City of FRESNO

REPORT TO THE REDEVELOPMENT AGENCY

AGENDA ITEM NO. 10:45 AM #2B
COUNCIL MEETING: 10/29/09
APPROVED BY
(Executive Director)

DATE: October 29, 2009

FROM: MARLENE MURPHEY, Executive Director

SUBJECT: Recommend approval of the First Amendment to an Exclusive Negotiation Agreement ("Amendment") between the Redevelopment Agency of the City of Fresno and EAH Housing Inc., a California Non-Profit 501 (c)(3) Corporation ("Developer") to provide for the creation and environmental analysis of a "Sequoia Village Expanded Footprint" including an additional six months on the initial term, as well as providing for the acquisition of a single family residential property by Developer, adjacent to the Agency-owned property, in the Southwest GNRA.

EXECUTIVE SUMMARY

Redevelopment Agency Staff recommend approval of the First Amendment to an Exclusive Negotiation Agreement with EAH Housing Inc., a California Non-Profit 501 (c)(3) Corporation. The Amendment contains a provision to extend the term of the Agreement for a period of six months, plus a provision requiring the developer to produce an expanded project footprint entitled the "Sequoia Village Expanded Footprint" which would require the purchase of a single family residential (SFR) parcel that is surrounded on three sides by an Agency-owned parcel. The Agency proposes to make a loan to the Developer for acquisition of the SFR parcel in an amount not to exceed $200,000 plus closing costs, payable from the Low- and Moderate Income Housing Fund.

The Agency entered into an ENA with EAH on November 16, 2008 for the development of affordable housing on about 7.5 acres of Agency-owned property at Elm Avenue and Annadale Avenue in the Southwest GNRA.

Since the approval of the ENA in 2008, Agency staff has been working with the Developer to prepare its entitlement application and determine the feasibility of the project. The Developer submitted the entitlement application on February 9, 2009. The public draft of the project's Mitigated Negative Declaration was published on March 27, 2009, and the comment period closed on April 20, 2009.

On March 24, 2009, the Agency Board approved a co-application with EAH for Proposition 1C funding to help finance the project, however, the application did not receive an award.

EAH has continued to work on the development of the project and has determined that one of the keys to project feasibility is to complete the site acquisition of the "Sequoia Village Expanded Footprint" that squares off and improves the entire site and avoids an otherwise

unusable remnant strip of land at the southeast corner of the parcel, as originally configured. They have entered a Standard Purchase Agreement with the owner of the subject property, which is surrounded on three sides by the Agency-owned property. It is the intent of the Developer to explore (a) incorporating the property including the structure into the project design, or (b) relocating the structure to a suitable single family home parcel in the neighborhood.

Agency staff recommends amending the Agreement to provide the Developer the opportunity to acquire the additional parcel to expand the project footprint. If the Agreement does not proceed to a DDA, the Developer will convey the parcel to the Agency by Grant Deed at no additional cost to the Agency and the Agency will extinguish the Note. If the project does proceed to a DDA, the Agency note will become part of the overall Agency financial assistance to the project. It is in the best interest of the Agency for the properties to be combined to make the project more feasible, as it eliminates a hard-to-develop strip of property along the southeastern corner of the property. In the event that the EAH project does not proceed, it is in the Agency's long term interest to have an optimum site.

The additional six months in term would allow the Developer to redesign and resubmit the entitlement application on the project for the expanded site and to submit an application for Low Income Housing Tax Credits (LIHTC) in the Spring 2010 round. The subject amendment and loan has been environmentally assessed under CEQA by the Agency and a determination that the project is categorically exempt from CEQA was made under Section 15378 as this is a finance transaction only. A Notice of Categorical Exemption has been prepared.

BACKGROUND

Through a negotiated agreement with Sequoia Health, the Agency received 7.5 acres of vacant land on Annadale Avenue, just west of Elm Avenue. In FY 07/08, the Agency issued a Request for Proposals for a potential housing development on the property. The Agency Board approved the Agency's selection of EAH Housing in September 2008 and directed the Agency to move forward with negotiating an Exclusive Negotiation Agreement (ENA) with the Developer. The Agency entered into an ENA with EAH on November 16, 2008.

Agency staff has been working with the Developer to coordinate and participate in pre-planning activities with City staff including preparation of its entitlement application. On March 24, 2009, the Agency Board approved a co-application with EAH for Proposition 1C funding to help finance the project. The Proposition 1C application was submitted April 1, 2009. However, in late May, 2009 the State determined that the project site was not eligible for Prop 1C Urban Infill funds because the site is not substantially urbanized, i.e. developed on at least 75% of its perimeter. The loss of this potential funding source has made the developer look more closely at other possible funding sources.

Additionally, while the project Site Plan application has been submitted to the City, the

Developer had an opportunity to acquire a single family home parcel within the project footprint that without incorporation causes the project site to be less efficient and irregular. Parcel and acquisition will prompt a redesign and amended entitlement application. The developer – over the coming months – will be working on the acquisition of the single family home parcel; completion of entitlements, and a reworking of the project financing in anticipation of submitting a 9% LIHTC application in early 2010.

The Amendment was reviewed by the Housing and Community Development Commission at its September 14, 2009 meeting. The Commission voted to recommend approval.

FINANCING

The funds for the Agency loan to the Developer are available in the Agency's Low- and Moderate Income Housing fund.

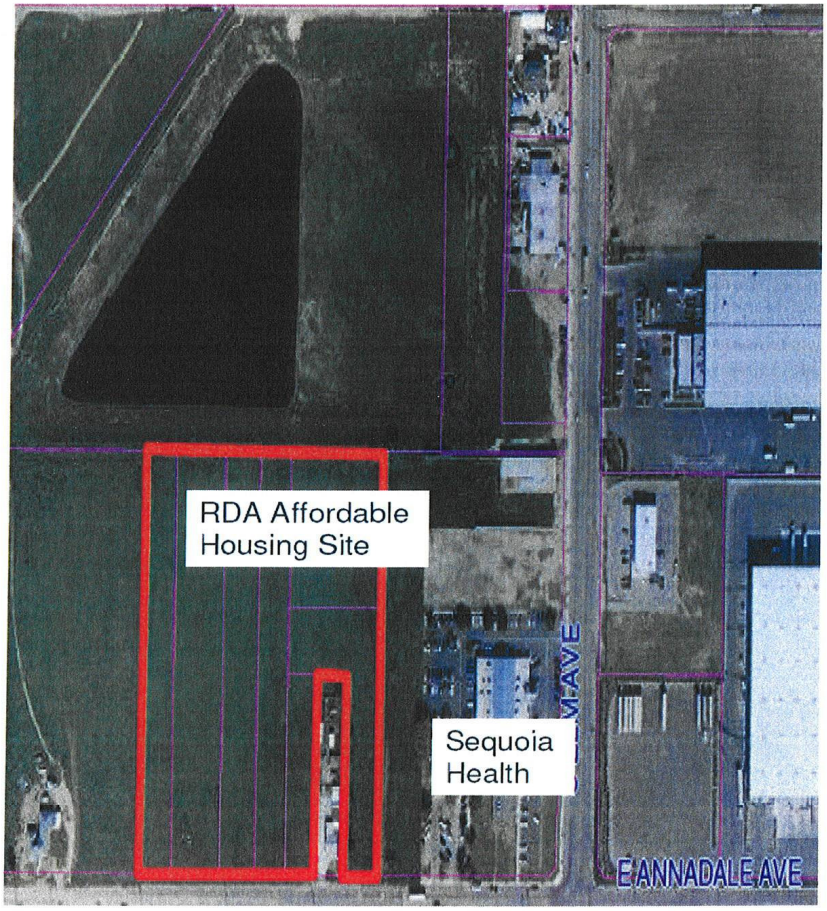
Attachments:

1. Area Map
2. First Amendment to an Exclusive Negotiation Agreement

Exhibit A

Study Area Map

SEQUOIA VILLAGE AFFORDABLE HOUSING PROJECT AREA



FIRST AMENDMENT TO AN EXCLUSIVE NEGOTIATION AGREEMENT
Sequoia Village Affordable Housing Project

This FIRST AMENDMENT TO AN EXCLUSIVE NEGOTIATION AGREEMENT (this "Amendment") is dated, for reference purposes, as of _____, 2009 and is entered between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic, organized and existing under the laws of the State of California, ("RDA" or "Agency"), and EAH Housing Inc, a California Non-profit 501 (c)(3) Corporation (""Developer"), on the terms, and subject to the conditions, set forth below. The Agency and Developer are sometimes referred herein collectively as the "Parties," and either individually as a "Party."

RECITALS

A. On November 16, 2008, Agency and Developer entered into that certain Exclusive Negotiation Agreement ("Original Agreement") pursuant to which Agency and Developer agreed to work mutually on the development of certain parcels of real property, comprising a total of approximately 7.4 +/- acres (collectively, the "Site"), on the north side of Annadale Avenue west of Elm Avenue in the City of Fresno. The Site is depicted on the "Study Area Map," attached to and incorporated in this Agreement as Exhibit A.

B. The original Site, as designated on Exhibit A, lies within the Southwest Fresno G.N.R.A. Redevelopment Project Area (the "Project Area"), and is subject to the Project Area's governing redevelopment plan (the "Redevelopment Plan").

C. The parcel(s) comprising the Site are owned by the Agency.

D. The Developer proposes to determine the feasibility of developing the Site as a mix of senior and family/multiple-family affordable rental housing units ("Project") that will meet the needs of the areas diverse population, and to negotiate with the Agency the potential terms of a Disposition and Development Agreement (the "DDA") to develop and operate the Project on the Site.

E. Subject to the Agency's compliance with Community Redevelopment Law ("CRL"), the Parties intend to negotiate mutually acceptable terms and conditions in the DDA that will define the Parties' rights, obligations and participation in developing and operating the Project on the Site.

F. Developer desires, for the purpose of maximizing the development potential of the Agency's 7.4 +/- acre Site, for the Developer to acquire a single family home site surrounded on three sides by the Agency site, the "Munoz Parcel," prior to the approval of the DDA, so that the Developer may entitle and

undertake the environmental analysis under CEQA of the larger site, and the Agency desires to assist the acquisition on the terms and conditions herein, with annually allocated and available funds.

G. Due to the potential redesign of the Site for the Project attributed to the acquisition of the Munoz Parcel, the Parties also desire to extend the term of this Agreement for a period of six (6) months.

H. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Original Agreement. The Original Agreement, as modified by this Amendment, is hereinafter referred to as the "Agreement."

I. The acquisition of the Munoz Property has been determined to be exempt from CEQA review pursuant to Section 15378 of the CEQA Guidelines.

NOW, THEREFORE, the parties hereto agree as follows:

AGREEMENT

Section 1. The first sentence of "Section 3. Negotiation Period, Extensions, Termination" is revised to read as follows:

The Parties will negotiate for 18 months (540 calendar days) from the date that the Agency executes this Agreement (the "Negotiation Period"), unless negotiations are terminated sooner as provided herein.

Section 2. The following Section 11.10 shall be added:

11.10 Sequoia Village Expanded Footprint. As additional consideration for the exclusive negotiating rights provided under this Agreement, even if the Parties do not successfully negotiate and enter into a DDA in accordance with this Agreement, before the expiration of the Negotiation Period, the Developer may by voluntary conveyance acquire the Munoz Parcel shown in Exhibit A-1 and described in Exhibit "C" (Legal Description of Munoz Parcel), and deliver to the Agency a Promissory Note (Exhibit "D") not to exceed $205,000, the amount of the purchase price and closing costs. Agency may loan Developer such amount and record a first position insured (in the amount of the loan) Deed of Trust (Exhibit "E") against the property. If the Project does not proceed to a DDA under the schedule outlined in the Schedule of Performance, Developer, within 30 days of Agency request, shall transfer the Munoz Parcel to Agency by Grant Deed in return for a cancellation of the Promissory Note. If the Project does proceed to a DDA, then the amount of the Agency Loan secured by the

Deed of Trust shall be considered financial assistance to the project, pursuant to the DDA.

Section 3. Exhibit A-1, Map of Sequoia Village Expanded Footprint, attached hereto and incorporated herein, is hereby added.

Section 4. Exhibit B, Revised Performance Schedule, attached hereto and incorporated herein, is hereby amended to include new milestone dates.

Section 5. Exhibit C, Legal Description of Munoz Parcel, attached hereto and incorporated herein is hereby added.

Section 6. Exhibit D, Interest Earning Promissory Note, attached hereto and incorporated herein is hereby added.

Section 7. Exhibit E, Deed of Trust, attached hereto and incorporated herein is hereby added.

Section 8. The Developer shall have the property Seller execute a waiver of relocation, and any and all right, benefits and protections provided by Section 1542 of the California Civil Code, prior to the close of escrow and the funding of any Fresno Redevelopment Agency loan. Developer warrants and represents that, upon the date, if any, that the Agency acquires the Munoz property, the property shall be unoccupied.

Section 9. It is the intent of the Developer to explore (a) incorporating the property including the structure into the project design, or (b) relocating the structure to a suitable single family home parcel in the neighborhood.

Section 10. Except as otherwise provided, all terms and conditions of the Original Agreement shall be as stated therein.

IN WITNESS WHEREOF the Agency and Participant have executed this Agreement as of the date first written above.

* * * *

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Signatures on Next Page.]

AGENCY:

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

By: _____
Marlene Murphey, Executive Director

Dated: _____, 2009

DEVELOPER:

EAH Housing Inc.,
a California non-profit corporation

By: _____
Title: _____

Dated: _____, 2009

ATTEST:
REBECCA KLISCH

City Clerk and Ex Officio Clerk
of the Agency

By:
_____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ

City Attorney and Ex Officio
Attorney

By:
_____
Deputy

Attachments:

Exhibit A-1, Map of Sequoia Village Expanded Footprint
Exhibit B, Revised Performance Schedule
Exhibit C, Legal Description of Munoz Parcel

Exhibit A

Study Area Map

SEQUOIA VILLAGE AFFORDABLE HOUSING PROJECT AREA

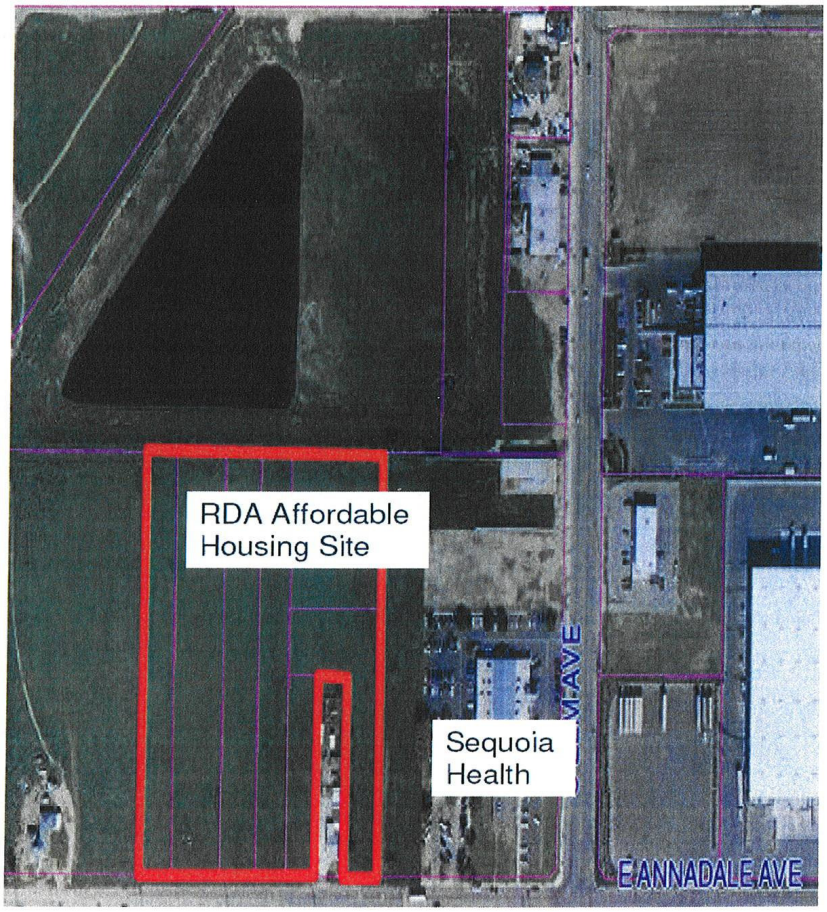


Exhibit B

Revised Performance Schedule

Developer Responsibilities. During the Negotiation Period, and without limiting any other provision of the Agreement as modified by this First Amendment, the Developer shall complete the following tasks, at its sole cost and expense, in furtherance of the negotiation process, by the times stated. The times stated shall run from the Effective Date of this Amendment. If the Parties enter an agreement extending the Negotiation Period and updating this Performance Schedule, the amendment and updated Performance Schedule will supersede this Performance Schedule.

1. To the extent not already identified in Section 7, identify in writing to the Agency the names of the Developer's decision makers and its lead negotiators, the decision-making authority for each such person and the decisions that must be made by the Developer's governing body; the names of its design consultants, market consultants, architect, engineer, financial consultant (if any), legal counsel, building contractor, building management company and any other development team members, to the extent no previously provided. (Days 1-30)

2. Prepare and submit a phasing, ownership, and operations plan for any/all phases. (Days 1-90)

3. Prepare a revised schematic plan to include the general land use designations, proposed land use designations, number, type, density, size (square footage), and proposed location of residential units, resident services, site amenities, and number, type and proposed location of parking spaces and all other information, sufficient to determine the entitlement tract necessary. (Days 1-90)

4. Prepare a Project economic model to include development costs, income, supportable investment and public revenues expected to be generated by the Project. The economic model will be presented in sufficient detail to enable the Agency to estimate property tax and other public revenues to be generated by the Project and evaluate the economic feasibility of the proposed Project. (Days 30-90)

5. Submit a financial plan for the Project, including a statement of overall construction costs, source and availability of equity capital, construction and permanent financing, and the scope and type of proposed Agency investment the Developer deems necessary. (Days 90-150)

6. Prepare and submit to the Agency evidence of market support for the Project components. Such evidence may include a market study, letters of tenant interest or

other market data to allow the Agency to reach conclusions as to the market interest for the Project. (Days 1-120)

7. Submit to the Agency proposed DDA deal points, a general development plan, the economic parameters of the development, and a Project scope description, including any proposed phases thereof, sufficient for preparing an Initial Study and conducting other appropriate CEQA review. The proposed DDA deal points shall be consistent with the minimum DDA deal points set forth in the Agreement, and shall include a Project development and implementation schedule. (Days 120-150)

8. Cooperate with the Agency in the preparation of a Proposition 1-C Infill Infrastructure Grant application within the parameters of the Notice of Funds Availability including the preparation and submittal entitlement and discretionary land use applications (within the parameters of the Proposition 1-C Infill Infrastructure Grant Notice of Funds Availability)

9. Complete negotiation of DDA. (Within Negotiation Period)extension.)

Agency. During the Negotiation Period, and without limiting any other provision of this Agreement, the Agency shall complete and/or work to complete the following tasks, all in furtherance of the negotiation process, by the times stated. Unless otherwise indicated, all costs shall be the responsibility of the Developer. The times stated shall run from the Effective Date of this Agreement. If the Agency and the Developer enter an agreement extending the Negotiation Period and updating the Performance Schedule, the updated Performance Schedule shall supersede this Performance Schedule.

1. Provide the Developer with an inventory of existing public infrastructure and its locations, condition and capacity (Agency cost, unless otherwise agreed in writing). (Days 1-30)

2. Provide, or assist the Developer in obtaining, available and existing public records such as, plans, studies, reports and documents relating to the Site. Such information may include, without limitation, EIRs, the General Plan, utility plans, architectural historic surveys, specific plans, soils reports, zoning, the Redevelopment Plan, owner participation rules, any Agency adopted policies, and other information that may assist the Developer in evaluating the Site and the Project. (Days 1-30)

3. Conduct a review of the Redevelopment Plan to determine possible amendments, e.g., land use and land assembly, timing to adopt any amendments, and financial impacts thereof relative to the proposed Project (Agency cost). (Days 1-60)

4. Cooperate with and assist Developer in determining a description and timeline for the entitlement track likely to be necessary to enable the project to proceed in the timeliest manner. (Days 1-60)

5. If and as directed by the Agency Board, prepare an initial study to determine the type and scope of environmental assessment necessary for the Project (at Developer cost under any Consultant/Services Agreement). (Days 1-150)

6. Cooperate with and assist Developer in determining the land disposition schedule and method. (30-150)

7. Pay for any redevelopment plan amendments that the Agency may determine appropriate, solely from annually allocated and available funds (Following submission of the DDA deal points and other information to the Council and the Agency Board, and direction to proceed with any such plan amendments).

8. Complete environmental review required for the Project under CEQA (at Developer cost under any Consultant/Services Agreement). Complete negotiation of DDA. (Within Negotiation Period, including any extension.)

9. Identify a well site and provide all necessary funding for the acquisition and improvement of said well site, as required by the Fresno water department.

Exhibit C
Legal Description of Munoz Parcel

LEGAL DESCRIPTION

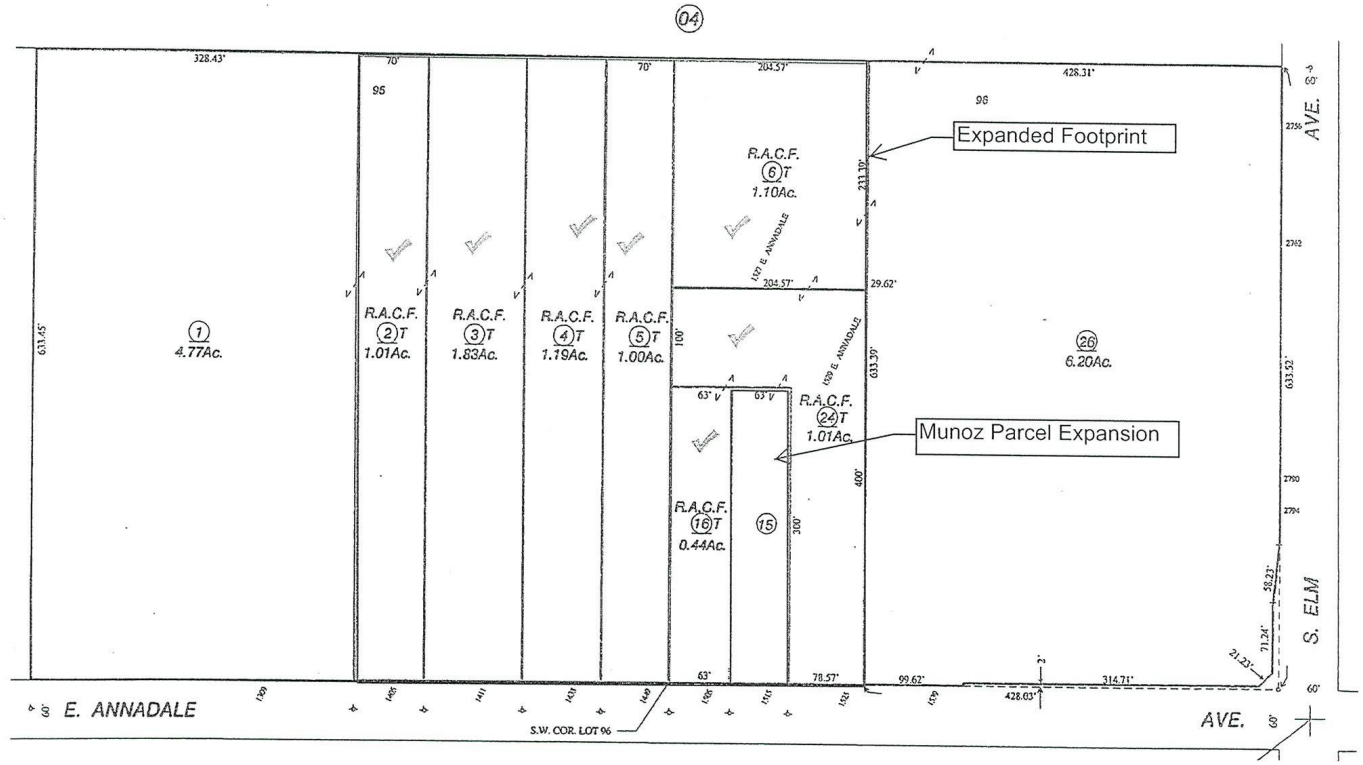
The land referred to herein is situated in the State of California, County of Fresno, City of Fresno, and described as follows:

That portion of Lot 96 of Fresno Colony, in the City of Fresno, County of Fresno, State of California, according to the map recorded in Book 2 Page 8 of Plats, Fresno County Records, described as follows:

Beginning at a point on the East line of Section 21, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, distant thereon 30 feet Northerly from the East 1/4 corner of said Section; thence Westerly parallel with the East and West 1 /4 Section line of said Section 21 and distant 30 feet Northerly therefrom to a point 126 feet Easterly from the West line of said Lot 96 of Fresno Colony, said point being the true point of beginning; thence Northerly parallel with said Westerly line, a distance of 300 feet; thence Westerly parallel with said East and West 1/4 section line of said Section 21, a distance of 63 feet; thence Southerly parallel with the West line of said Lot 96 a distance of 300 feet; thence East 63 feet to the point of beginning.

APN: 479-270-15

(End of Legal Description)

Exhibit A-1

Map of Sequoia Village Expanded Footprint