse than 3rd) position lien. Repayment of this Note shall be non-recourse to the Owner and all constituent members of the Owner.

Time is of the essence. It will be a default under this Note if Borrower defaults under the Agreement, any other Loan Documents, and if Borrower fails to pay when due any sum payable under this Note. In the event of a default by Borrower, the Borrower shall pay a late charge equal to 2% of any outstanding payment. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest and then to principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the Loan Documents give rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind.

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

All payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate, and in the absence of that designation, then to Lender at its address of record provided in the Agreement.

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

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

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

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

The Deed of Trust provides as follows:

DUE ON SALE—CONSENT BY BENEFICIARY. Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Land, or any interest in the Land. A "sale or transfer" means the conveyance of Land or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Land, or by any other method of conveyance of Land interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member or to an entity whose general or managing partner or managing member is controlled directly or indirectly by the Project tax credit investor, CharterMac Capital LLC. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

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

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

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

The Loan shall be non-recourse to the Borrower and all constituent members of the Borrower.

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

MARTIN LUTHER KING SQUARE, LLC,
a California limited liability company,
By A.F. Evans Company, Inc.
A California corporation,
Its managing member

By: _____
Name: _____
Title: _____

EXHIBIT "G"

Basic Design

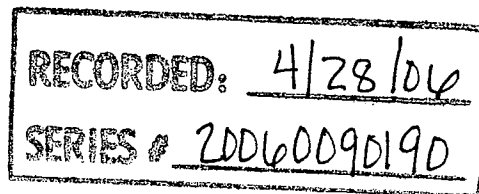
[Intentionally Omitted.]

DECLARATION OF RESTRICTIONS

Recording Requested and When Recorded Return to:

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

City of Fresno
Attn: Housing Manager
2600 Fresno St., Room 3076
Fresno, CA 93721



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

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this [28th] day of April 2006, by Martin Luther King Square, LLC, a California limited liability company, ("Declarant"), in favor of the Redevelopment Agency of the City of Fresno, a California public body corporate and politic, ("RDA") and the City of Fresno, a California municipal corporation, ("City"), jointly and severally. The RDA and City are collectively referred to as the "Beneficiaries".

WHEREAS, Declarant is the owner of the real estate in the county of Fresno, state of California, located at 911 East Belgravia Avenue, APNs [478-030-54 and 478-114-36 and 478-114-37], which is more particularly described in Exhibit "A", attached hereto and made a part hereof, including the improvements thereon (the "Property"); and

WHEREAS, Declarant and Beneficiaries have entered into a certain April [28th] 2006 Owner Participation Agreement, recorded as Instrument No [20060090189] in the Official Records of Fresno County, California, ("Agreement"), whereby Declarant agrees to rehabilitate and maintain certain rental housing affordable to low and very low-income families, subject to the terms and conditions set forth in the Agreement; and

WHEREAS, in addition to the covenants and conditions contained in the

Agreement, the Declarant has agreed at the special instance and request of the Beneficiaries and upon good and sufficient consideration, to impose certain California Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.) and HOME Act (Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended; 24 CFR Part 92) affordability requirements upon 91 Units upon the Property funded under the Agreement, which affordability restrictions must be enforceable for a fifty-five (55) year period; and

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

NOW THEREFORE, Declarant declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the Martin Luther King Square Project, the City's HOME Program obligations and activities, the RDA's Community Redevelopment Law and Plan Area obligations including RDA's obligations set forth at California Health & Safety Code sections 33334.2 et seq. and 33413 (a) with respect to housing set aside funds and replacement dwelling units at affordable rent within the jurisdiction of the RDA. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, will inure to the benefit of the Beneficiaries, and will be enforceable by them jointly and severally. Any purchaser under a contract of sale or other transferee of an interest covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration for the period of fifty-five (55) years running from and after recordation of Beneficiaries' Certificate of Completion constituting the Affordability Period.

1. Declarations. Declarant hereby declares that the Property is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Property, the Martin Luther King Square Project, the City's HOME Program obligations set forth at Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended; 24 CFR Part 92, the RDA's Community Redevelopment Law and Plan Area obligations including RDA's obligations set forth at California Health & Safety Code sections 33334.2 et seq. and 33413 (a) regarding housing set aside funds and replacement dwelling units at affordable rent within the

jurisdiction of the RDA, and are established and agreed upon for the purpose of enhancing and protecting the value of the Property and in consideration the Agreement and the above recitals. All terms not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

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

a. Declarant for itself and its successor(s) on title covenants and agrees that from the date of recordation of Beneficiaries's Certificate of Completion until the expiration of the Affordability Period it shall cause the 91 Project Units funded under the Agreement to be used as Affordable Rental Housing and affordable replacement dwellings as provided for in the Agreement. Unless otherwise provided in the Agreement, the term affordable rental housing shall include without limitation compliance with the following requirements:

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

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

Income Requirements. Each of the 91 Units constituting Affordable Rental Housing upon the Property may be leased only to (a) natural person(s), fourteen (14) of which may have annual household incomes at the time of initial occupancy not greater than sixty percent (60%) and seventy-seven

(77) of which may have annual household income at the time of initial occupancy is not greater than fifty percent (50%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent with the rules established by the California Tax Credit Allocation Committee for the Martin Luther King Square Project and applicable HOME Act/California Redevelopment Law.

Injunctive Relief and Recapture. Should any of the 91 Units constituting Affordable Rental Housing upon the Property not continue to be, at the time of initial occupancy, the principal residence of a Household that qualifies as a low-income or very low-income Household, during the period of Affordability, such Unit(s) shall be made available for subsequent lease only to Households that qualify as a low-income or very low-income for use as the Household's principal residence.

b. Item (a) above is hereinafter referred to as the Covenant and Restriction.

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

4. Acceptance and Ratification. All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the Covenant and Restriction. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Covenant and Restriction, as such may be amended or supplemented from time to time, is accepted and ratified by such future owners, tenant or occupant, and such Covenant and Restriction shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Covenant and Restriction was recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. Provided, however, if this Declaration has been subordinated to a deed of trust and the Property is transferred by foreclosure to the holder of the deed of trust or an assignee of such holder, who is not Declarant or an affiliate of Declarant, then this Declaration shall be of no further force and effect except

that if the Property is subsequently transferred to any party prior chargeable with this Declaration, then the Declaration shall revive.

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

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

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

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

Agreement, the Declarant has agreed at the special instance and request of the Beneficiaries and upon good and sufficient consideration, to impose certain California Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.) and HOME Act (Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended; 24 CFR Part 92) affordability requirements upon 91 Units upon the Property funded under the Agreement, which affordability restrictions must be enforceable for a fifty-five (55) year period; and

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

NOW THEREFORE, Declarant declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the Martin Luther King Square Project, the City's HOME Program obligations and activities, the RDA's Community Redevelopment Law and Plan Area obligations including RDA's obligations set forth at California Health & Safety Code sections 33334.2 et seq. and 33413 (a) with respect to housing set aside funds and replacement dwelling units at affordable rent within the jurisdiction of the RDA. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, will inure to the benefit of the Beneficiaries, and will be enforceable by them jointly and severally. Any purchaser under a contract of sale or other transferee of an interest covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration for the period of fifty-five (55) years running from and after recordation of Beneficiaries' Certificate of Completion constituting the Affordability Period.

1. Declarations. Declarant hereby declares that the Property is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Property, the Martin Luther King Square Project, the City's HOME Program obligations set forth at Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended; 24 CFR Part 92, the RDA's Community Redevelopment Law and Plan Area obligations including RDA's obligations set forth at California Health & Safety Code sections 33334.2 et seq. and 33413 (a) regarding housing set aside funds and replacement dwelling units at affordable rent within the

jurisdiction of the RDA, and are established and agreed upon for the purpose of enhancing and protecting the value of the Property and in consideration the Agreement and the above recitals. All terms not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

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

a. Declarant for itself and its successor(s) on title covenants and agrees that from the date of recordation of Beneficiaries's Certificate of Completion until the expiration of the Affordability Period it shall cause the 91 Project Units funded under the Agreement to be used as Affordable Rental Housing and affordable replacement dwellings as provided for in the Agreement. Unless otherwise provided in the Agreement, the term affordable rental housing shall include without limitation compliance with the following requirements:

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

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

Income Requirements. Each of the 91 Units constituting Affordable Rental Housing upon the Property may be leased only to (a) natural person(s), fourteen (14) of which may have annual household incomes at the time of initial occupancy not greater than sixty percent (60%) and seventy-seven

(77) of which may have annual household income at the time of initial occupancy is not greater than fifty percent (50%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent with the rules established by the California Tax Credit Allocation Committee for the Martin Luther King Square Project and applicable HOME Act/California Redevelopment Law.

Injunctive Relief and Recapture. Should any of the 91 Units constituting Affordable Rental Housing upon the Property not continue to be, at the time of initial occupancy, the principal residence of a Household that qualifies as a low-income or very low-income Household, during the period of Affordability, such Unit(s) shall be made available for subsequent lease only to Households that qualify as a low-income or very low-income for use as the Household's principal residence.

b. Item (a) above is hereinafter referred to as the Covenant and Restriction.

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

4. Acceptance and Ratification. All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the Covenant and Restriction. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Covenant and Restriction, as such may be amended or supplemented from time to time, is accepted and ratified by such future owners, tenant or occupant, and such Covenant and Restriction shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Covenant and Restriction was recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. Provided, however, if this Declaration has been subordinated to a deed of trust and the Property is transferred by foreclosure to the holder of the deed of trust or an assignee of such holder, who is not Declarant or an affiliate of Declarant, then this Declaration shall be of no further force and effect except

that if the Property is subsequently transferred to any party prior chargeable with this Declaration, then the Declaration shall revive.

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

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

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

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

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

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

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

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

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

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

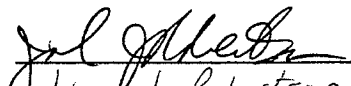
///

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

"DECLARANT"

MARTIN LUTHER KING SQUARE, LLC
a California limited liability company

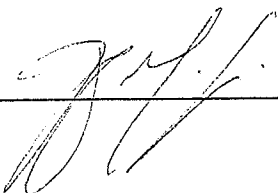
By A.F. Evans Company, Inc.
A California corporation,
Its managing member

By: 
Name: John J. Robertson
Title: Vice President

State of California)
)
County of Alameda)

On April 20, 2006 before me, Jennifer M. Collins, Notary Public, personally appeared John J. Robertson 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 signature(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.

Signature  (Seal)

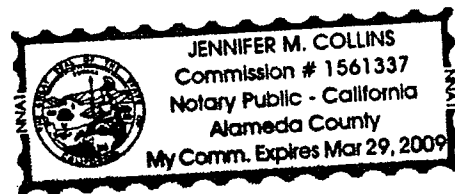


EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Fresno, County of Fresno, State of California, described as follows:

PARCEL 1:

PARCEL D, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 72-36 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON AUGUST 8, 1972, IN BOOK 4 OF PARCEL MAPS PAGE(S) 10 AND 11 AND AS PER CERTIFICATE OF CORRECTION RECORDED MAY 9, 1973 IN BOOK 6162, PAGE 550 OF OFFICIAL RECORDS.

PARCEL 2:

PARCEL B, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 71-39 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON JUNE 27, 1972, IN BOOK 3 OF PARCEL MAPS PAGE(S) 86.

PARCEL 3:

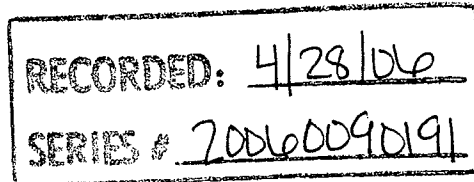
PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 71-39 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON JUNE 27, 1972, IN BOOK 3 OF PARCEL MAPS PAGE(S) 86.

APN: 478-030-54 (Parcel 1), 478-114-36 (Parcel 2) and 478-114-37 (Parcel 3)

RECORDING REQUESTED BY
First American Title Insurance Company
National Commercial Services

AND WHEN RECORDED MAIL TO:

City of Fresno
City Hall
2600 Fresno Street, Room 3076
Fresno CA 93721-3605



Space Above This Line for Recorder's Use Only

A.P.N.: 478-030-54, 478-114-36 and 478-114-37

File No.: NCS-103273-CC (pn)

**DEED OF TRUST AND ASSIGNMENT OF RENTS
(Short Form)**

THIS DEED OF TRUST, made this ^{28th day} April, 2006, between

TRUSTOR: **Martin Luther King Square, LLC, a California Limited Liability Company**

whose address is **1000 Broadway Suite 300, Oakland CA 94607,**

TRUSTEE: **First American Title Company, a California corporation**

and BENEFICIARY: **City of Fresno, a California municipal corporation and Redevelopment Agency of the City of Fresno, a public body corporate and politic, jointly and severally.**

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

SEE EXHIBIT "A" ATTACHED HERewith AND MADE A PART HEREOF.

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

FOR THE PURPOSE OF SECURING: 1. Performance of each agreement of Trustor, incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by Promissory Notes of even date herewith, and any extension or renewal thereof, in the principal sum of **\$500,000.00 to City of Fresno and \$500,000.00 to Redevelopment Agency of the City of Fresno** each executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record Owner of said property hereafter may borrow from Beneficiary, when evidenced by another Note (or Notes) reciting it is so secured.

THIS DEED OF TRUST SECURES TWO (2) PROMISSORY NOTES OF EVEN DATE HERewith, ONE FOR THE PRINCIPAL SUM OF \$500,000.00 IN FAVOR OF THE CITY OF FRESNO AND ONE FOR THE PRINCIPAL SUM OF \$500,000.00 IN FAVOR OF THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO. A DEFAULT IN THE PAYMENT OF ONE PROMISSORY NOTE WILL CONSTITUTE A DEFAULT IN BOTH PROMISSORY NOTES.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES: By the execution and delivery of this Deed of Trust and the Note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County on October 18, 1961, and in all other counties on October 23, 1961, in the book and page of the Official Records in the office of the county recorder of the county where said property is located, noted below and opposite the name of such county, viz:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1128	556	Imperial	1189	701	Merced	1660	753	San Benito	300	405	Siskiyou	506	762
Alpine	3	130-31	Inyo	165	672	Modoc	191	93	San Bernadino	6213	768	Solano	1287	621
Amador	133	438	Kern	3756	690	Mono	69	302	San Francisco	A-804	596	Sonoma	2067	427
Butte	1330	513	Kings	858	713	Monterey	357	239	San Joaquin	2855	283	Stanislaus	1970	56
Calaveras	185	338	Lake	437	110	Napa	704	742	San Luis Obispo	1311	137	Sutter	655	585
Colusa	323	391	Lassen	192	367	Nevada	363	94	San Mateo	4778	175	Tehama	457	183
Contra Costa	4684	1	Los Angeles	T-3878	874	Orange	7182	18	Santa Barbara	2065	881	Trinity	108	595

Del Norte	101	549	Madera	911	136	Placer	1028	379	Santa Clara	6626	664	Tulare	2530	108
El Dorado	704	635	Marin	1849	122	Plumas	166	1307	Santa Cruz	1638	607	Tuolumne	177	160
Fresno	5052	623	Mariposa	90	453	Riverside	3778	347	Shasta	800	633	Venutra	2607	237
Glenn	469	76	Mendocino	667	99	Sacramento	5039	124	Sierra	38	187	Yolo	769	16
Humboldt	801	83				San Diego	SERIES 5 Book 1964, Page 149774				Yuba	398	693	

(which provisions, identical in all counties, are printed below) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

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

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

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

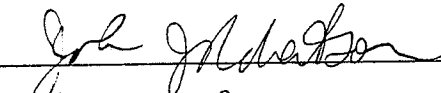
Dated: April , 2006

Signature of Trustor(s):

Martin Luther King Square, LLC, a California limited liability company

By: A.F. Evans Company, Inc., a California corporation

Its: Managing Member

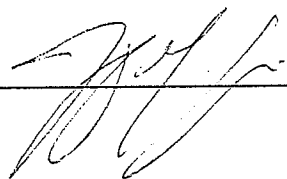
By: 
John Robertson

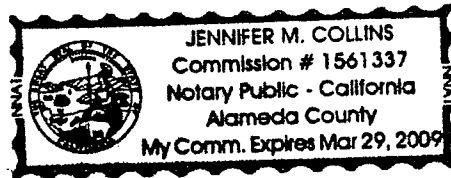
Its: Vice President

State of California)
)
County of Alameda)

On April 20, 2006 before me, Jennifer M. Collins, Notary Public, personally appeared John J. Robertson 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 signature(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.

Signature  (Seal)



STATE OF California }
COUNTY OF _____ } ss.
}

On _____, before me, _____,
Notary _____ Public, 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 his/her/their signature(s) on the instrument the person(s)
or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

My Commission Expires: _____

This area for official notarial seal

Notary Name: _____

Notary Phone: _____

Notary Registration Number: _____

County of Principal Place of Business: _____

DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious Deed of Trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth a length therein.

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

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

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

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

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

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

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

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

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

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

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

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

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

DO NOT RECORD (continued)

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of matter or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

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

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

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

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

-----DO NOT RECORD-----

REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid.

To: First American Title Insurance Company, a California corporation ,
Trustee

Dated: _____

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

Mail Reconveyance to: _____

By _____

By _____

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

Short Form
DEED OF TRUST First American Title Insurance Company National Commercial Services
WITH POWER OF SALE
INDIVIDUAL

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Fresno, County of Fresno, State of California, described as follows:

PARCEL 1:

PARCEL D, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 72-36 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON AUGUST 8, 1972, IN BOOK 4 OF PARCEL MAPS PAGE(S) 10 AND 11 AND AS PER CERTIFICATE OF CORRECTION RECORDED MAY 9, 1973 IN BOOK 6162, PAGE 550 OF OFFICIAL RECORDS.

PARCEL 2:

PARCEL B, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 71-39 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON JUNE 27, 1972, IN BOOK 3 OF PARCEL MAPS PAGE(S) 86.

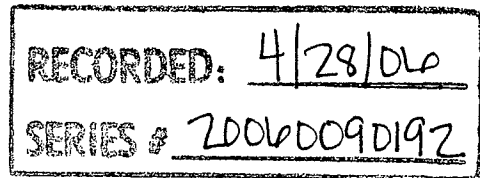
PARCEL 3:

PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 71-39 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON JUNE 27, 1972, IN BOOK 3 OF PARCEL MAPS PAGE(S) 86.

APN: 478-030-54 (Parcel 1), 478-114-36 (Parcel 2) and 478-114-37 (Parcel 3)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITICORP USA, INC.
COMMUNITY DEVELOPMENT
One Sansome Street, 26th Floor
San Francisco, California 94104
Attention: Marla Victorio
Loan Number: 10-7005184



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

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT ("AGREEMENT"), is dated as of April 1, 2006, by **MARTIN LUTHER KING SQUARE, LLC**, a California limited liability company, owner of the real property ("Owner") described on the attached Exhibit A (the "Property"), the **CITY OF FRESNO** (the "City"), and the **REDEVELOPMENT AGENCY OF THE CITY OF FRESNO** (the "Agency") (the City and Agency are collectively referred to as the "Subordinate Lenders"), in favor of **CITICORP USA, INC.**, a Delaware corporation (the "Senior Lender").

RECITALS:

- A. With respect to the Property, Owner has executed a Deed of Trust ("**Subordinate Deed of Trust**") jointly in favor of the Subordinate Lenders, which Subordinate Deed of Trust is being recorded concurrently herewith in the Official Records ("**Official Records**") of the County of Fresno, State of California. The Subordinate Deed of Trust secures Owner's performance under the separate promissory notes referred to therein (collectively, "**Subordinate Notes**"), which Subordinate Notes evidence two (2) loans (collectively, the "**Subordinate Loans**"), one from the City to Owner in the amount of \$500,000.00 and another from the Agency to Owner in the amount of \$500,000.00.
- B. In connection with the Subordinate Loans, Owner has executed, and there is being recorded concurrently herewith in the Official Records in favor of the Subordinate Lenders, one or more use restriction and/or regulatory agreements (collectively, the "**Regulatory Agreements**"). The Regulatory Agreements provide for certain terms, conditions, covenants and restrictions to be imposed upon Owner and the Property. The Regulatory Agreements, the Subordinate Notes, and the Subordinate Deed of Trust, together with any and all other agreements, documents, and instruments that evidence, secure, or relate to the Subordinate Loans, are collectively referred to herein as the "**Subordinate Lender Documents**."
- C. Senior Lender has agreed to make a construction converting to permanent loan to Owner in the original principal amount of \$7,026,679.00 (the "**Senior Loan**"). All or substantially all of the proceeds of the Senior Loan are to be used in connection with the development, construction,

improvement the Property. The Senior Loan is evidenced by, among other things, a Construction Loan Agreement and Promissory Note, and is secured by, among other things, a Construction to Permanent Deed of Trust, Assignment of Rents and Security Agreement (the "**Senior Deed of Trust**"), executed by Owner in favor of Senior Lender, and to be recorded concurrently herewith in the Official Records. The Construction Loan Agreement, Promissory Note, Senior Deed of Trust, and other documents evidencing, securing, or otherwise relating to the Senior Loan, are collectively referred to as the "**Senior Loan Documents**."

- D. It is a condition precedent to making the Senior Loan, that the Senior Lender Documents and Senior Lender's right to payments under the Senior Lender Documents shall unconditionally be and remain at all times a lien or charge upon the Property, prior and superior to the Subordinate Lender Documents and any and all rights, restrictions, agreements, liens and charges in favor of Subordinate Lenders and the Subordinate Lenders' respective right to payments under the Subordinate Lender Documents.
- E. Senior Lender is willing to make the Senior Loan, provided the condition precedent described above is satisfied and that Subordinate Lenders will specifically and unconditionally subordinate the Subordinate Lenders Documents and the Subordinate Lenders' right to payments under the Subordinate Lenders Documents and any and all other rights, restrictions, agreements, liens and charges in favor of Subordinate Lenders to the liens and charges of the Senior Lender Documents and Senior Lender's right to payments under the Senior Lender Documents.
- F. It is to the mutual benefit of the parties hereto that Senior Lender make the Senior Loan, and Subordinate Lenders and Owner are willing to provide the subordination required by the condition precedent described above.

NOW, THEREFORE, in consideration of mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Senior Lender to make the Senior Loan, it is hereby declared, understood and agreed as follows:

- (a) The Senior Lender Documents and any modification, extension or renewal thereof together with Senior Lender's right to payments under the Senior Lender Documents shall unconditionally be and remain at all times a lien or charge on the Property, prior and superior to the Subordinate Lenders Documents and the Subordinate Lenders' right to payments under the Subordinate Lender Documents and any and all other rights, restrictions, agreements, liens and charges in favor of the Subordinate Lender. All advances made by Senior Lender and any modification, extension or renewal agreed to by Senior Lender with respect to the Senior Loan, the Senior Lender Documents or any other documents and instruments governing, evidencing or securing the Senior Loan shall be secured by the lien or charge of the Senior Lender Documents, which lien shall at all times be prior and superior to the Subordinate Lender Documents and the Subordinate Lender's right to payments under the Subordinate Lender Documents and any and all other rights, restrictions, agreements, liens or charges in favor of the Subordinate Lender;
- (b) The Senior Lender would not make the Senior Loan without this Agreement; and
- (c) This Agreement shall be the whole and only agreement with regard to the subordination of the Subordinate Lender Documents and the Subordinate Lender's right to payments under the Subordinate Lender Documents and any and all other rights, restrictions, agreements, liens or charges in favor of the Subordinate Lenders to the liens or charges of the Senior Lender Documents and the

Senior Lender's right to payments under the Senior Lender Documents and shall supersede and cancel, but only insofar as would affect such priority, any prior agreements as to such subordination, including, but not limited to, those provisions, if any, contained in the Subordinate Lender Documents in favor of the Subordinate Lenders, which provide for the subordination of the rights, restrictions, agreements, lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

Subordinate Lenders declare, agree and acknowledge that:

- (d) Subordinate Lenders consent to and acknowledge (i) all provisions of the Senior Lender Documents in favor of Senior Lender and (ii) all agreements, including but not limited to any loan or escrow agreements, between Owner and Senior Lender for the disbursement, if any, of the proceeds of Senior Lender's loans;
- (e) Senior Lender in making disbursements pursuant to any such agreement is under no obligation or duty to, nor has Senior Lender represented that it will see to the application of such proceeds by the person or persons to whom Senior Lender disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;
- (f) Subordinate Lenders intentionally and unconditionally subordinate the Subordinate Lenders Documents and the Subordinate Lenders' right to payments under the Subordinate Lenders Documents and intentionally and unconditionally subordinate any and all other rights, restrictions, agreements, liens or charges in favor of Subordinate Lenders in favor of the lien or charge upon the Property of the Senior Lender Documents. Subordinate Lenders understand that in reliance upon, and in consideration of, this Agreement, specific concessions are being and will be made by Senior Lender, and as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this Agreement. Subordinate Lenders shall not modify or amend in any way any of the Subordinate Lenders Documents without first obtaining the written consent of Senior Lender;
- (g) Subordinate Lenders acknowledge that no violation, default or event of default (or events which would become such with the giving of notice or passage of time or both) currently exist under the Subordinate Lender Documents;
- (h) Subordinate Lenders agree to notify Senior Lender within 30 days after Subordinate Lender has knowledge of a breach, default or event of default under the Subordinate Lender Documents; and
- (i) The undersigned hereby acknowledges and agrees that its agreement with Owner, and any terms and conditions thereof, whether express or implied, are solely between it and Owner and are of no concern to Senior Lender. Senior Lender is and will be, throughout the terms of its loans and modification, extension or renewal thereof, under no duty or obligation to assure compliance with the terms and conditions of any agreement between Owner and undersigned; nor will Senior Lender be under any obligation or duty to take any action because of any knowledge it has or may have regarding any breach by Owner. The undersigned further agrees, notwithstanding anything to the contrary in the law, equity or its agreement with Owner, that the subordination of its interest is not subject to compliance, substantial or otherwise, with any provision of such agreement with Owner, whether express or implied. The undersigned acknowledges that Senior Lender considers this acknowledgment and agreement to be a material condition for making its loan with Owner.

- (j) As required pursuant to Section 33334.14(a)(4) of the California, Health and Safety Code, Beneficiary has determined that an economically feasible alternative method of financing, refinancing or assisting the project situated or to be situated on the Property, on substantially comparable terms and conditions to the Subordinate Lender Documents, without subordination, is not reasonably available.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION, WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENTS OF THE LAND. IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS SUBORDINATION AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT THERETO.


[signatures begin on following page.]

City:

CITY OF FRESNO



Approved as to Form:

 _____ (Robert Cayle - IDCA)

Add Notary

Agency:

REDEVELOPMENT AGENCY OF THE CITY OF FRESNO

Marlene M. G.

Approved as to Form:

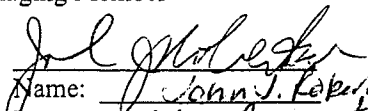
Robert Coyle (Robert Coyle - DCA - ex officio)

Add Notary

Owner:

MARTIN LUTHER KING SQUARE, LLC,
a California limited liability company

By: **A.F. Evans Company, Inc.,**
a California corporation,
its Managing Member

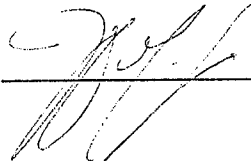
By: 
Name: John J. Robertson
Its: Vice President

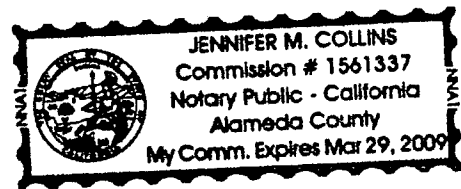
Add Notary

State of California)
)
County of Alameda)

On April 20, 2006 before me, Jennifer M. Collins, Notary Public, personally appeared John J. Robertson 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 signature(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.

Signature  (Seal)



ACKNOWLEDGMENT

State of California
County of Fresno

On April 11, 2006, before me, Carol Borunda, Notary Public,
(here insert name and title of the officer)

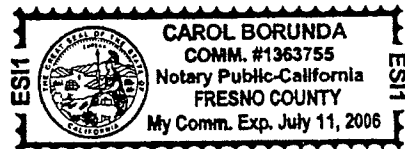
personally appeared Jon Ruiz

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~~ signature~~(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.

Signature

Carol Borunda



(Seal)

ACKNOWLEDGMENT

State of California
County of Fresno

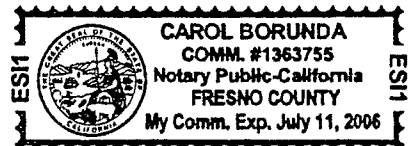
On April 12, 2006, before me, Carol Borunda, Notary Public,
(here insert name and title of the officer)

personally appeared Jon Ruiz

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~~ signature~~(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.

Signature Carol Borunda



(Seal)

ACKNOWLEDGMENT

State of California
County of Fresno

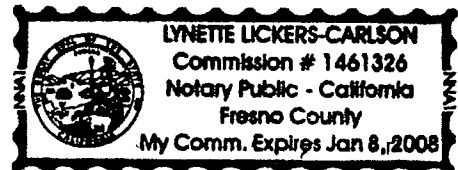
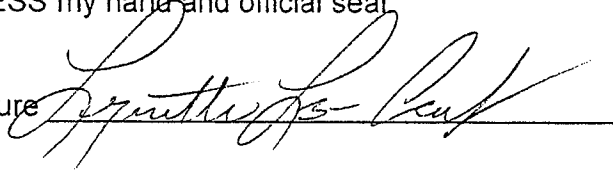
On April 12, 2006 before me, Lynette Lickers-Carlson Notary Public,
(here insert name and title of the officer)

personally appeared Markne Murphey

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 signature(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

Signature



(Seal)

EXHIBIT "A"
LEGAL DESCRIPTION

The Property is located in the City of _____, County of _____, State of
California and is described as follows:

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Fresno, County of Fresno, State of California, described as follows:

PARCEL 1:

PARCEL D, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 72-36 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON AUGUST 8, 1972, IN BOOK 4 OF PARCEL MAPS PAGE(S) 10 AND 11 AND AS PER CERTIFICATE OF CORRECTION RECORDED MAY 9, 1973 IN BOOK 6162, PAGE 550 OF OFFICIAL RECORDS.

PARCEL 2:

PARCEL B, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 71-39 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON JUNE 27, 1972, IN BOOK 3 OF PARCEL MAPS PAGE(S) 86.

PARCEL 3:

PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 71-39 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON JUNE 27, 1972, IN BOOK 3 OF PARCEL MAPS PAGE(S) 86.

APN: 478-030-54 (Parcel 1), 478-114-36 (Parcel 2) and 478-114-37 (Parcel 3)

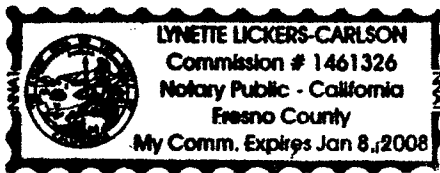
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

SS.

On April 10 2006, before me, Lynette Lickers-Carlson, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Marlene Murphy,
Name(s) of Signer(s)



☒ personally known to me

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

20

ACKNOWLEDGMENT

State of California
County of Fresno

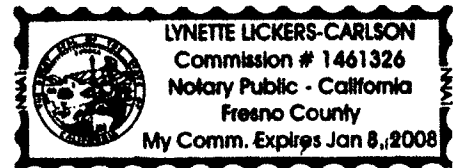
On April 12, 2006 before me, Lynette Lickers-Carlson, Notary Public,
(here insert name and title of the officer)

personally appeared Marlene Morpley

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 signature(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.

Signature Lynette Lickers-Carlson



(Seal)

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ACKNOWLEDGMENT

State of California

County of Fresno

On April 12, 2006, before me, Carol Borunda, Notary Public,
(here insert name and title of the officer)

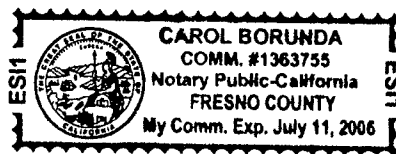
personally appeared Jon Ruiz

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~~ signature~~(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.

Signature

Carol Borunda



(Seal)

45

Exhibit “B”
Regulatory Agreement

9



FRESNO County Recorder

Robert C. Werner

DOC- 2006-0090190

Acct 5-First American Title Insurance Company

Friday, APR 28, 2006 11:09:52

Ttl Pd \$0.00

Nbr-0002167987

JZG/R3/1-9

Recording Requested By:
First American Title

DECLARATION OF RESTRICTIONS

Recording Requested and When Recorded Return to:

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

City of Fresno
Attn: Housing Manager
2600 Fresno St., Room 3076
Fresno, CA 93721

1534390

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

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, ("Declaration"), is executed as of this 4-28-2006 day of April 2006, by Martin Luther King Square, LLC, a California limited liability company, ("Declarant"), in favor of the Redevelopment Agency of the City of Fresno, a California public body corporate and politic, ("RDA") and the City of Fresno, a California municipal corporation, ("City"), jointly and severally. The RDA and City are collectively referred to as the "Beneficiaries".

WHEREAS, Declarant is the owner of the real estate in the county of Fresno, state of California, located at 911 East Belgravia Avenue, APNs [478-030-54 and 478-114-36 and 478-114-37], which is more particularly described in Exhibit "A", attached hereto and made a part hereof, including the improvements thereon (the "Property"); and

WHEREAS, Declarant and Beneficiaries have entered into a certain April 4-28-2006 2006 Owner Participation Agreement, recorded as Instrument No 04/28/2006 20060090189 in the Official Records of Fresno County, California, ("Agreement"), whereby Declarant agrees to rehabilitate and maintain certain rental housing affordable to low and very low-income families, subject to the terms and conditions set forth in the Agreement; and

WHEREAS, in addition to the covenants and conditions contained in the

Agreement, the Declarant has agreed at the special instance and request of the Beneficiaries and upon good and sufficient consideration, to impose certain California Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.) and HOME Act (Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended; 24 CFR Part 92) affordability requirements upon 91 Units upon the Property funded under the Agreement, which affordability restrictions must be enforceable for a fifty-five (55) year period; and

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

NOW THEREFORE, Declarant declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the Martin Luther King Square Project, the City's HOME Program obligations and activities, the RDA's Community Redevelopment Law and Plan Area obligations including RDA's obligations set forth at California Health & Safety Code sections 33334.2 et seq. and 33413 (a) with respect to housing set aside funds and replacement dwelling units at affordable rent within the jurisdiction of the RDA. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, will inure to the benefit of the Beneficiaries, and will be enforceable by them jointly and severally. Any purchaser under a contract of sale or other transferee of an interest covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration for the period of fifty-five (55) years running from and after recordation of Beneficiaries' Certificate of Completion constituting the Affordability Period.

1. Declarations. Declarant hereby declares that the Property is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Property, the Martin Luther King Square Project, the City's HOME Program obligations set forth at Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended; 24 CFR Part 92, the RDA's Community Redevelopment Law and Plan Area obligations including RDA's obligations set forth at California Health & Safety Code sections 33334.2 et seq. and 33413 (a) regarding housing set aside funds and replacement dwelling units at affordable rent within the

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jurisdiction of the RDA, and are established and agreed upon for the purpose of enhancing and protecting the value of the Property and in consideration the Agreement and the above recitals. All terms not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

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

a. Declarant for itself and its successor(s) on title covenants and agrees that from the date of recordation of Beneficiaries's Certificate of Completion until the expiration of the Affordability Period it shall cause the 91 Project Units funded under the Agreement to be used as Affordable Rental Housing and affordable replacement dwellings as provided for in the Agreement. Unless otherwise provided in the Agreement, the term affordable rental housing shall include without limitation compliance with the following requirements:

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

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

Income Requirements. Each of the 91 Units constituting Affordable Rental Housing upon the Property may be leased only to (a) natural person(s), fourteen (14) of which may have annual household incomes at the time of initial occupancy not greater than sixty percent (60%) and seventy-seven

(77) of which may have annual household income at the time of initial occupancy is not greater than fifty percent (50%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent with the rules established by the California Tax Credit Allocation Committee for the Martin Luther King Square Project and applicable HOME Act/California Redevelopment Law.

Injunctive Relief and Recapture. Should any of the 91 Units constituting Affordable Rental Housing upon the Property not continue to be, at the time of initial occupancy, the principal residence of a Household that qualifies as a low-income or very low-income Household, during the period of Affordability, such Unit(s) shall be made available for subsequent lease only to Households that qualify as a low-income or very low-income for use as the Household's principal residence.

b. Item (a) above is hereinafter referred to as the Covenant and Restriction.

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

4. Acceptance and Ratification. All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the Covenant and Restriction. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Covenant and Restriction, as such may be amended or supplemented from time to time, is accepted and ratified by such future owners, tenant or occupant, and such Covenant and Restriction shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Covenant and Restriction was recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. Provided, however, if this Declaration has been subordinated to a deed of trust and the Property is transferred by foreclosure to the holder of the deed of trust or an assignee of such holder, who is not Declarant or an affiliate of Declarant, then this Declaration shall be of no further force and effect except

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that if the Property is subsequently transferred to any party prior chargeable with this Declaration, then the Declaration shall revive.

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

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

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

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

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

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

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

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

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

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

///


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

"DECLARANT"

MARTIN LUTHER KING SQUARE, LLC
a California limited liability company

By A.F. Evans Company, Inc.
A California corporation,
Its managing member

By: 
Name: John J. Robertson
Title: Vice President

State of California)
)
County of Alameda)

On April 20, 2006 before me, Jennifer M. Collins, Notary Public, personally appeared John J. Robertson 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 signature(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.

Signature _____ (Seal)

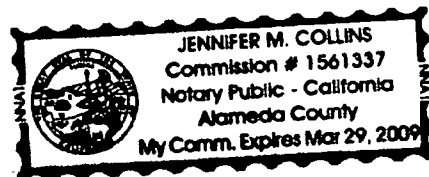
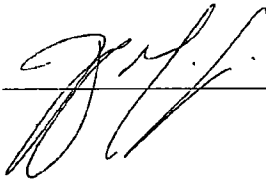


EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Fresno, County of Fresno, State of California, described as follows:

PARCEL 1:

PARCEL D, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 72-36 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON AUGUST 8, 1972, IN BOOK 4 OF PARCEL MAPS PAGE(S) 10 AND 11 AND AS PER CERTIFICATE OF CORRECTION RECORDED MAY 9, 1973 IN BOOK 6162, PAGE 550 OF OFFICIAL RECORDS.

PARCEL 2:

PARCEL B, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 71-39 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON JUNE 27, 1972, IN BOOK 3 OF PARCEL MAPS PAGE(S) 86.

PARCEL 3:

PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 71-39 FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA ON JUNE 27, 1972, IN BOOK 3 OF PARCEL MAPS PAGE(S) 86.

APN: 478-030-54 (Parcel 1), 478-114-36 (Parcel 2) and 478-114-37 (Parcel 3)