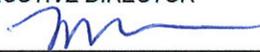




**REPORT TO THE REDEVELOPMENT AGENCY**

AGENDA ITEM NO. <i>10:45am "E"</i> BOARD MEETING: 3/3/2011
APPROVED BY
EXECUTIVE DIRECTOR 

**DATE:** March 3, 2011

**FROM:** MARLENE MURPHEY, Executive Director

**BY:** DEBRA BARLETTA  
Project Manager

**SUBJECT:**

Presented to Fresno Redevelopment Agency  
Date 3/3/11  
Disposition \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 1 Adopt a finding of a Categorical Exemption per staff determination, pursuant to Section 15332 Class 32 of the CEQA Guidelines, for the development of a 28 unit mixed use residential project located at L and San Joaquin Streets.
- 2 Recommend approval of an Owner Participation Agreement (OPA) between the Redevelopment Agency of the City of Fresno and FFDA Properties, LLC for the development of a new 28 unit residential project located at L Street and San Joaquin Street within the Fulton Redevelopment Project Area.

**EXECUTIVE SUMMARY**

Redevelopment Agency Staff recommend that the Agency Board approve the attached Owner Participation Agreement with FFDA Properties, LLC (the "Developer") which would lead to the development of a housing development in the Fulton Redevelopment Project Area - Cultural Arts and Entertainment District by authorizing Agency participation in the L Street Project at L and San Joaquin Streets, in an amount not to exceed \$1,440,000, payable from the Low- and Moderate Income Housing Fund.

This project is a continuation of the Agency's revitalization efforts in the Fulton Redevelopment Project Area. Public/private partnerships have produced six major mixed-income residential development projects: H Street, Vagabond, Iron Bird and Broadway Lofts which are complete; Fulton Village and Mayflower Lofts are currently under construction. With the addition of 1612 Fulton and the proposed subject project at L and San Joaquin Streets there will be a total of 300 new housing units in the Uptown Area, with a mix of market and affordable rates.

The proposed new multi-family project will consist of approximately 39,844 square feet of gross building square feet on a parcel of 56,028 square feet. The Developer proposes to develop twenty eight (28), three bedroom, two and one-half bath, 1,423 square feet, townhome units. Nine (9) of the units (approximately 32%) shall be affordable to moderate income households for a period of 55 years.

In order to make the L Street Project feasible, the Developer has requested to enter into an Owner Participation Agreement ("Agreement") with the Agency, similar to the prior agreements.

The Agreement is conditioned on the Developer acquiring fee interest of the entire site; receiving all land use and development approvals, variances and permits required by the Agreement; receiving the appropriate environmental assessment pursuant to the California Environmental Quality Act (CEQA); and, securing any additional public financing commitments to make the project feasible, if necessary. Agency is pursuing a finding of a Categorical Exemption, pursuant to Section 15332 Class 32 of CEQA Guidelines, for the L Street Project as an In-Fill Development Project.

The Project has been environmentally assessed and has been determined to be eligible for a Categorical Exemption under Section 15332 Class 32 of the California Environmental Quality Act (CEQA). Under Section 15332/Class 32, an in-fill development project meeting the following conditions is exempt from CEQA: a) the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; b) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; c) the site has no value as habitat for endangered, rare or threatened species; d) approval of the project would not result in any significant effects relating to traffic, noise air quality, or water quality; and, e) the site can be adequately served by all required utilities and public services.

## **BACKGROUND**

This Agreement with FFDA Properties, LLC is for the purpose of developing a housing project in the Fulton Redevelopment Project Area Cultural Arts and Entertainment District. Over the past several years the Agency has worked with this Developer to facilitate the public-private projects for much needed housing and mixed use development in the Fulton Redevelopment Project Area Cultural Arts and Entertainment District. These projects include Vagabond Lofts, a \$10 million development consisting of 38 residential units with approximately 10,000 square feet of small commercial space; H Street Lofts, a \$3.5 million development of 26 live/work lofts; Iron Bird Lofts, a \$15 million development consisting of 80 housing units and 15,000 sq. ft. of commercial space; Broadway Lofts, a \$4,000,000 development consisting of 22 residential units; Mayflower Lofts, a \$2.3 million development consisting of 15 residential units; and, Fulton Village, a \$7,000,000 development consisting of 68 residential units with approximately 1,300 square feet of commercial space. With the addition of 1612 Fulton Street and the proposed subject project at L and San Joaquin Streets there will be a total of 300 new housing units in the Uptown Area, of which 66 have affordable covenants. In addition the projects represented about 28,000 square feet of commercial space and about \$65.5 million in value.

The proposed new multi-family project will consist of approximately 39,844 square feet on a parcel of 56,028 square feet. The developer proposes to develop twenty eight (28), three bedroom, two and one-half baths, 1,423 square feet, townhome units. To date, the Developer has purchased a portion of the property with the balance currently in escrow. The project is proceeding through the City's Site Plan Review process.

In order to make the L Street Project feasible, the Developer has requested participation from the Agency. The Agreement will define the scope of work of the project and condition participation on the Developer acquiring fee interest of the entire site; receiving all land use and development approvals, variances and permits required by the Agreement; receiving the appropriate environmental assessment pursuant to CEQA; and, securing any additional public funds for the project, if necessary. The Developer is required to complete the project as proposed and dedicate nine (9) of the units, or thirty two percent (32%), as affordable to households earning no more than 120% of the area median income, for a period of 55 years. The affordable housing units will be integrated with the market rate units.

At their regularly scheduled meeting of February 23, 2011, the Housing and Community Development Commission unanimously recommended approval of this item.

## **FINANCING**

This dynamic project and the other Uptown Fulton and Cultural Arts District redevelopment projects highlight the necessity of layering public financing with private financing to develop pioneering projects needed to bring back vibrancy to downtown Fresno and create an environment where people can live, work, play, and enjoy Fresno's art's community.

The total development cost of the project is \$5,529,721. The Developer's financing plan calls for a permanent loan of \$2,743,174 (49.6% loan to cost), the \$1,440,000 Agency contribution (26% of cost) and 24.4% developer equity. With the Agency participation, the project makes a 5% return on the Developer's cash contribution in the project, less than a standard return. It assumes a 75% loan to value ratio for the construction loan.

The agreement proposes a grant of \$720,000 and a loan of \$720,000 interest-free and deferred for the first ten years. After the 10<sup>th</sup> year, it will be amortized on a 25 year amortization schedule with interest at 1% per annum and shall be due and payable in 35 years.

This \$5,529,721 project leverages \$2.84 in private investment for every dollar in Agency assistance.

This assistance serves to leverage the Agency's investment of Low- and Moderate Income Housing Funds by continuing to revitalize the Cultural Arts District. This investment further creates a downtown housing market that steadily grows to deliver the critical mass required to redevelop the area and create a vibrant, attractive, and desirable neighborhood.

This project will remove blight from the Uptown Fulton Area, stabilize the area, create new commercial space in the area, and deliver needed affordable housing units in close proximity to jobs, educational opportunities, and community resources. The Agency will additionally benefit from the receipt of 55 year affordability covenants for 9 moderate income units.

**Attachments:**

1. Area Map
2. Draft OPA



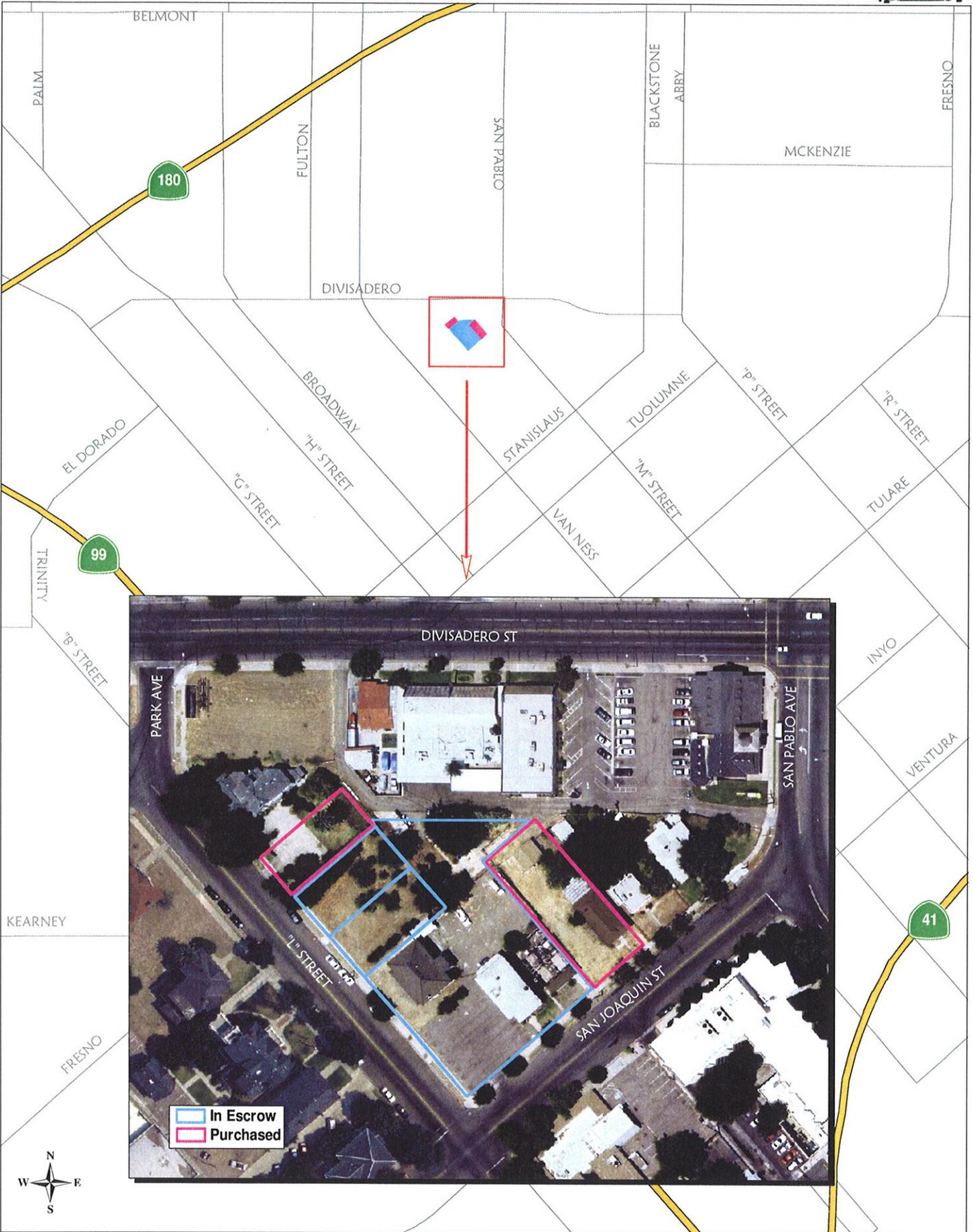
Schematic Panoramic Elevation w/ 1' Street

Proposed:  
**Two Story Residential Project**  
1718 L Street, Fresno, California  
February 22, 2011



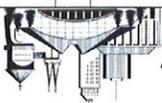
# San Joaquin & "L" Street Properties

# Location Map



# Uptown Area - Housing Projects

Redevelopment Agency  
of the City of Fresno





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

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(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: \_\_\_\_\_  
Its: Executive Director

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

OWNER PARTICIPATION AGREEMENT

by and between

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

and

FFDA PROPERTIES, LLC

L Street and San Joaquin Street  
Residential Rental Project  
Fresno, CA 93721

## ATTACHMENTS

1. Exhibit A: Legal Description of Property
2. Exhibit B: Schedule of Performance/Payment Schedule
3. Exhibit C: Budget/Financial Plan
4. Exhibit D: Certificate of Completion
5. Exhibit E: Scope of Development and Project Design
6. Exhibit F: Form of Regulatory Agreement and Declaration of Covenants and Restrictions
7. Exhibit G: Form of Promissory Note
8. Exhibit H: Form of Deed of Trust

## 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") and FFDA PROPERTIES, LLC, a California limited liability company ("Owner").

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### RECITALS

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

A. By authority granted under California Redevelopment Law (the "Law"), the Agency has prepared and is responsible for carrying out the redevelopment plan for the Freeway-99 Golden State Corridor Redevelopment Project Area (the "Plan").

B. To the extent provided in or allowed by the Law including Cal. H.&S.C. Sections 33334.2 and 33449, as provided by joint resolutions of the Fresno City Council and the Agency, findings and determinations pursuant to Health and Safety Code Section 33334.2.(g), the Plan and limited to the terms and conditions therein, the Agency may make improvements upon and/or 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, by variously: (1) allowing the use of Housing Set Aside Funds outside the Airport Area Revitalization, Central Business District, Central City Commercial Revitalization, Chinatown Expanded, Convention Center, Freeway 99-Golden State Corridor, Fruit/Church, Mariposa, Roeding Business Park, South Fresno Industrial Revitalization, South Van Ness Industrial, Southeast Fresno Revitalization, West Fresno I, West Fresno II, West Fresno III, redevelopment plans; (2) restricting the use of the Housing Set Aside Funds to certain of the Community Development Block Grant eligible areas of the City; (3) placing a priority on the use of the Housing Set Aside Funds from certain Project Areas to be used either within or adjacent to the Central Area or adjacent to certain Project Areas.

C. 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. Owner holds, or will acquire, all rights, title and interest in fee to the certain real property described in Exhibit "A" attached hereto and incorporated herein (the "Property"), including improvements located thereon which shall be improved by Owner as contemplated by this Agreement and known as the L Street Project located at L

Street and San Joaquin Street, Fresno, California (the "Project"). The Property and Project are located within the territorial jurisdiction of the Agency.

F. Owner proposes to develop a new residential rental project on the Property consisting of twenty eight (28) residential units. Nine (9) of the residential units (the "Affordable Units") are to be rented and preserved as Affordable Rental Housing.

G. Owner agrees to undertake improvements in accordance with the combined Performance and Payment Schedule described in Exhibit "B" attached hereto and incorporated herein (the "Performance and Payment Schedule").

H. To the extent Housing Set Aside Funds will exceed 50 percent of the cost of producing the Affordable Units, the Agency has determined based on substantial evidence, that the use of the Housing Set Aside Funds is necessary because the Agency or Owner of the Affordable Units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity. The Project is not feasible and cannot be completed and restricted to the affordable rental housing purposes and uses provided under Law and this Agreement absent the financial support of the Agency.

I. The Property and 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 solely through private financing, and are necessary to eliminate blight.

J. Agency is willing to assist Owner's construction of the Affordable Units by making available to Owner as a loan certain Housing Set Aside (Tax Increment) Funds in the amount of \$720,000 (the "Loan") as described in Section 1.26 and Project Grant of \$720,000 (the "Grant") as described in Section 1.20 upon the terms and conditions specified in this Agreement.

K. The Loan and Grant shall be disbursed in accordance with the schedule set out in Exhibit "B" to the Agreement and the Loan shall be repaid in accordance with the Promissory Note, an example of which is attached hereto as Exhibit "G". The Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement shall be evidenced by this Agreement, the Regulatory Agreement and Declaration of Covenants and Restrictions, attached hereto as Exhibit "F", and the Deed of Trust and Assignment of Rents, attached hereto as Exhibit "H," which shall be recorded against and run with and encumber the Property.

L. The Housing and Community Development Commission reviewed the Project and this Agreement on February 23, 2011 and recommended that the Agency Board approve it.

M. Agency has further determined this Project is in the best interests of, and will materially contribute to, Plan implementation. Further, Agency has found the Project: (i) will have a positive influence in the Plan Area, and surrounding environs; (ii) is in the vital and best interests of Agency 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 income housing available at affordable rent, as defined by Cal. H.&S.C. Sections 50052.5 and 50053, to persons and families of 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) all planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of low income housing; (ix) will comply with all owner participation rules and criteria of Agency and the Plan; and (x) will comply with any and all applicable review and other requirements of the City's Historical Preservation Commission.

N. The Owner and the Agency have determined that this Agreement is not subject to Article XXXIV of the California Constitution.

## **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 "ADA" means the Americans with Disabilities Act of 1990.
  - 1.2 "Affordability Period" means a period of fifty-five (55) years commencing from the date Agency records the Certificate of Completion.
  - 1.3 "Affordable Rental Housing" or "Affordable Units" means the Units available at affordable rent, as defined by Cal. H.&S.C. Section 50052.5 (4), to persons and families of moderate income, as defined in Cal. H.&S.C. Section 50093 of Code, consistent with Recital F above which requirements shall be enforceable by covenants running with the land. As used in this Agreement, the term "Affordable Moderate Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of one hundred ten percent (110%) of the Fresno Metropolitan Statistical Area Median Income adjusted for the family size appropriate for the Unit.

- 1.4 "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.
- 1.5 "Agreement" means this Owner Participation Agreement.
- 1.6 "Budget" means the Budget/Financial Plan for the Project attached hereto and incorporated herein as Exhibit "C" (the "Budget").
- 1.7 "Certificate of Completion" means that Certificate issued in the form attached as Exhibit "D" to Owner by Agency evidencing completion of the Project for purposes of this Agreement.
- 1.8 "City" shall mean the City of Fresno, California, a municipal corporation.
- 1.9 "Conditions Precedent of Agency" means the conditions precedent to the effectiveness of this Agreement against the Agency.
- 1.10 "Construction Completion Date" means the date specified in Exhibit B, subject to extension pursuant to Section 4.5.
- 1.11 "Day" whether or not capitalized, means a calendar day, unless stated otherwise.
- 1.12 "Deed of Trust" shall mean the Deed of Trust recorded against the Property securing the Loan, as shown in Exhibit "H" of this Agreement.
- 1.13 "Default" means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.
- 1.14 "Director" means the Executive Director of Agency.
- 1.15 "Entitlements" mean all permits and fees that the City, County of Fresno, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.
- 1.16 "Effective Date" means the date of complete execution of the Agreement following Agency Board approval thereof.
- 1.17 "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 "super lien" law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.

- 1.18 "Funding Source" means the Loan and other funding sources secured by Owner to construct the Improvements.
- 1.19 "Financing Plan" means the Budget including sources and uses of funds sufficient for Owner to complete the Improvements according to the Performance and Payment Schedule.
- 1.20 "Grant" or "Project Grant" means the amount of \$720,000 contributed to the Project, which shall be disbursed in accordance with the Performance and Payment Schedule set out in Exhibit "B" and which sum is not subject to the repayment or other provisions of the Promissory Note or the Deed of Trust, as shown in Exhibits "G" and "H".
- 1.21 "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 byphenyls, (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.

- 1.22 "Household" means one or more persons occupying an Affordable Unit.
- 1.23 "Housing Set-Aside Funds" means those California Health and Safety Code Section 33334.2 monies held and administered by Agency a portion of which shall be made available as the Loan to Owner for eligible costs and expenses incurred by Owner in constructing the Improvements in such amounts, and upon such terms and conditions specified in this Agreement.
- 1.24 "Improvements" mean the construction of the Affordable Units and other units that Owner will complete on the Property as part of the Project, including associated fencing, and landscaping improvements.
- 1.25 "Law" means the Community Redevelopment Law of the State (California Health and Safety Code Sections 33000 *et seq.*).
- 1.26 "Loan" means the principal sum of \$720,000 provided by Agency to Owner as a loan, upon the terms and conditions set forth in this Agreement and the Promissory Note attached hereto as Exhibit "G" to be secured by a no worse than 2nd position deed of trust lien against the Property. If the deed of trust securing the Promissory Note is recorded prior to the recordation of the deed or deeds of trust securing the other Funding Sources consistent with the Financing Plan, the Agency shall subordinate such deed of trust to such other deed(s) of trust.
- 1.27 "Loan Documents" are collectively this Agreement and all exhibits and attachments thereto any deed of trust given as security, as they may be amended, modified or restated from time to time.
- 1.28 "Material Change" means a change, modification, revision or alteration to the Loan Documents that significantly deviates from those previously approved by the Agency, provided that fully funded change(s) which do not result in a change in the number or type (i.e. residential, affordable) of Units and/or an increase in the total Loan funding provided in this Agreement shall not constitute Material Change(s).
- 1.29 "Moderate Income" means persons and families of low or moderate income as defined in Section 50093 of the California Health & Safety Code, currently including persons and families whose income does not exceed 120 percent (120%) of the Fresno Metropolitan Statistical Area Median Income, adjusted for family size appropriate for the unit.

- 1.30 "Owner" means FFDA Properties, LLC or an affiliated company in which it is a member, managing member, or principal.
- 1.31 "Plan" means the Redevelopment Plan for the Fulton Redevelopment Project Area.
- 1.32 "Project" means the development of twenty eight (28) residential Units on the Property, of which nine (9) Units shall be Affordable Moderate Income Units.
- 1.33 "Project Area" means the Fulton Redevelopment Project Area.
- 1.34 "Project Completion Date" means the date that Agency shall have determined the Project has reached completion in accordance with the plans and specifications in the Performance and Payment Schedule, as evidenced by Agency's issuance of a Certificate of Completion.
- 1.35 "Property" means the real property described in Exhibit "A," attached hereto.
- 1.36 "Release of Restrictions" means a release of those covenants, conditions and restrictions contained in this Agreement.
- 1.37 "Restrictions" means the affordability restrictions contained in this Agreement and Exhibit F thereto, containing all conditions, covenants, and restrictions required by the Law, any other applicable laws and regulations, the Plan, and this Agreement, running with the Property and the Affordable Units thereon and burdening such for the Affordability Period.
- 1.38 "Performance and Payment Schedule" means the schedule attached as Exhibit "B," setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may revise the Performance and Payment Schedule from time to time on mutual written agreement of Owner and Agency, but any delay or extension of the Construction Completion Date is subject to the requirements in this Agreement.
- 1.39 "Security Financing Interest" means a security interest which Owner grants in the Property and the Improvements thereon before the Agency issues and records a Release of Restrictions.
- 1.40 "Unit" mean a residential unit constituting the Project.

- 1.41 "Urban Core" shall mean the area within the Agency's Merged Project Area No. 1 boundaries, including any of the following project areas: Central Business District, Chinatown Expanded, Convention Center, Fulton, Jefferson, Mariposa, South Van Ness Industrial, West Fresno I, or West Fresno II; and, the residential portion of the Freeway-99 Golden State Corridor Redevelopment Project Area.
2. CONDITIONS PRECEDENT TO AGENCY'S OBLIGATION TO PERFORM UNDER THIS AGREEMENT. The following are conditions precedent to Agency's obligation to perform under this Agreement. Until each and all of the conditions are satisfied, Agency is not obligated to take any action, or provide any funding, or further funding, under this Agreement. Agency, in writing by its authorized representative, may waive any condition or agree to extend the time for satisfaction of any condition set forth in this Section 2. Agency may terminate this Agreement as provided herein for the failure of a condition.
- 2.1 Owner shall pay for and provide a title report, recorded deed or other evidence acceptable to Agency that Owner owns the Property.
- 2.2 Owner has entered into, and provided Agency copies of agreements with any and all funding sources and the general contractor for the Project. All such funding source agreements shall contain a provision whereby the party(ies) to each such agreement, other than Owner, agree to make reasonable efforts to (i) notify Agency immediately of any event of default by Owner under such agreement; (ii) notify Agency immediately of termination or cancellation of such agreement; and (iii) provide Agency, upon Agency's request, an estoppel certificate certifying that such agreement is in full force and effect and Owner is not in default under such agreement.
- 2.3 Owner has submitted evidence that the combined monies from the Funding Sources are not less than the greater of a total development cost of \$5,529,721 or the amount which Agency determines is necessary to complete the Project, including evidence of a loan commitment for such Funding Sources acceptable to the Agency. If Agency determines that said funds are not sufficient to complete the Project, Owner may satisfy this condition as agreed to by Owner and Agency in writing.
- 2.4 Owner will submit its Financing Plan to the Agency for review and acceptance provided that the purpose of Agency's review is solely to confirm Owner has sufficient funds available to complete the Improvements and maintain Project as this Agreement requires.

After Agency accepts the Financing Plan, Owner will not make any Material Change in the Financing Plan without first submitting such

change to Agency for review and acceptance, which shall not be unreasonably withheld, delayed or conditioned.

- 2.5 Owner, at Owner's expense, shall have investigated and determined all environmental, soil, seismic, and other surface and subsurface conditions of the Property and the suitability of such conditions for the Project. Owner's responsibility and due diligence includes, but is not limited to, determining the presence of Hazardous Materials. Both Owner and Agency will promptly give the other copies of all reports and test results. Owner will indemnify, defend, and hold Agency harmless from any damages or claims arising out of Owner's inspections and tests.
- 2.6 Should Owner's property assessment/inspection reveal any Hazardous Materials or environmental conditions requiring remediation, Owner will promptly notify Agency. 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 thereafter 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. Without limiting the foregoing, any remediation will be performed pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction and will be performed according to applicable environmental laws and governmental requirements.
- 2.7 Owner shall not be in default of this Agreement and all representations and warranties of Owner contained herein shall continue to be true and correct in all material respects.
- 2.8 Owner will have signed and delivered all documents required hereunder.
- 2.9 Owner will have received all land use and development approvals, variances, permits and the like required by this Agreement.
- 2.10 Owner shall be in full compliance with the Performance and Payment Schedule.
- 2.11 Owner will have provided proof of insurance as required by this Agreement.
- 2.12 This Agreement, the executed Deed of Trust, and the executed Restrictions shall have been recorded with the Fresno County Recorder's Office.

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

- 3.1 Owner will take all reasonable precautions to prevent the release into the environment of any Hazardous Materials in, on or under the Property in violation of applicable laws or regulations. Owner will comply with all governmental requirements with respect to Hazardous Materials. In addition, Owner shall install and use equipment and implement and follow procedures that are consistent with reasonable standards for the disclosure, storage, use, removal and disposal of Hazardous Materials.
- 3.2 Owner will notify the Agency and give Agency a copy 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 regulation relating to Hazardous Materials. Within 3 days after each incident, Owner will report to Agency any unusual or potentially important incidents respecting the environmental condition of the Property.

If a release of any Hazardous Materials into the environment occurs, Owner will, as soon as possible after the release, furnish Agency with a copy of any reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Owner will furnish Agency 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.

- 3.3 From the Effective Date of this Agreement, Owner shall indemnify, hold harmless and defend Agency, City and each of their officers, officials, employees, agents and volunteers from any and all claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable 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, parallel indemnity after closing, 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. Owner's obligations under the preceding sentence shall apply regardless of whether Agency, City or any of their officers, officials, employees, agents or volunteers are negligent, but shall not apply to any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense caused solely by the gross negligence, or caused by the willful misconduct, of Agency, City or any of their officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

- 3.4 The status and qualifications of Owner are of particular concern to Agency. From the Effective Date of this Agreement until the Restrictions expire, no voluntary or involuntary successor-in-interest of Owner will acquire any rights or powers under this Agreement, provided that the parties acknowledge the Owner shall hold the Affordable Units for rental as Affordable Rental Housing as provided in this Agreement. Notwithstanding anything to the contrary herein, Owner shall have the right to transfer ownership of the Property to another person or entity having experience in the ownership and operation of Affordable Rental Housing, as reasonably determined by Agency, which approval shall not be unreasonably withheld, delayed or conditioned.

#### 4. DEVELOPMENT OF THE PROPERTY.

- 4.1 Except as set forth in this Agreement, before Owner begins constructing the Improvements or undertakes any other work of improvement on the Property, Owner, at its own cost and expense, will secure all land use and other entitlements, permits, and approvals that Agency or any other governmental agency with jurisdiction over the Project requires for construction of the Project. Without waiver or limitation, Owner will secure and 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, the Improvements or the Property may require.

4.1.2 ADA/Barriers to the Disabled. The Project shall comply with all applicable federal, state and local accessibility requirements.

- 4.2 Scope of Development and Project Design. Owner has submitted a general or basic concept drawing to Agency, which Agency has approved,

and a copy of which is attached as Exhibit "E" (the "Scope of Development and Project Design"). Owner will complete the Improvements on the Property in one phase, according to the Scope of Development and Project Design, and the plans, drawings, and documents that Owner submits to Agency. Owner shall carry out construction of the Project including the 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.

- 4.3 Books and Records. Owner shall make available for examination at reasonable intervals and during normal business hours, all books, accounts, reports, files and other papers or property with respect to all matters covered by this Agreement, and shall permit Agency to audit, examine and make excerpts or transcripts from such records. Agency may audit any conditions relating to this Agreement at Agency's expense, unless such audit shows a materially significant discrepancy in information reported by Owner to Agency in which case Owner shall bear the cost of such audit. Owner shall also reasonably cooperate with and assist the Agency in Agency's compliance with any applicable audit requirements of the California Redevelopment Law including California Health and Safety Code Sections 33080 and 33080.1. This section shall survive for a period of four years after the expiration or termination of this Agreement.
- 4.4 Audit. Owner shall be accountable to Agency for all Loan funds disbursed to Owner pursuant to this Agreement. Owner will cooperate fully with Agency and the State of California in connection with any interim or final audit relating to the Project that may be performed. Owner will maintain accurate and current 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. 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 for a period of four years after the expiration or termination of this Agreement.
- 4.5 Owner shall cause the issuance of all necessary discretionary governmental permits, approvals and entitlements, close any implicated

funding or other escrow and begin/complete construction of the Improvements according to the Performance and Payment Schedule.

4.5.1 Construction Completion Date. Agency, acting through and in the discretion of its Director, may extend the Construction Completion Date of the Project for that period of time that Agency, in its reasonable discretion, determines necessary to overcome any delay if and to the extent such delay is due to a cause which is beyond Owner's reasonable control, and if Owner could not, with reasonable diligence, have foreseen and avoided such cause for delay. Such causes include, without limitation, acts of God, unusually severe weather or flood, war, terrorism, 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. Agency will not extend the Construction Completion Date for acts or omissions occurring through the fault of Owner, or for acts of Agency permitted or contemplated by this Agreement. An extension of time as provided in this subsection will be Owner's sole remedy for any delays in the Performance and Payment Schedule.

As a condition precedent to any extension requested by Owner, Owner will give the Agency notice within ten (10) days after any cause for delay occurs, stating the cause and the additional time Owner anticipates needed to complete the Project. Any extension by Agency must be in writing and signed by the Director or the Director's designee, which approval shall not be unreasonably withheld, delayed or conditioned.

- 4.6 Subject to the terms of this Agreement, the Loan shall be disbursed to Owner according to the Performance and Payment Schedule. All Loan funds shall be used solely for costs of the Project and Improvements. In the event Owner does not complete construction of the Project by the Construction Completion Date, as may be extended pursuant to Section 4.5.1, or otherwise does not go forward with the Project, any portion of the Loan and the Grant advanced to the Owner shall be immediately due and payable upon the written demand of Agency.
- 4.7 Certificate of Completion. Owner will notify Agency when Owner deems the Project complete. Within ten (10) business days after such notice, Agency will inspect the Improvements. When Agency reasonably determines Owner has completed the Improvements as required in this Agreement, the Plan, and the Law, Agency will furnish Owner with the Certificate of Completion. Agency will not unreasonably delay, condition or refuse to issue the Certificate of Completion. The recorded Certificate

of Completion will be a conclusive determination that Owner has satisfactorily completed the Improvements required under this Agreement. Any parties then owning or subsequently 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 constructing the Improvements, but will take such interest in the Property subject to the continuing covenants set forth in this Agreement.

4.7.1 If Agency determines not to furnish the Certificate of Completion, in accordance with Section 4.7 above, Agency will give Owner a written notice stating why Agency has decided not to issue the Certificate of Completion, or why it is delaying the issuance, and the reasonable actions that, in Agency's opinion, Owner must take before Agency can issue the Certificate of Completion. Agency'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 is not a notice of completion as referred to in Section 3093 of the California Civil Code.

4.7.2 The following are conditions precedent to Agency issuing the Certificate of Completion, and each submission will be in form and substance satisfactory to the Director: Evidence that the time to file all mechanics' liens or material men's liens has expired and any such liens recorded against the Property or Improvements have been released or, if not released, sufficiently bonded (i.e. 150%) against as required by law.

- 4.8 To the extent economically feasible, consistent with the requirements of any permitted encumbrance, or as otherwise approved by Agency or provided in the Agreement, if any building or improvement on the Property is damaged or destroyed by an insurable cause, Owner shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the Scope of Development and Project Design 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.
- 4.9 Inspections. Owner shall permit, facilitate and require its contractors to permit and facilitate observation and inspection of the Project by Agency

during reasonable business hours and upon reasonable notice for the purpose of determining compliance with this Agreement.

- 4.10 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. For purposes of this Section 4.10 the parties acknowledge that as of the Effective Date the Project Property is vacant and unoccupied.
- 4.11 Reporting Requirements. Owner shall submit to Agency the following reports:

4.11.1 Annual Reports. Annually, beginning in the year following Agency'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 shall submit an annual report to Agency, in a form approved by Agency. Such annual report shall include for each of the Affordable Units: the rent, the annual income and the family size of the Household occupying the Affordable Unit. Such annual report shall also state the date the tenancy commenced for each Affordable Unit, certification from an officer of Owner that the Affordable Unit is in compliance with the Affordable Rental Housing requirements, and such other information the Agency may be required by Law to obtain. Owner shall provide any additional information reasonably requested by the Agency provided such information is directly related to Owner's compliance with this Agreement.

4.11.2 Annual Proof of Insurance. Annually, beginning in the year following Agency'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.

- 4.12 All Leases used to rent the Affordable Units are subject to the following:

4.12.1 Annual Income Certification and Reporting. Owner shall include in leases for all Affordable 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 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 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 the Affordable Units that have been allocated to 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.

4.12.2 The leases for the Affordable 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 4.12.1 above.

4.13 With respect to the Project, Owner shall comply with the following:

4.13.1 Except to any extent otherwise provided in this Agreement, Owner is specifically responsible for all management functions with respect to the Affordable Units including, 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 shall have no responsibility for management of the Affordable Units of the Project.

4.14 Owner covenants and agrees the Affordable Units shall constitute Affordable Rental Housing during the entire Affordability Period. If Owner fails to comply the requirement to lease the Affordable Units only to qualified Households during the Affordability period, as described in the attached Form of Regulatory Agreement and Declaration of Covenants and Restrictions attached hereto as Exhibit "F," Agency shall be entitled to enjoin Owner from leasing the Affordable Units in the Project, as Owner acknowledges that damages are not an adequate remedy at law for such breach.

## 5. **INDEMNITY; INSURANCE**

5.1 Owner shall indemnify, hold harmless and defend Agency, City and each

of their officers, officials, employees, agents 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 Agency, City, 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 Owner's performance of this Agreement. Owner's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of Agency, City or any of their officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

- 5.2 Throughout the life of this Agreement, the Owner shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with an insurance company either (1) 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 (2) authorized by the Agency's Risk Manager or his/her designee. The following policies of insurance are required:

5.2.1 Until the Certificate of Completion is recorded, Builders Risk (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

5.2.2. Following the recording of the Certificate of Completion, COMMERCIAL PROPERTY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 10 30 (Cause of Loss – Special Form), with limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of the Improvements with no coinsurance penalty provisions. Such insurance shall include coverage for business income, including "rental value", in an amount equal to the two (2) years of the annual rent generated by the Improvements. Coverage for business income, including "rental value," shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 00 30.

Owner shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Owner shall also be responsible for payment of any self-insured retentions. Any deductibles or

self-insured retentions must be declared to, and approved by, the Agency's Risk Manager or his/her designee.

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

The Builders Risk (Course of Construction) and Property insurance policies shall be endorsed to name Agency as a loss payee.

Owner shall furnish Agency with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the Agency's Risk Manager or his/her designee prior to Agency's execution of this Agreement.

If at any time Owner fails to maintain the required insurance in full force and effect, Owner shall immediately discontinue all work under this Agreement until Agency 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 Agency to terminate this Agreement.

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

Upon request of Agency, Owner shall immediately furnish Agency with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

- 5.3 Owner will obtain and deliver 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, each bond in an amount at least equal to 100% of Owner's estimated construction costs, provided that the Agency hereby waives any requirement for said bonds at all time during which Owner is in full compliance with this Agreement and the Project remains fully funded.
- 5.4 Until Agency issues the Certificate of Completion Agency will have access to the Property, after reasonable notice to the Owner (except in emergencies), without charge or fee, during normal construction hours, for purposes of assuring compliance with this Agreement. Agency representatives will comply with all safety rules while on the Project or the Property.
- 5.5 Owner will design and construct the Improvements, and after that, prior to any allowable transfer or sale thereof, Owner will maintain the Property according to all applicable laws including, without limitation, all applicable state labor standards, Agency zoning and development standards, building, plumbing, mechanical and electrical codes, all provisions of the Fresno Municipal Code and all applicable access requirements. Agency makes no representation about which, if any, of such laws, ordinances, regulations or standards apply to development of the Project.

Owner acknowledges that Owner, not Agency, is responsible for determining applicability of and compliance with all local, state, and federal laws including, but not limited to, any applicable provisions of the California Labor Code, Public Contract Code, and Government Code. Agency makes no express or implied representation as to the applicability or inapplicability of any such laws to this Agreement or to the parties' respective rights or obligations hereunder including, but not limited to, payment of prevailing wages, competitive bidding, subcontractor listing, or similar or different matters. Owner further acknowledges that Agency shall not be liable or responsible at law or in equity for any failure by Owner to comply with any such laws, regardless of whether Agency knew or should have known of the need for such compliance, or whether Agency failed to notify Owner of the need for such compliance.

- 5.6 Owner will take reasonable efforts to not permit any lien or stop notice to be filed against the Property, provided Owner may reasonably determine to contest any such lien or stop notice. If Owner discovers that any lien or stop notice has been recorded against the Property, Owner will notify the Agency within fifteen (15) days following such discovery. If a claim of lien or stop notice is recorded against the Property or Improvements, Owner,

within 30 days after recordation of a claim of lien or stop notice or within 5 days after Agency's demand, whichever first occurs, will do the following:

5.6.1 Pay and discharge the same; or

5.6.2 Effect the release of such lien by recording and serving upon the claimant a surety bond in sufficient form and amount (i.e. 150%), or otherwise, and provide evidence of same to Agency; or

5.6.3 Give Agency other assurance which Agency, in its sole discretion, deems satisfactory to protect the Agency from the effect of the lien or stop notice.

## 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 issues and records a Certificate of Completion, without the written consent of Agency, provided that Agency hereby approves the recommended security interest of Owner's financial institutions, including their respective successors or assigns, as described in the Financing Plan.

## 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 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.

7.2 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 such taxes. 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. Owner will notify Agency 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 Agency 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 be fully binding for the benefit of the Plan community and Agency without regard to technical classification or designation, legal or otherwise.

8.1 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 construction, and after completing the Improvements, the Owner shall devote the Affordable Units on the Property to the uses specified in this Agreement for the Affordability Period. All uses of the Affordable Units including, without limitation, all activities Owner undertakes pursuant to this Agreement, shall conform with this Agreement and the Law. Without waiver or limitation, each of the Affordable Units to be constructed pursuant to this Agreement shall be maintained as Affordable Rental Housing pursuant to this Agreement and the Restrictions.

8.2 Owner and those taking under Owner will maintain the Property 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 Scope of Development and Project Design and related plans, as-amended from time to time. Owner and those taking under 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 any dead, or diseased plants and/or landscaping (if any) with comparable materials.

Agency will give Owner written notice of any breach of this Section 8.2. Within 10 days from receipt of such notice, Agency and Owner will meet and confer, and agree to corrective actions and a schedule of performance for such corrective actions. Owner must cure the default within the agreed schedule or within (a) 10 days after the Agency's notice for any default involving landscaping, graffiti, debris, waste material, or general maintenance on the Property; or (b) 30 days after Agency's notice for any default involving the Improvements. If Owner does not cure the default within the agreed schedule, Agency, without obligation to, may enter the Property, cure the default, and protect, maintain, and preserve the Improvements and landscaping.

Agency may lien or assess the Property for the Agency's expenses in protecting, maintaining, and preserving the on-site Improvements and aesthetics of the Property, including any lawful administrative charge in the manner used by the Agency in the abatement of public nuisances. The notice and opportunity to cure provided for herein will supplement the noticing, hearing, and nuisance abatement order used by Agency. Owner will promptly pay all such amounts to Agency upon demand.

- 8.3 From the Effective Date until the expiration of the Affordability Period, Owner covenants to use and operate the Affordable Units on the Property as Affordable Rental Housing pursuant to this Agreement.
- 8.4 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 Affordable Units, nor shall 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 Affordable Units.
- 8.5 All deeds, leases, or contracts concerning the Affordable Units 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."

- 8.6 Agency 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 Agency has been, remains, or is an

owner of any land or interest in the Affordable Units on the Property. Agency 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.

## 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 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 30 days and diligently pursue the cure to completion, whereupon there shall be no event of 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 Owner begins any legal action against Agency, it shall serve process on the Agency by personal service on the Director, or in any other manner the law permits. If Agency begins any legal action against the Owner, it will serve process on the Owner by personal service on Owner, Owner's Agent or in any other manner the law permits.
- 9.4 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.
- 9.5 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.

- 9.6 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 Agency:

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

To Owner:

FFDA Properties, LLC  
ATTN: Darius Assemi  
1396 West Herndon Avenue, Suite 101  
Fresno, CA 93711

A party may change its address for notices, demands and communications by giving notice of the new address as provided in this section. The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

- 10.2 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.
- 10.3 The Agency may assign or transfer any of its interests, rights, or obligations hereunder at any time to any public agency without the consent of the Owner.
- 10.4 No member, official or employee of the Agency shall be personally liable to the Owner, or any successor in interest to Owner, for any Default or breach by the Agency.

- 10.5 The relationship between the Agency and the Owner is that of redevelopment agency and redeveloper respectively, as permitted by law, and not that of a partnership or joint venture. Agency and Owner shall not be deemed or construed for any purpose to be the agent of the other.
- 10.6 Whenever this Agreement references an action or approval required or permitted by the Agency, the Director or his or her designee is authorized to act for the Agency as agent of the Agency unless this Agreement, the Law, Constitutional and/or local law provide otherwise, or the context otherwise requires.
- 10.7 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.
- 10.8 This Agreement includes the exhibits and attachments referenced and incorporated in it. This Agreement contains the entire agreement between the parties relating to the transaction contemplated by this Agreement and supersedes all prior or contemporaneous agreements, understanding, representation and statements, whether oral or written.
- 10.9 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.
- 10.10 Any waiver, alteration, change or modification of or to this Agreement, to be effective, must be in writing, and signed by each party.
- 10.11 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.
- 10.12 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) 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.

- 10.13 No member, official or employee of Agency 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. 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.
- 10.14 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.
- 10.15 No contractor, subcontractor, mechanic, material man, 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 and any such person in writing, they may not enter any claim or bring any such action against Agency under any circumstances. Except as provided by law, or as otherwise agreed to in writing between Agency and such person, each such person shall be deemed to have waived in writing all right to seek redress from Agency under any circumstances whatsoever.
- 10.16 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.

10.17 In the event of any conflict between the body of this Agreement and any exhibit or attachment to it, the terms and conditions of the body of this Agreement will control.

///  
///  
///

IN WITNESS WHEREOF, Agency and Owner have signed this Agreement, and the Agency has approved this Agreement, on the dates and in the year set forth below.

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

FFDA Properties, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Marlene Murphey  
Executive Director

By: \_\_\_\_\_  
Darius Assemi  
\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:  
REBECCA KLISCH  
Ex. Officio Clerk, Redevelopment Agency  
the City of Fresno

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
Ex. Officio Attorney, Redevelopment  
Agency of the City of Fresno

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attachments:

- Exhibit A: Legal Description of Property
- Exhibit B: Performance and Payment Schedule
- Exhibit C: Budget/Financial Plan
- Exhibit D: Certificate of Completion
- Exhibit E: Scope of Development and Project Design
- Exhibit F: Form of Regulatory Agreement and Declaration of Covenants and Restrictions
- Exhibit G: Form of Promissory Note
- Exhibit H: Form of Deed of Trust

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

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

TO BE INSERTED

**EXHIBIT "B"**  
**Performance and Payment Schedule**

**SCHEDULE OF PERFORMANCE**

<u>Items Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>
<u>Submission – Site Plan Review.</u> The Owner shall submit Site Plan, Operating Statement, Architecture and related CEQA documents to the City of Fresno for review.		
<u>Submission – Building Plans.</u> The Owner shall submit Building, Civil Engineering and Fire Protection Plans to the City of Fresno for review.	Within 30 days after receiving Site Plan approval from City.	
Owner executes and delivers Agreement and executed Promissory Note, Deed of Trust and Regulatory Agreement to Agency	On or before _____	
Agency Board approves Owner Participation Agreement (OPA) with Owner for Project	On or before _____	
<u>Submission and Approval – Certificates of Insurance.</u> The Owner furnishes to the Agency appropriate certificates of bodily injury and property damage insurance policies.	Within 15 days after approval of this Agreement by the Agency.	
Agency executes Agreement and Regulatory Agreement and records Deed of Trust for the Agency Loan and Regulatory Agreement.	After receipt and approval of insurance certificates and receipt of executed documents from Owner. On or before _____	
<u>Initial Loan Disbursement.</u> The Agency shall make the initial disbursement of loan proceeds in the amount of \$_____	After the Deed of Trust and Regulatory Agreement are recorded and concurrently with the issuance of a building permit for the Improvements and after certification by the Owner that the construction site has been cleared including any demolition.	June 30, 2011
<u>Commencement of Construction of Owner's Improvements.</u> Within 30 days after receipt of building permits by the Owner, construction shall commence on the improvements to be constructed on the Project Site.	On a schedule that will coordinate with the Owner's construction schedule.	July 31, 2011
<u>Remaining Loan Disbursement.</u> The remainder of the Agency Loan	Within the Owner's construction schedule.	September 30, 2011

_____ will be disbursed in within ten (10) days after notice and verification by the Agency that the City of Fresno has completed inspection of the foundation.		
<u>Grant Disbursement.</u> The Agency Grant (\$720,000) will be disbursed in _____ payments of _____ within ten (10) days after notice and verification by the Agency that the City of Fresno has completed inspection of, and that each element has passed inspection, the (a) framing, and (b) final inspection.	Within the Owner's construction schedule.	(a) November 30, 2011  (b) March 31, 2012
<u>Completion of Construction of Owner's Improvements</u> The Owner shall complete construction of the improvements to be constructed on the Project Site.	Within the specified months after commencement thereof by the Owner, not to exceed 8 months after commencement of construction	March 31, 2012
<u>Issuance – Certificate of Completion.</u> The Agency shall furnish the Owner with a Certificate of Completion on the Project.	Promptly after completion of all construction and upon written request thereof by the Owner.	April 30, 2012

Improvements shall be completed within 8 months of the start of construction.

Construction to commence by: July 31, 2011

Construction to be completed by: March 31, 2012 ("Construction Completion Date")

### SCHEDULE OF AGENCY LOAN REPAYMENT

Months 1 – 120 after the Project Completion Date set forth in the Certificate of Completion: \$0.00/Month

Months 121 – 420 after the Project Completion Date set forth in the Certificate of Completion: \$2,713.48/Month<sup>1</sup>

<sup>1</sup> (This reflects a 1% interest on the Loan amount, commencing at the Payment Commencement Date)

# EXHIBIT "C"

## Budget/Financial Plan

PROJECT SUMMARY - Subject to Change  
Street Village - 1718 L Street

PROJECTIONS

2/16/2011

<u>Project Concept</u>	
Land Area (SF) - Includes Shpg/Manuf	56,028
Land Area (Acres)	1.29
Gross Building SF	39,844
Total Residential Units	28
Density (du/acre)	21.77
Net Rentable Area (Residential SF)	39,844
Total Commercial Units	0
Net Rentable Area (Commercial)	0
Storage Units	0
Parking Spaces (on-site) Garages	55
Parking Spaces (on-site)	7
Parking Spaces (off-site)	39
	101

<u>Unit Mix and Rents</u>				
<u>Residential</u>				
Total Units	28			
Affordable	9			
Market Rate	19			
Avg Market Rent Per Net Rentable Area (\$/SF)				\$0.91
	#	SF	Rent	\$/SF
3/2.5 Townhome	19	1423	\$1,300	\$0.91
	19			
Affordable Units (not to exceed 120% A	#	SF	Rent	
3/2.5 Townhome	9	1423	\$1,300	\$0.91
	9			
<u>Commercial</u>				
Market Rent Per Net Rentable Area (\$/SF)				\$0.00

<u>Total Development Cost</u>		
Land Acquisition - Subject to change due to decreasing land values:		
1752 L Street (Shegerian) 466-103-12	6,243	\$62,430
Parcel 2	5,000	
Parcel 3	5,000	
Parcel 4	5,993	\$245,000
Parcel 5	5,622	
Parcel 6	12,147	
Parcel 7	5,623	
466-103-04 (Manuel)	10,069	\$140,000
	56,697	\$447,430

<u>Hard Cost</u>		
Site Prep (Demo & Abatement)		\$20,000
Direct Construction @\$/PSF	\$69	\$2,749,236
On Sites		\$313,000
Off Sites		\$138,000
		\$3,220,236
Construction Contingency @	5%	\$137,462
Total Hard Cost		\$3,357,698

<u>Soft Cost</u>		
Dev & Impact Fees *		\$629,000
County Impact Fees		\$0
School Fees - Commercial		\$0
School Fees - Residential	\$ 2.97	\$118,337
Engineering/Architecture		\$137,000
Legal/Taxes/Insurance		\$25,000
Developer Supervision/Overhead	5%	\$495,000
Other/Contingency @% of Hard	5%	\$167,885
Total Soft Cost		\$1,572,222

<u>Financing Cost</u>		
Financing Fees (pts)	1.0%	\$53,773
Interest During Construction	6.00%	\$98,598
Total Financing Cost		\$152,372
TOTAL DEVELOPMENT COST (TDC)		\$5,529,721

Cons./Perm. Financing	\$2,743,174
RDA Loan	\$720,000
RDA Grant	\$720,000
Shortfall	\$1,346,547
	\$5,529,721

* Includes Fees pending waiver	
Park	\$95,144
Reg Street	\$46,816
Traffic Signal	\$12,628
	\$154,588

8 Const Period (mo)

197,490 TDC per unit

TDC - FMV = \$1,746,034

NOI	274,317
Cap Rate	7.25%
FMV	3,783,688
LTV	75%
Loan	2,837,766

NOI	274,317
Constant	10%
Loan	2,743,174

**EXHIBIT "D"**  
**Certificate of Completion**

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

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(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 is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

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

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

Marlene Murphey

Its: Executive Director

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