



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Authorizing the City Manager to Execute a Purchase and Development Agreement with Eden Housing, Inc. Regarding Senior Housing Project at 2245 Tienda Drive.

**MEETING DATE:** April 7, 2010

**PREPARED BY:** Community Development Department

**RECOMMENDED ACTION:** Adopt a resolution authorizing the City Manager to execute a Purchase and Development Agreement with Eden Housing, Inc. regarding a senior housing project at 2245 Tienda Drive.

**BACKGROUND INFORMATION:** The attached Purchase and Development Agreement (PDA) sets the terms and conditions for the sale of the Tienda Drive property to Eden Housing, Inc., as well as the terms and conditions for the subsequent use and development of the property for senior housing. As the City's commitment of Community Development Block Grant (CDBG) and Home Investment Partnerships Act (HOME) funds to Eden Housing for land acquisition, pre-development and some development costs for this project are through our previous allocations of Urban County funds, the loan and regulatory agreements and the promissory note are drawn between Eden Housing, Inc. and San Joaquin County. The County remains the Responsible Entity for those funds and not the City of Lodi. Accordingly, the PDA is conditioned to require the execution of those documents with San Joaquin County prior to final execution of this PDA.

**HISTORY**

On April 1, 2009, the City Council authorized the City Manager to negotiate with Eden Housing, Inc. for an agreement to develop an affordable senior housing project at the property identified as 2245 Tienda Drive.

On August 5, 2009, the City Council subsequently authorized the City Manager to execute an Exclusive Right to Negotiate (ERN) Agreement with Eden Housing. The ERN also served as the document to demonstrate the requisite site control in its application to the State of California Department of Housing and Community Development (HCD) for HOME funding.

The next stage in the process toward the future development of the proposed senior housing project came on October 21, 2009, when the City Council authorized the City Manager to execute an Option Agreement for Eden Housing's purchase of the subject property at 2245 Tienda Drive. That Option Agreement also served as the documentation to demonstrate requisite site control for Eden's application to the U.S. Department of Housing and Urban Development (HUD) 202 Program, which provides funding specifically for affordable senior housing development.

APPROVED:   
Blair King, City Manager

While the PDA requires 49 percent of the units to be affordable, the terms of the federal assistance that Eden Housing is receiving requires the entire development be affordable.

During the planning process for this project development there has been a significant amount of outreach to the surrounding neighborhood and to key agencies and organizations that the proposed project would likely serve, by both City staff and representatives from Eden Housing. During that outreach process, which included a number of one-on-one meetings with adjacent property owners as well as a presentation to a group of residents from the neighborhood, there was a great deal of community input which has led to the current design and layout. Early on we provided plan alternatives that utilized more of the back of the Roget Park property to address security concerns in that rear corner, but the consensus from the surrounding residents and from the Roget family representative was that they expected the existing park boundaries to be maintained. Those discussions also led to the creation of a larger buffer between the project and the residential properties to the north.

Through this outreach process we have received overwhelming support and approval from the surrounding neighborhood and the various agencies and organizations that this project would serve.

#### **ENVIRONMENTAL ASSESSMENTS:**

In accordance with the California Environmental Quality Act (CEQA), a Mitigated Negative Declaration (MND) was prepared for this project. The Draft MND was circulated to responsible agencies as well as the State Clearinghouse for review. Also, the Draft MND was duly Noticed and made available for public review at City Hall, the Library, and on the City website. At the conclusion of the public review period, all written comments were responded to and incorporated in the Final MND.

In accordance with the National Environmental Protection Act (NEPA), an Environmental Assessment (EA) was prepared for this project. The Draft EA was also made available for public review and upon receiving no public comment, the final EA and a Notice of Finding No Significant Impact (FONSI) and Request for Release of Funds (RROF) were certified by San Joaquin County and forwarded to the U.S. Department of Housing and Urban Development (HUD) for comment and approval.

#### **PLANNING COMMISSION REVIEW AND APPROVAL**

On February 10, 2010, the Planning Commission reviewed and approved this project, which included the Site Plan and Architectural Review as well as the approval of a Tentative Map to create two parcels as the senior housing project has been split into two phases. The Planning Commission's approval of this project was conditioned to require one parking space per unit rather than the recommended three-quarters (3/4) of a space per unit. The developer and their architect were able to incorporate the additional parking by adjusting setback of the buildings both at the front and at the rear of the property.

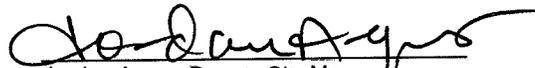
There was no opposition to the project.

#### **NEXT STEPS:**

Assuming the City Council adopts the resolution, the next steps in the process include closing escrow on the property which is anticipated by June, 2010. If Eden Housing is successful in receiving HUD funding, the project could begin construction by early 2012 with occupancy approximately one year later.

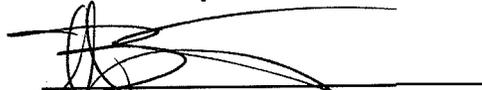
**FISCAL IMPACT:** The purchase price of \$630,000.00, which is based upon the most recent fair market appraisal of the land, will go into the Parks Fund and will fund the subsequent development of Roget Park, which is directly adjacent to this project.

**FUNDING AVAILABLE:** Urban County CDBG/HOME Program Funding



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Jordan Ayers, Deputy City Manager



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Konradt Bartlam  
Community Development Director

PURCHASE AND DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF LODI

AND

EDEN HOUSING, INC.

PURCHASE AND DEVELOPMENT AGREEMENT  
(Lodi Senior Housing, 2245 Tienda Drive, Lodi, CA 95242)

This Purchase and Development Agreement (the "Agreement") is entered into as of \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date"), by and between the City of Lodi, a California municipal corporation of the State of California (the "Seller") and Eden Housing, Inc., a California nonprofit public benefit corporation (the "Buyer"), with reference to the following facts:

RECITALS

A. The Seller owns that unimproved 3.39-acre parcel of real property located at 2245 Tienda Drive in Lodi, more particularly described in Exhibit A-1 and Exhibit A-2, attached hereto and incorporated herein (the "Property").

B. The Seller has determined that the desired future use of the Property shall be an affordable residential development that is age restricted for seniors. Accordingly, the Seller issued a Request for Qualifications ("RFQ") inviting submissions from developers interested in developing the Property with affordable housing for seniors with restrictions compatible with the requirements of the City's available funding sources: Community Development Block Grant Program ("CDBG") and Home Investment Partnership Act ("HOME") financing.

C. Buyer is a nonprofit affordable housing developer with extensive experience in constructing, owning and operating senior rental housing developments affordable to very low to lower income households.

D. In response to the Seller's RFQ, the Buyer submitted its proposal to construct, own and operate on the Property rental housing affordable to very low and lower income senior households (the "Senior Project"). On April 1, 2009, the Seller's City Council selected Eden as the Buyer for the Property and directed staff to proceed with the preparation of an Exclusive Right to Negotiate Agreement ("ERN") for the negotiation of a Purchase Agreement or a Disposition Development and Loan Agreement, the terms and conditions of which would govern the conveyance of the Property to the Buyer for the purpose of the development of the Senior Project by the Buyer.

E. On August 5, 2009, the City Council voted to unanimously approve the ERN, attached hereto as Exhibit B.

F. The purpose of this Agreement is to set forth Buyer's rights and obligations to purchase and develop the Property and Seller's obligation to sell the Property to Buyer in accordance with the terms of this Agreement.

G. Buyer intends to obtain a loan of CDBG and HOME funds from the County of San Joaquin ("County") and execute a Regulatory and Loan Agreement with the County prior to close of escrow for the Property.

H. This Agreement does not authorize the granting of the Land Use Approvals or the construction of the Development, as defined in Section 1.1. Such actions may be authorized and will become possible only upon subsequent discretionary action of the Seller separate and apart from this Agreement.

I. Notwithstanding anything to the contrary contained herein, the effectiveness of this Agreement, the Seller's obligations hereunder and the construction of the Development, defined in Section 1.1, below, are conditioned upon compliance with the California Environmental Quality Act ("CEQA"). No physical activity, not otherwise exempt from CEQA, shall commence on the Property without CEQA compliance. The City (i) prepared a Mitigated Negative Declaration in Compliance with CEQA, (ii) issued a Notice of Intent to Adopt a Mitigated Negative Declaration, and (iii) established a public review period extending from December 7, 2009 through January 5, 2010, all as required by law. Three (3) comments were received from the public and other agencies and all comments were responded to and incorporated into the Final Mitigated Negative Declaration, adopted by the City Council, prior to approving and authorizing the execution of this Agreement.

NOW, THEREFORE, in consideration of the recitals hereof and the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

#### ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The following capitalized terms have the meanings set forth in this Section 1.1, wherever used in this Agreement, unless otherwise provided:

1.1.1 "Agreement" means this Purchase and Development Agreement.

1.1.2 "Approved Development Budget" shall mean the proforma development budget, in the format attached as Exhibit C, including sources and uses of funds, as the same may be revised from time to time, and which shall be approved by the Seller prior to the transfer of the Property to Buyer.

1.1.3 "Buyer" means Eden Housing, Inc., a California nonprofit public benefit corporation or its approved successors and assigns.

1.1.4 "CDBG" means the Community Development Block Grant program.

1.1.5 "CEQA" means the California Environmental Quality Act and its implementing guidelines and regulations.

1.1.6 "County" means the County of San Joaquin, a political subdivision of the State of California.

1.1.7 "Default" has the meaning set forth in Section 11.1.

1.1.8 "Development" means the Property and the two (2) senior rental housing development projects and other improvements constructed on the Property.

1.1.9 "Effective Date" means the date first set forth above.

1.1.10 "Eden Housing" means Eden Housing, Inc., a California nonprofit public benefit corporation.

1.1.11 "Final Plans" mean the final plans, drawings and specifications for the Development which are subject to the approval of the Seller. A copy of the Final Plans shall be maintained on file with the Seller.

1.1.12 "Financing Plan" means the proposal for financing costs of development of the Development as proposed by Buyer and approved by the Seller as of the date of this Agreement. The Financing Plan may be revised from time to time with the approval of Seller. The Financing Plan, in the format attached as Exhibit D, shall be approved by Buyer and Seller prior to the transfer of the Property to Buyer.

1.1.13 "Land Use Approvals" means the permits and approvals necessary for the construction of the Development on the Property, including, but not limited to, necessary general plan and zoning code amendments, overall design and architectural review and approval by the Seller and any other applicable government entity.

1.1.14 "Property" means that certain real property described in Exhibit A-1 and Exhibit A-2.

1.1.15 "Seller" means the City of Lodi, a California municipal corporation.

1.1.16 "Transfer" has the meaning set forth in Section 10.3, below.

Section 1.2 Exhibits. The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A-1	Legal Description of the Property
Exhibit A-2	Legal Description of the Property
Exhibit B	Exclusive Negotiating Rights Agreement
Exhibit C	Approved Development Budget
Exhibit D	Financing Plan
Exhibit E	Schedule of Performance
Exhibit F	Scope of Development
Exhibit G	Preliminary Site Plan
Exhibit H	Seller Insurance Requirements
Exhibit I	HUD-Required Provisions Rider
Exhibit J	Assignment of Agreements
Exhibit K	Memorandum of Purchase and Development Agreement

ARTICLE 2  
REPRESENTATIONS AND WARRANTIES OF THE BUYER

Section 2.1 Representations and Warranties. The Buyer hereby represents and warrants to the Seller as follows:

2.1.1 Organization. The Buyer is a duly organized, validly existing nonprofit public benefit corporation, is in good standing under the laws of the State of California, and has the power and authority to own its property and carry on its business as now being conducted.

2.1.2 Authority of the Buyer. The Buyer has full power and authority to execute and deliver this Agreement and the necessary documents or instruments, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

2.1.3 Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been or will be executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Buyer, and all actions required under the Buyer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

2.1.4 Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Buyer enforceable against it in accordance with their respective terms.

2.1.5 No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement nor any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on the Buyer, or any provision of the organizational documents of the Buyer, or will conflict with or constitute a breach of or a default under any agreement to which the Buyer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Buyer, other than liens established pursuant hereto.

2.1.6 Compliance With Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions as

of time of building permit issuance, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

2.1.7 Pending Proceedings. The Buyer is unaware of a known default under any law or regulation or under any order of any court, board, commission or agency, and there are no known claims, actions, suits or proceedings pending or, to the knowledge of the Buyer, threatened against or affecting the Buyer, at law or in equity, before or by any court, board, commission or agency which might, if determined adversely to the Buyer, materially affect the Buyer's ability to perform its obligations contemplated by this Agreement.

2.1.8 Financial Statements. The financial statements of the Buyer and other financial data and information furnished by the Buyer to the Seller fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of the Buyer from that shown by such financial statements and other data and information.

2.1.9 Taxes. The Buyer and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or their properties otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. Buyer has no knowledge of a proposed tax assessment against the Buyer or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect upon the assets, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Buyer and its subsidiaries, taken as a whole, which would be expected to result in a material impairment of the ability of the Buyer to perform under this Agreement.

### ARTICLE 3 DISPOSITION OF THE PROPERTY

The Seller shall convey to Buyer, and Buyer shall accept from the Seller, a fee interest in the Property, upon the satisfaction or waiver of all conditions precedent set forth in this Article.

Section 3.1 Purchase Price. The purchase price for the Property shall be Six Hundred Thirty Thousand Dollars (\$630,000) ("Purchase Price") which shall be paid to Seller at the close of escrow.

Section 3.2 Escrow and Closing. This transaction shall be completed through an escrow numbered 54605-918488-09 established with North American Title Company located at 21060 Redwood Road, Suite 110, Castro Valley, CA 94546, Attention: Suzanne Smith, Branch Manager. The Buyer shall have the right to select the company issuing the title policy, notwithstanding North American Title Company acting as the

escrow holder. Each party shall promptly deposit all funds and documents as required by the escrow holder to complete this transaction.

Section 3.3 Costs of Closing and Escrow. The Buyer shall pay all title insurance premiums for policies the Buyer elects to purchase in connection with the lease of the Property and the financing of the Project, and all conveyance and recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the transfer of the Property and the financing of the Project. Property taxes and assessments shall be prorated as of the date of Closing ("Closing Date").

3.3.1 Escrow Instructions; Deposit of Funds; Recordation of Documents. The Seller and Buyer shall provide Escrow Agent with copy of this Agreement, which together with such supplemental instructions as Seller or Buyer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by the Seller and Buyer, shall serve as escrow instructions for the conveyance of Property.

3.3.2 Closing Date. Within the time period set forth in the Schedule of Performance, the Buyer and the Seller shall deposit into escrow executed copies documents necessary to close escrow. On the Closing Date and provided that all conditions precedent to the sale of the Property have been satisfied or waived, the Escrow Agent shall cause the Grant Deed to be recorded in the Official Records of San Joaquin County.

3.3.3 Closing Documents.

3.3.3.1 Seller Documents. Seller shall execute in Escrow, or deliver to Escrow Holder for delivery to Buyer at the Close of Escrow, each of the following:

- (a) Grant Deed executed by Seller; and
- (b) Memorandum of this Agreement.

3.3.3.2 Buyer Documents. Buyer shall execute in escrow, or deliver to Escrow Holder for delivery to Seller at the Close if Escrow, each of the following:

- (a) Purchase money in the amount of Six Hundred Thirty Thousand (\$630,000); and
- (b) A fully executed copy of that certain Regulatory Agreement between Eden Housing and the County; and
- (c) Memorandum of this Agreement; and
- (d) The amount of the title and escrow costs and expenses and prorations required by this Agreement; and

(e) Any other document required by this Agreement which is to be recorded upon the acquisition of the Property by Buyer.

Section 3.4 Seller Pre-Disposition Requirements. The provisions of this Section 3.4, below, set forth the conditions precedent to Seller's obligation to convey the Property to Buyer.

3.4.1 No Default. There shall exist no conditions, event or act which would constitute a material breach or default under this Agreement, or Assignment of Agreements, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

3.4.2 Preliminary Financing Plan. The Buyer shall submit to the Seller for its review and approval its preliminary plan for the construction and permanent financing of the Project (the "Preliminary Financing Plan"). The Preliminary Financing Plan shall indicate all sources of funds necessary to pay, when due, the estimated costs of Project development, including, without limitation, hard and soft construction costs, and shall include development and operating proformas which set out the Buyer's preliminary plan for financing the cost of development, construction and operation of the Project. The parties acknowledge that the Preliminary Financing Plan is subject to change from time to time based on the funding sources, Project costs and other factors. Each such revision to the Preliminary Financing Plan shall be subject to Seller approval.

3.4.3 CEQA; NEPA. The Seller has completed its environmental assessment of the Development in accordance with the provisions of the California Environmental Quality Act ("CEQA") and has approved a Mitigated Negative Declaration in accordance with the provisions of CEQA. If HOME Funds are to be loaned to the Buyer, the Seller shall have fulfilled the requirements of NEPA.

Section 3.5 Buyer's Pre-Disposition Requirements. This Section 3.5 sets forth the conditions precedent to Buyer's obligation to purchase the Property from the Seller.

3.5.1 No Default. Seller shall not be in default under the terms of this Agreement, and all representations and warranties of Seller contained herein shall be true and correct in all material respects.

3.5.2 Title Policy. The Title Company (defined above in Section 3.2) is prepared to issue to Buyer, at Buyer's cost, an ALTA policy of title insurance, insuring Buyer's interest in the Property, subject only to (i) any lien for taxes accrued subsequent to the conveyance of the Property; (ii) assessments, conditions, covenants, restrictions or easements of record; (iii) utility easements to service the Property which do not interfere with its existing or intended use; and (iv) such other title exceptions that Buyer shall have approved in its reasonable discretion.

3.5.3 Changed Conditions. There have been no changed conditions with

respect to the permitted uses or condition of the Property which materially and adversely affect intended use of the Property or substantially increases the Buyer's Project costs.

### Section 3.6 Condition of the Property.

3.6.1 Inspections. The Buyer acknowledges and agrees that: (i) the Buyer shall inspect the Property and the improvements located thereon, and shall examine the legal, environmental, zoning, land use, seismic, title, survey and physical characteristics and condition thereof; (ii) by acquiring title to the Property, the Buyer shall be deemed to have approved of all such characteristics and conditions; (iii) the Property and the improvements thereon are to be conveyed to, and accepted by the Buyer in their present condition "AS IS," "WHERE IS" AND WITH ALL FAULTS with no warranty expressed or implied regarding the condition of the soil, its geology, or the presence of known or unknown faults or Hazardous Materials, and no patent or latent defect or deficiency in the condition of the Property or the improvements thereon whether or not known or discovered, shall affect the rights of either the Seller or Buyer hereunder. The Buyer shall rely solely upon its own independent investigation concerning the physical condition of the Property and its compliance with applicable statutes, ordinances, rules and regulations. The Seller shall have no responsibility for site preparation, demolition, or any other removal or replacement of any improvements on the Property. Within Thirty (30) days of the Effective Date of this Agreement, the Seller shall provide copies of any documents in their possession, reports, studies, investigations (environmental or otherwise) and other documents in the possession and control of the Seller, including all contracts and other documentation in connection with the Seller's site clearance and demolition work, if any, on the Property during the Seller's ownership of the Property. Nothing in this Agreement, including this Section 3.6.1, shall limit, waive or relieve the Seller from any legal duty which the Seller may have to disclose any known defect.

3.6.2 Suitable for Intended Use. If following conveyance of the Property, the condition of the Property is not in all respects entirely suitable for the uses to which the Property will be put pursuant to this Agreement, Buyer may terminate this Agreement without fault pursuant to Article 4 provided that the Buyer gives the Seller thirty (30) days prior written notice of the termination. If the Buyer elects to proceed under this Agreement, it shall be the sole responsibility and obligation of Buyer to correct any soil, subsurface or structural conditions, demolish any improvements, and otherwise put the Property in a condition suitable for the Project to be constructed pursuant to this Agreement. The Buyer hereby waives any right to seek reimbursement from the Seller for costs Buyer incurs in connection with the correction of any physical condition on the Property, except to the extent such costs are related to Hazardous Materials known to Seller but not disclosed to Buyer.

### 3.6.3 Other Obligations.

3.6.3.1 It shall be the sole responsibility of the Buyer, at the Buyer's sole expense, to investigate and determine the soil conditions of the Property and the

suitability of such soil conditions for the construction of the Project by the Buyer. If the soil conditions are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the sole responsibility and obligation of the Buyer to take such action as may be necessary to place the soil conditions of the Property in a condition suitable for development of the Property.

3.6.3.2 The Seller agrees that it shall not charge Buyer a fee to process the General Plan amendment and land use designation change for the Property.

3.6.3.3 The Seller shall use its due diligence and best efforts to prohibit the dumping of soil and/or other debris on the Property by any adjacent property owners or others, and if such dumping occurs have the debris removed and, in the case of soil, tested for contamination prior to removal from the Property.

3.6.3.4 Seller agrees to cooperate with and assist Buyer in a lot split of the approximately 3.39 acre Property, which shall be completed prior to the Closing Date. Buyer shall pay for all costs and expenses for the lot split. Seller's sole responsibility in connection with the lot split shall be to execute documents as the owner of the Property. The purpose of the lot split is to divide the Property into a southern parcel consisting of approximately 1.69 acres and a northern parcel consisting of approximately 1.7 acres. Buyer will first develop the southern parcel as an affordable rental housing project for very low to low income seniors. Buyer also intends to develop the northern parcel as an affordable rental housing project for very low to low income seniors.

Section 3.7 Access. Prior to conveyance of Property by the Seller, representatives of the Buyer shall have the right of access to the Property at all reasonable times, upon not less than two (2) business days written notice to the Seller, for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. While any of the activities described in this Section are taking place, the Buyer shall maintain the insurance coverage's described in Section 8.10 and indemnify and hold the Seller harmless from any injury or damages arising out of any activity pursuant to this paragraph. The Buyer shall have access to all data and information on the Property available to the Seller, but without warranty or representation by the Seller as to the completeness, correctness or validity of such data and information, except as otherwise set forth in this Agreement.

Section 3.8 Indemnity, Hold Harmless and Waiver.

3.8.1 Buyer Indemnity. Notwithstanding Section 3.8.2, below, the Buyer agrees, from and after the date of conveyance of the Property under this Agreement, to defend, indemnify, protect and hold harmless the Seller and their officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("Indemnitees") from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions, claims, losses, damages, fines, penalties, expenses, Environmental Response Costs or costs of any kind or nature whatsoever, together with fees (including, without limitation,

reasonable attorneys' fees and experts' and consultants' fees), whenever arising, unless caused in whole or in part by the negligence of any of the Indemnitees, resulting from or in connection with the construction of the Development by the Buyer, the general contractor or any subcontractor or supplier of or to the Development, the Buyer's occupancy or use of the Property or the Buyer's performance or non-performance under or with respect to this Agreement or the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials, at, on, in, beneath or from the Property (collectively referred to as "Contamination"). The Buyer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Contamination, at the Buyer's sole cost. If the Buyer discovers Contamination or other materials subject to legal requirements or corrective action, the Buyer shall immediately notify the Seller of the same. Buyer's indemnity obligations under this paragraph shall not apply to (i) any Contamination caused by the Seller during the Seller's ownership of the Property, (ii) the Seller's or Seller's failure to disclose any known condition which the Seller is required to give to any transferee of real property, (iii) any placement of soil or other debris on the Property by adjacent property owners or others during the Seller's ownership of the Property, and (iv) liability of the Seller, not as the owner of the Property but as the owner of any adjacent property for Contamination originating or migrating from adjacent property owned by the Seller.

3.8.2 CEQA Lawsuit. In the event a CEQA lawsuit is brought which relates to this Agreement and/or the Development, the Parties shall meet and confer about whether to proceed with the Development.

3.8.3 Waiver. The Buyer hereby waives all rights, causes of action and claims the Buyer has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials, at, on, in, beneath or from the Property, unless the presence of such Hazardous Materials at, on, in, beneath or from the Property is caused in whole or in part by any of the Indemnitees, including (i) any Contamination caused by the Seller during the Seller's ownership of the Property, (ii) the Seller's or Seller's failure to disclose any known condition which the Seller is required to give to any transferee of real property, (iii) any placement of soil or other debris on the Property by adjacent property owners or others during the Seller's ownership of the Property, and (iv) liability of the Seller, not as the owner of the Property but as the owner of any adjacent property for Contamination originating or migrating from adjacent property owned by the Seller.

3.8.4 Materiality. The Buyer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Buyer for the benefit of the Seller set forth in this Agreement are a material element of the consideration to the Seller for the performance of its obligations under this Agreement, and that the Seller would not have entered into this Agreement unless the Buyer's obligations were as provided for herein. The Buyer further acknowledges and agrees that the paragraph which extends representations, warranties, indemnifications, and/or covenants of the

Buyer to the benefit of the Seller shall not be satisfied, waived or otherwise extinguished by Seller's issuance of any Certification of Completion under Section 6.3.9 of this Agreement.

Section 3.9 Commissions. Each party represents and warrants to the other party that no broker or finder or other real estate agent is entitled to any commission, finder's fee or other compensation resulting from any action on its part. The Buyer and Seller each agree to indemnify the other and defend and hold harmless the other party from and against any loss, cost, or expense, including attorneys fees, incurred by such party, and against any claims, causes of action or the like brought by any broker, finder or similar agent for a commission or fee on account of this Agreement.

#### ARTICLE 4 TERMINATION OF AGREEMENT

Section 4.1 Termination of Agreement for Infeasibility and Other Specified Reasons. Provided that the Buyer is not in Default under this Agreement, this Agreement may be terminated by the Buyer under the following circumstances set forth in 4.1.1-4.1.3, below, by giving not less than Thirty (30) days prior written notice of such termination to the Seller.

4.1.1 General Plan is not amended with the new Land Use designation allowing the type development contemplated by this Agreement for the Property; or

4.1.2 The Property is unsuitable for the intended use as set forth in Section 1.1.8; or

4.1.3 The determination by the Buyer in its commercially reasonable discretion that the development costs associated with the construction of the Development make the Development financially infeasible.

The Buyer shall meet with the Seller to discuss Buyer's determination that the Development is financially infeasible and to discuss possible alternate plans acceptable to the Seller.

Section 4.2 Following termination under this Article, neither party shall have any rights or obligations under this Agreement, except that the provisions of Sections 3.7, 3.8.1, 3.9, 6.3.6, 6.3.10, 8.5.3 and 12.4 of this Agreement shall survive such termination and remain in full force and effect.

#### ARTICLE 5 PREDEVELOPMENT ACTIVITIES

This Article 5 sets forth various predevelopment obligations and activities that the Buyer shall seek diligently and in good faith to perform and achieve prior to commencement of construction of the Development. The tasks described below shall

be completed no later than the dates to be set forth in a Schedule of Performance in the format attached to this Agreement as Exhibit E, once approved by Buyer and Seller, subject to Force Majeure. The Schedule of Performance may be modified by the parties from time to time by attaching an updated Schedule of Performance that is dated and executed by the Buyer and by the City Manager on behalf of the Seller without formal amendment of this Agreement.

Section 5.1 CEQA Documentation. Within the time frame set forth in the Schedule, the Buyer shall prepare and submit to the Seller such plans, specifications, drawings, and other information, as specified by the Seller, are reasonably necessary for the Seller to perform the environmental review process required by CEQA. The Buyer shall provide the Seller any updated documentation of the Project in order to facilitate the Seller's performance of the CEQA review process.

Section 5.2 CEQA Review. Following execution of this Agreement and within the time frames set forth in the Schedule of Performance, the Seller, shall diligently complete any required environmental review of the Project in accordance with CEQA, subject to any exemption for which the Project may qualify. The Buyer acknowledges that the environmental review process under CEQA will involve preparation and consideration of additional information as well as consideration of input from interested organizations and individuals; that approval or disapproval of the Project following completion of the environmental review process is within the sole, complete, unfettered and absolute discretion of the Seller without limitation by or consideration of the terms of this Agreement; and that the Seller makes no representation regarding the ability or willingness of the Seller to approve development of the Project at the conclusion of the environmental review process required by CEQA, or regarding the imposition of any mitigation measures as conditions of any approval that may be imposed on the Project. The parties recognize that if as a result of the environmental review process the Project is not approved for development, both the Seller and the Buyer each have an independent right to terminate this Agreement. In the event the either party elects to terminate this Agreement pursuant to this paragraph, neither party shall have any further obligations under this agreement, except that the provisions of Sections 3.7, 3.8.1, 3.9, 6.3.6, 6.3.10, 8.5.3 and 12.4 of this Agreement shall survive such termination and remain in full force and effect. In addition, the Buyer acknowledges that any required approvals by any other local, state or federal agency may require additional environmental review, and that any approval by the Seller shall not bind any other local, state or federal agency to approve the Project or to impose mitigation measures which are consistent with the terms of this Agreement or with the terms of any mitigation measures required by the Seller pursuant to the Seller's environmental review. The Seller agrees to cooperate with the Buyer to obtain all necessary approvals by providing all information and studies in the possession and control of the Seller.

Nothing in this Agreement or otherwise shall bind or otherwise affect the Seller's discretion in:

5.2.1 The preparation of any CEQA review document in accordance with CEQA

and normal public agency land use entitlement procedures;

5.2.2 Approving or rejecting such CEQA review in accordance with applicable CEQA standards;

5.2.3 Making or declining to make any findings necessary under CEQA to grant the Land Use Approvals and the proposed development of the Project contemplated by this Agreement and the Buyer's application for the Land Use Approvals; or

5.2.4 Imposing such mitigation measure(s) as condition(s) of the Land Approvals as the Seller deems appropriate under CEQA as a result of its consideration of the CEQA review documents.

Section 5.3 Preliminary Site Plan. The Buyer shall develop the Property and construct the Project in accordance with the Scope of Development, which shall be attached hereto as Exhibit F, when approved by Seller. The Parties agree that the Property and Improvements shall be developed as generally established in the Preliminary Site Plan as set forth on Exhibit G attached or to be attached hereto as the same may be updated from time to time with the approval of the Seller. Any material changes to the Preliminary Site Plan shall be subject to the approval of the Seller and shall be within the limitations of the Scope of Development and consistent with the overall plan for the development of the Property as provided in this Agreement. Neither party shall unreasonably withhold or delay consent to any material changes in the Preliminary Site Plan.

Section 5.4 Related Documentation. In addition to the Site Plan, the Buyer shall prepare all construction plans, drawings and related documents required to be submitted for approval by the Seller (or other governing body) for the construction of the Project. Seller's staff and the Buyer shall hold regular monthly progress meetings to coordinate the preparation of, submission to and review of all such documents, drawings and plans. The Seller and the Buyer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents receives prompt and speedy consideration.

Section 5.5 Land Use Approvals. The Buyer shall exercise diligent good faith efforts to obtain all Additional Land Use Approvals necessary for the Development within the time set forth in the Schedule of Performance. The Buyer acknowledges that execution of this Agreement by the Seller does not constitute approval by the Seller of any required permits, applications, allocations, or maps, and in no way limits the discretion of the Seller in the permit, allocation and approval process.

Section 5.6 Funding Sources.

5.6.1 Tax-Exempt Bond Applications. Within the time set forth in the Schedule of Performance, the Buyer shall submit a timely and complete application to CDLAC for a preliminary allocation of tax-exempt bonds; provided, however, Buyer shall not be

required to submit an application for which an allocation would be received anytime after September of the application year.

5.6.2 Tax Credit Applications. Within the time set forth in the Schedule of Performance (subject to the limitations set forth in Section 5.6.1, above regarding submission for a bond allocation from CDLAC) , the Buyer shall submit a timely and complete application to TCAC for a preliminary reservation of 4% tax credits.

5.6.3 HUD 202 Capital Advance. Within the time set forth in the Schedule of Performance, the Buyer shall submit a timely and complete application for a HUD 202 Capital Advance Reservation to finance the Development.

5.6.4 Other Funding Sources. The Buyer shall submit timely and complete applications for the Other Funding Sources within the time set forth in the Schedule of Performance. The Buyer shall use good faith efforts to maximize the procurement of other sources of project funding so as to minimize the amount of the Loan.

Section 5.7 Financing Plan. Within the time set forth in the Schedule of Performance, the Buyer shall submit for Seller approval a Financing Plan (the "Financing Plan") containing the following:

5.7.1 An updated development budget (the "Development Budget") showing a "sources and uses" breakdown of the costs of constructing the Development; and

5.7.2 An operating proforma for the first Thirty (30) years of operation of the Development including funding for the provision of supportive services. If the Development does not have a rental subsidy committed, the Financing Plan shall demonstrate that the target population can pay the proposed rents; and

5.7.3 Copies of all required funding commitments for construction and permanent financing for the Development, including a preliminary tax credit reservation and an executed commitment letter from an equity investor acceptable to the Seller; and

5.7.4 Any other information that is reasonably necessary to the Seller in determining that the Buyer has the financial capability to pay all costs of constructing and operating the Development.

## ARTICLE 6 CONSTRUCTION OF THE IMPROVEMENTS

Section 6.1 Commencement of Construction. The Buyer shall cause the commencement of construction of the Improvements no later than the date set forth in the Schedule of Performance, subject to Force Majeure.

Section 6.2 Completion of Construction. The Buyer shall diligently prosecute construction of the Improvements to completion, and shall cause the completion of the

construction of the Improvements no later than the date set forth in the Schedule of Performance, subject to Force Majeure. Upon completion of construction Buyer shall promptly apply for a final certificate of occupancy for the Development.

### Section 6.3 Construction Obligations.

6.3.1 Construction Plans Must Be Approved; Construction in Accordance with Plans and Approvals. The Buyer shall not commence construction of the Development until the Buyer has received all required permits from the Seller Building Department. The Buyer shall construct the Development in accordance with the approved Construction Plans and all other permits and approvals granted by the Seller pertaining to development of the Development. The Buyer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Development. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Development shall be performed by licensed contractors, engineers or architects, as applicable.

6.3.2 Change in Construction Plans. If the Buyer desires to make any material change in the Construction Plans, the Buyer shall submit the proposed changes to the Seller for approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement, the Scope of Development, the Development approvals and the Conditions of Approval. As used in the preceding sentence, "material change" means (i) any change for which approval of the Seller is required under the Seller's building approval process, (ii) any structural change, (iii) any change to the exterior of buildings, elevation, number of units, or increase or decrease of the square footage of the community building to the Development by more than 10%, or (iv) any single change order in excess of \$50,000 or \$250,000 in the aggregate. Unless such proposed change is rejected within three (3) business days, Seller shall be deemed to have approved such change. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect. This section shall not apply to any approvals required by the Seller Building Department in connection with any building, grading or other permits issued for the Development.

Any change in the Construction Plans required in order to comply with applicable law shall be deemed approved, so long as such changes do not substantially, nor materially, change the architecture, design, function, use, or other amenities of the Development as shown on the latest approved Construction Plans.

6.3.3 Defects in Plans. The Seller shall not be responsible to the Buyer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans.

6.3.4 Performance and Payment Bonds. The Buyer shall deliver to the Seller copies of payment bonds in an amount equal to Fifty Percent (50%) and performance bonds in an amount equal to One Hundred Percent (100%) of the scheduled cost of the construction of the Improvements (the "Construction Bonds") for the construction of the Improvements. Such bonds shall (i) be in a form reasonably acceptably to the Seller, (ii) be issued by a surety licensed to do business in California and reasonably acceptable to the Seller, and (iii) name the Seller as a co-obligee. In lieu of such performance and payment bonds, the Buyer may submit evidence satisfactory to the Seller of the Buyer's ability to commence and complete construction of the Development in the form of a completion guaranty in a form and from a guarantor acceptable to Seller. Such evidence must be submitted in approvable form in sufficient time to allow the Seller to review and approve the information prior to the start of construction.

6.3.5 Construction Period Reporting. During the period of construction, but not more frequently than once a month, the Buyer shall submit to the Seller a written progress report of the construction when and as requested by the Seller. The report shall be in the form of a construction draw report generally submitted by general contractors with such additional detail as may reasonably be required by the Seller and shall include a reasonable number of construction photographs taken since the last report submitted by the Buyer.

6.3.6 Seller Right of Access. For the purposes of assuring compliance with this Agreement, representatives of the Seller shall have the reasonable right of access to the Property without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Development. Such representatives of the Seller shall be those who are so identified in writing by the Seller's City Manager. The Seller shall indemnify the Buyer and hold it harmless from any damage caused (including any reasonable damages or costs incurred by any wrongful delays caused by the Seller) or liability arising out of this right to access.

The Buyer acknowledges that the Seller is under no obligation, and Seller neither undertakes nor assumes any responsibility or duty, to Buyer or to any third party to in any manner review, supervise, or inspect the progress of construction or the operations of the Development. Buyer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers and all other matters relating to the construction and operation of the Development. Any review or inspection undertaken by the Seller is solely for the purpose of determining whether Buyer is properly discharging its obligations to Seller, and shall not be relied upon by Buyer or any third party as a warranty or representation by the Seller as to the quality of the design or construction of the Improvements or otherwise.

6.3.7 Prevailing Wages. The Buyer and all the Buyer's subcontractors shall comply with the Davis-Bacon Act, 40 U.S.C. §§3141 et seq., California Health and Safety Code Section 33422.1, California Labor Code Section 1770 et seq., and all

regulations adopted pursuant thereto (referred to herein as, "Prevailing Wage Laws"), and be responsible for carrying out the requirements of such provisions, if and to the extent the Prevailing Wage Laws are applicable to this Development. The Buyer shall, and hereby agrees to, unconditionally indemnify, reimburse, defend, protect and hold harmless the Seller and their elective and appointive boards, commissions, officers, agents, attorneys, consultants and employees, and all of their respective successors and assigns, from and against any and all claims, demands, suits and actions at law or in equity, and losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, and costs and damages of every kind, nature and description (including but not limited to attorneys' fees and court costs; with counsel reasonably acceptable to the Seller), and administrative, enforcement or judicial proceedings, whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Development, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to California Labor Code Section 1770 et seq. and the Prevailing Wage Laws, or any act or omission of the Buyer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such claims, demands, suits, actions, losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, costs, damages, or administrative, enforcement or judicial proceedings. It is further agreed that the Seller does not, and shall not, waive any rights against the Buyer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the Seller, or the deposit with the Seller by the Buyer, of any of the insurance policies described in this Agreement.

6.3.8 Equal Opportunity in Contracting Construction. During the construction of the Development, the Buyer and all of the Buyer's subcontractors shall not discriminate on the basis of race, religion, sex, or national origin in the hiring, firing, promoting or demoting of any person engaged in the construction work and shall require its contractors and subcontractors to refrain from discrimination on such basis.

6.3.9 Certificate of Completion. Promptly after completion of all construction and development of the Development, the Seller shall furnish the Buyer with a final Certificate of Completion upon written request therefore by the Buyer. Buyer agrees not to submit such written request until after receipt by Buyer of the certificate of occupancy from the Seller. The final Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction of the Development in accordance with the provisions of this Agreement. Such Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of San Joaquin County.

A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Buyer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the Development.

6.3.10 Compliance with Laws. The Buyer shall carry out the construction of the Development in conformity with all applicable state, local and federal laws, ordinances, rules and regulations, including all applicable state and federal labor laws and standards, the Seller zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the Seller's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq..

6.3.11 Liens and Stop Notices. Until the recording of the Certificate of Completion, the Buyer shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of the Buyer. If a claim of a lien or stop notice is given or recorded affecting the Development, the Buyer shall within thirty (30) days of such recording or service: (a) pay and discharge the same; or (b) effect the release thereof by recording and delivering to the party entitled thereto a surety bond in sufficient form and amount or provide other assurance satisfactory to Seller that the claim of lien or stop notice will be paid or discharged.

6.3.12 Right of Seller to Satisfy Liens on the Property. After the conveyance of the Property, if the Buyer fails to satisfy or discharge any lien or stop notice on the Property pursuant to Section 6.3.11 above, the Seller shall have the right, but not the obligation, to satisfy any such liens or stop notices at Buyer's expense and without further notice to Buyer. In such event the Buyer shall be liable for and shall immediately reimburse Seller for such paid lien or stop notice. Alternatively, the Seller may require Buyer to immediately deposit with Seller the amount necessary to satisfy such lien or claim pending resolution thereof. The Seller may use such deposit to satisfy any claim or lien that is adversely determined against Buyer. Buyer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Improvements for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property or the Improvements. The Seller may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the Seller deems necessary or desirable to protect its interest in the Property and the Improvements.

## ARTICLE 7 USE OF THE PROPERTY

Section 7.1 Uses. The Buyer covenants and agrees for itself, its successors and assigns, that the Buyer and its successors and assignees shall devote the Property to

the uses specified in this Agreement, and that the Property shall be used as an affordable housing development in accordance with the terms and conditions thereof.

Section 7.2 Affordable Housing. For a term of Fifty-Five (55) years commencing upon the issuance of a final certificate of occupancy for the Improvements, the City shall not require that more than forty-nine percent (49%) of the units on the Property be used solely for an affordable housing project in which residential units shall be available at Affordable Housing Rent to eligible very-low income senior or elderly households.

Section 7.3 Regulatory Agreement. Buyer will record a Regulatory Agreement to be entered into with the County, as required by available funding sources. Such Regulatory Agreement will restrict rental of each Affordable Unit to an affordable level and contain such rights to other mechanisms to insure that the Affordable Units all remain affordable.

## ARTICLE 8 ONGOING OBLIGATIONS

Section 8.1 Marketing Plan. No later than three (3) months prior to the projected date of the completion of the construction of the Development, the Buyer shall submit to the Seller its plan for marketing the Development to income-eligible senior households, including information on affirmative marketing efforts and compliance with fair housing laws, including but limited to the information required under 24 CFR 92.351(a) (the "Marketing Plan").

Section 8.2 Financial Accountings and Post-Completion Audits. No later than ninety (90) calendar days following completion of construction of the Development, the Buyer shall provide to Seller a financial accounting of all sources and uses of funds for the Development. No later than one hundred fifty (150) calendar days following completion of construction of the Development, the Buyer shall submit an audited financial report showing the sources and uses of all funds utilized for the Development, as well as a copy of form 8609 that the Buyer is required to submit to TCAC.

Section 8.3 Records. The Buyer shall keep and maintain at the Development, or elsewhere with the Seller's written consent, full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail the Buyer's compliance with the terms and provisions of this Agreement. Books, records and accounts relating to the Buyer's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement. All such books, records, and accounts shall be open to and available for inspection and copying by the HUD, the Seller, its auditors or other authorized representatives at reasonable intervals during normal business hours. The Buyer shall permit any duly authorized representative of the HUD or the Seller to inspect and copy such records. Copies of all tax returns and other reports that Buyer

may be required to furnish to any governmental Seller shall at all reasonable times be open for inspection by the Seller at the place that the books, records and accounts of the Buyer are kept. The Buyer shall maintain complete, accurate, and current records pertaining to the Development for a period of not less than five (5) years after the creation of such records for all other expenditures in compliance with all HUD records and accounting requirements including but not limited to those set forth in Subpart K of 24 CFR 570 and 24 CFR 92.508. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the funds used for the Development is pending at the end of the record retention period stated herein, then the Buyer shall retain such records until such action and all related issues are resolved. Such records shall include but not be limited to:

8.3.1 Records providing a full description of the activities undertaken with the use of any HOME Funds and CDBG Funds; Records demonstrating that each activity undertaken meets one of the national objectives of the CDBG program set forth in 24 CFR 570.208;

8.3.2 Records demonstrating compliance with the HUD property standards and lead-based paint requirements;

8.3.3 Records required to determine the eligibility of activities under CDBG Regulations set forth in 24 CFR 570 et seq.;

8.3.4 Records demonstrating compliance with the affordability and income requirements for tenants;

8.3.5 Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements, as applicable;

8.3.6 Financial records as required by 24 CFR 92.505, 24 CFR 570.502, and OMB Circular A-110 (24 CFR 84);

8.3.7 Records demonstrating compliance with applicable relocation requirements which must be retained for at least five (5) years after the date by which persons displaced from the property have received final payments;

8.3.8 Records demonstrating that tenant leases comply with the HOME Requirements set forth in 24 CFR 92 et seq.; and

8.3.9 Records demonstrating compliance with Section 3 of the Housing and Urban Development Act of 1968 and other applicable labor requirements listed in Section 6.3.7 above, including certified payrolls from the Buyer's general contractor evidencing that applicable prevailing wages have been paid.

The Seller shall notify the Buyer of any records it deems insufficient. The Buyer shall have Twenty-One (21) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the Seller in such notice, or if a period longer

than Twenty-One (21) days is reasonably necessary to correct the deficiency, then the Buyer shall begin to correct the deficiency within twenty-one (21) days and correct the deficiency as soon as reasonably possible.

Section 8.4 Audits. The Buyer shall make available for examination at reasonable intervals and during normal business hours to Seller all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit Seller to audit, examine, and make excerpts or transcripts from such records. Seller may make audits of any conditions relating to this Agreement.

#### Section 8.5 Hazardous Materials.

8.5.1 Upon acquisition of the Property, the Buyer shall keep and maintain the Development in compliance with, and shall not cause or permit the Development to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Development including, but not limited to, soil and ground water conditions. The Buyer shall not use, generate, manufacture, store or dispose of on, under, or about the Development or transport to or from the Development any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be used in construction of the Development or customarily kept and used in and about residential property of this type.

8.5.2 The Buyer shall immediately advise the Seller in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Buyer or the Development pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against the Buyer or the Development relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) the Buyer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Development that could cause the Development or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Hazardous Materials Law.

8.5.3 The Seller shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid

by the Buyer. The Buyer shall defend, indemnify, and hold harmless the Seller and the Seller and their council members, board members, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Development including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Development and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the Seller in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees. These obligations to indemnify shall survive termination of this Agreement. Buyer's indemnity obligations under this paragraph shall not apply to (i) any Contamination caused by the Seller during the Seller's ownership of the Property, (ii) the Seller's or Seller's failure to disclose any known condition which the Seller is required to give to any transferee of real property, (iii) any placement of soil or other debris on the Property by adjacent property owners or others during the Seller's ownership of the Property, and (iv) liability of the Seller, not as the owner of the Property but as the owner of any adjacent property for Contamination originating or migrating from adjacent property owned by the Seller.

8.5.4 Without the Seller's prior written consent, which shall not be unreasonably withheld, the Buyer shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Development, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the Seller's reasonable judgment, impair the value of the Seller's security hereunder; provided, however, that the Seller's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Development either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the Seller's consent before taking such action, provided that in such event the Buyer shall notify the Seller as soon as practicable of any action so taken. The Seller agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) the Buyer will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) the Buyer establishes to the reasonable satisfaction of the Seller that there is no reasonable alternative to such remedial action which would result in less impairment of the Seller's security hereunder; or (iv) the action has been agreed to by the Seller.

8.5.5 The Buyer hereby acknowledges and agrees that (i) this Section 8.5 is intended as the Seller's written request for information (and the Buyer's response) concerning the environmental condition of the Development as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the

Development is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

8.5.6 In the event that any portion of the Development is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Seller's or the trustee's rights and remedies under this Agreement, the Seller may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Development and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Buyer to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Seller right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Buyer shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Development and the Buyer knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Seller in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Development is environmentally impaired, shall be due and payable to the Seller upon its demand made at any time following the conclusion of such action.

#### Section 8.6 Maintenance and Damage.

8.6.1 During the course of both construction and operation of the Development, the Buyer shall maintain the Development in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if the Buyer has not cured such condition within thirty (30) days after receiving a notice from the Seller of such a condition, then in addition to any other rights available to the Seller, the Seller shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Development.

8.6.2 Subject to the requirements of senior lenders, and if economically feasible in the Seller's reasonable judgment after consultation with the Buyer, if any improvement now or in the future on the Development is damaged or destroyed, then the Buyer shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the Seller with such changes as have been approved by the Seller. Such work or repair shall be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the Seller in writing, after the damage or loss occurs or thirty (30)

days following receipt of the insurance proceeds, and shall be complete within one (1) year thereafter. Any 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, then the Buyer shall make up the deficiency.

Section 8.7 Fees and Taxes. The Buyer shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Development to the extent owned by the Buyer, and shall pay such charges prior to delinquency. However, the Buyer shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the Seller, the Buyer deposits with the Seller any funds or other forms of assurance that the Seller in good faith from time to time determines appropriate to protect the Seller from the consequences of the contest being unsuccessful. The parties acknowledge that Buyer will apply for a welfare exemption from real property taxes.

Section 8.8 Notice of Litigation. The Buyer shall promptly notify the Seller in writing of any litigation known to the Buyer affecting the Buyer or the Property and of any claims or disputes that involve a material risk of litigation.

Section 8.9 Non-Discrimination. The Buyer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development, nor shall the Buyer or any person claiming under or through the Buyer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Development.

Section 8.10 Insurance Requirements. The Buyer shall maintain the insurance coverage set forth in Exhibit H throughout the term of this Agreement.

Section 8.11 CDBG and HOME Requirements. The Buyer shall comply with all applicable laws and regulations governing the use of any CDBG Funds as set forth in 24 CFR 570 et seq. The Buyer shall comply with all applicable laws and regulations governing the use of any HOME Funds as set forth in 24 CFR 92 et seq. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of any CDBG and/or HOME funds for the Development, the applicable laws and regulations shall govern.

The laws and regulations governing the use of any CDBG and/or HOME funds used for the Development include (but are not limited to) the following:

8.11.1 Environmental and Historic Preservation. 24 CFR 58 et seq., which prescribes procedures for compliance with the National Environmental Policy Act of

1969 (42 USC<sub>=</sub>4321-4361), and the additional laws and authorities listed at 24 CFR 58.5.

8.11.2 Applicability of OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110, A-122, and A-133.

8.11.3 Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 CFR Part 24.

8.11.4 Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 USC<sub>=</sub>3601 et seq.) and implementing regulations at 24 CFR 100 et seq.; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 USC 794 et seq.); the Age Discrimination Act of 1975 (42 USC<sub>=</sub>6101 et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 CFR 107 et seq.; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; and Executive Order 12138 as amended by Executive Order 12608.

8.11.5 Lead-Based Paint. The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 USC<sub>=</sub>4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 USC<sub>=</sub>4851 et seq.), and implementing regulations at 24 CFR 35 et seq.

8.11.6 Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601 et seq.) and implementing regulations at 49 CFR 24 et seq.; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 CFR 42 et seq.; 24 CFR 92.353; and California Government Code 7260 et seq. and implementing regulations at 25 California Code of Regulations 6000 et seq. These requirements do not supplant the additional relocation requirements listed above in Section 8.3.7.

8.11.7 Discrimination against the Disabled. The requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC<sub>=</sub>794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 USC 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 USC 12131 et seq.), and federal regulations issued pursuant thereto.

8.11.8 Clean Air and Water Acts. The Clean Air Act, as amended, 42 USC<sub>=</sub>7401 et seq., the Federal Water Pollution Control Act, as amended, 33 USC<sub>=</sub>1251 et seq., and the regulations of the Environmental Protection Seller with respect thereto, at 40 CFR 1500 et seq., as amended from time to time.

8.11.9 Uniform Administrative Requirements – HOME. The provisions of 24 CFR 92.505 regarding cost and auditing requirements.

8.11.10 Uniform Administrative Requirements - CDBG. The provisions of 24 CFR 570.502 regarding cost and auditing requirements.

8.11.11 Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968 ("Section 3"), as amended, 12 USC 1701(u) requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. The Buyer agrees to include the following language in all subcontracts executed under this Agreement:

8.11.11.1 The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC Section 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

8.11.11.2 The parties to this contract agree to comply with HUD's regulations in 24 CFR 135 et seq., which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

8.11.11.3 The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause; and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

8.11.11.4 The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR 135 et seq., and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR 135 et seq. The contractor will not subcontract

with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR 135 et seq.

8.11.11.5 The contractor will certify that any vacant employment positions, including training positions, that are filled (i) after the contractor is selected but before the contract is executed, and (ii) with persons other than those to whom the regulations of 24 CFR 135 et seq. require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR 135 et seq.

8.11.11.6 Noncompliance with HUD's regulations in 24 CFR 135 et seq. may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

8.11.11.7 With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450(e)) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

8.11.12 Labor Standards. The applicable labor requirements set forth in 24 CFR 92.354. The prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 USC 3141-3148); the Copeland "Anti-Kickback" Act (40 USC 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act (40 USC 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1.5 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

8.11.13 Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 CFR Part 24.

8.11.14 Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 USC 1352 et seq. and implementing regulations at 24 CFR 87 et seq.

8.11.15 Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.) and the procedures set forth in 36 CFR 800 et seq.

8.11.16 Religious Organizations. If the Buyer is a religious organization, as

defined by the CDBG and/or HOME requirements, the Buyer shall comply with all conditions prescribed by HUD for the use of CDBG and/or HOME funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 CFR 570.200(j) and 24 CFR 92.257.

8.11.17 HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to funds used for the Development, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

8.11.18 Anti-Lobbying Certification. The Buyer certifies, to the best of the Buyer's knowledge or belief, that:

8.11.18.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any Seller, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

8.11.18.2 No funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Seller, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

## ARTICLE 9

### CONDITIONS AFFECTING THIRD PARTY INTERESTS IN THE PROPERTY

#### Section 9.1 Security Financing; Rights of Holders.

9.1.1 No Encumbrances Except Mortgages, Deeds of Trust or Other Financing for the Development. Mortgages, deeds of trust, or any other form of conveyance required for any reasonable method of financing are permitted, but only for the purpose of securing loans of funds to be used for financing or refinancing the construction,

reconstruction, rehabilitation of the Development and any other expenditures necessary and appropriate to develop, own and operate the Property in accordance with the provisions of this Agreement. The Buyer shall notify the Seller in advance of any mortgage, deed of trust, or other form of conveyance for financing unless incorporated in the Financing Plan. Except as permitted in the Financing Plan approved by the Seller, the Buyer shall not enter into any such conveyance for financing without the prior written approval of the Seller and shall promptly notify the Seller of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto whether by voluntary act of the Buyer or otherwise unless incorporated in the Financing Plan. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development. The Seller agrees to enter into a subordination agreement as requested by Buyer's lender on terms reasonably acceptable to the Seller and lender to subordinate this Agreement to the security instruments of lender's loan.

9.1.2 Holder Not Obligated to Construct Development. The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Development or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property to any uses or to construct any improvements thereon other than those uses provided for or authorized by this Agreement.

No Mortgagee (including any Mortgagee who obtains title to Buyer's interest in the Property or any part thereof as a result of foreclosure proceedings or transfer in lieu or foreclosure) shall be obligated by the provisions of this Agreement to construct the improvements unless Mortgagee expressly assumes such obligation by written notice to Seller. Whether or not a Mortgagee elects to assume Buyer's obligation to construct the improvements, nothing in this Agreement shall be construed to permit such Mortgagee to construct any improvements other than the improvements authorized under this Agreement. If the Mortgagee elects to assume Buyer's obligation to construct the improvements, Mortgagee shall not be bound by the Schedule of Performance, provided that, upon assuming such obligation, Mortgagee and Seller shall execute a new Schedule of Performance and Mortgagee shall complete the Improvements in accordance with the new schedule of performance. If, after acquiring Buyer's interest in the Property, Mortgagee elects not to assume Buyer's obligation to complete the improvements, Mortgagee shall so notify Seller within sixty (60) days after Mortgagee's acquisition of the Buyer's interest in the Property, and Mortgagee shall use good faith efforts to sell such interest within six (6) months after delivery of such notice to a buyer who will construct the improvements. In the event that Buyer receives a Section 202 Capital Grant from HUD, if and for so long as the Property is subject to a HUD 202 Use Agreement and/or this Agreement, the Property shall be subject to the HUD-Required Provisions Rider, attached hereto as Exhibit I.

9.1.3 Notice of Default; Right to Cure. Whenever the Seller shall deliver any notice or demand to the Buyer with respect to any breach or default by the Buyer in

completion of construction of the Development, the Seller shall at the same time deliver a copy of such notice or demand to each holder of record of any security interest authorized by this Agreement who has previously made a written request to the Seller therefore. Each such holder shall (insofar as the rights of the Seller are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Buyer under this paragraph shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Buyer under this paragraph. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Development (beyond the extent necessary to conserve or protect the Development or construction already made) without first having expressly assumed the Buyer's obligations to the Seller by written agreement satisfactory to the Seller. The holder in that event must agree to complete, in the manner provided in this Agreement, the Development to which the lien of such holder relates and submit evidence satisfactory to the Seller that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such Development shall be entitled, upon written request made to the Seller, to a Certificate of Completion from the Seller.

9.1.4 Failure of Holder to Complete Improvements. In any case where, six (6) months after a default by the Buyer in completion of construction of the Improvements, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Property has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the Seller may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the Buyer's interest in the Property has vested in the holder, the Seller, if it so desires, shall be entitled to the conveyance of such interest in the Property from the holder to the Seller upon payment to the holder of an amount equal to the sum of the following:

9.1.4.1 The unpaid security interest debt at the time the interest became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

9.1.4.2 All expenses with respect to the reconveyance;

9.1.4.3 The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Property and Development;

9.1.4.4 The costs of any authorized improvements made by such holder;  
and

9.1.4.5 An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the debt and had the debt continued in existence to the date of payment by the Seller.

In the event that Buyer receives a Section 202 Capital Grant from HUD, if and for so long as the Property is subject to a HUD 202 Use Agreement and/or this Agreement, the Property shall be subject to the HUD-Required Provisions Rider, attached hereto as Exhibit I.

9.1.4.6 Right of Seller to Cure Security Interest Default. In the event of a default or breach by the Buyer of a mortgage, deed of trust or other security interest with respect to the Property prior to completion of the Development and the holder has not exercised its option to complete the Development, the Seller may cure the default prior to completion of any foreclosure. In such event, the Seller shall be entitled to reimbursement from the Buyer of all costs and expenses incurred by the Seller in curing the default. The Seller shall also be entitled to a lien upon the Buyer's interest in the Property to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to develop the Property as authorized herein.

## ARTICLE 10 K CHANGES IN BUYER

Section 10.1 Changes only Pursuant to this Agreement. The qualifications, experience and expertise of the Buyer are of particular concern to the Seller. It is because of these qualifications, experience and expertise that the Seller has entered into this Agreement. No voluntary or involuntary successor in interest to the Buyer shall acquire any rights or powers under this Agreement, other than pursuant to a Transfer permitted in Section 10.3. Any attempt to assign this Agreement or transfer any interest of the Buyer under this Agreement without the prior written consent of the Seller shall be null and void and shall confer no rights or privileges upon the purported assign.

Section 10.2 Prohibition Against Transfer of Property and Assignment of Agreement Prior To Completion. Prior to the recording of the Notice of Completion, the Buyer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance, assignment or lease ("Transfer") of the whole or any part of the Property or the buildings or structures thereon or this Agreement without the prior written approval of the Seller which Seller may withhold in its sole and absolute discretion.

If the Buyer proposes a Transfer of the Property or a portion thereof, other than as authorized in Section 10.3, the proposed transferee shall have the qualifications and financial resources necessary and adequate as may be reasonably determined by the Seller to fulfill the obligations undertaken in this Agreement by the Buyer. Any transferee, by instrument in writing satisfactory to the Seller and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the Seller shall expressly assume all of the obligations of the Buyer under this

Agreement relating to the Property and agree to be subject to all the conditions and restrictions to which the Buyer is subject. There shall be submitted to the Seller for review all instruments and other legal documents proposed to affect any such Transfer; and if approved by the Seller its approval shall be indicated to the Buyer in writing. This Section 10.2 shall not be deemed to prevent the granting of easements, rights of way, licenses or permits to facilitate the development of the Property.

In the absence of specific written agreement by the Seller, no Transfer by the Buyer shall be deemed to relieve the Buyer or any other party from any obligations under this Agreement.

### Section 10.3 Permitted Transfers With Prior Approval; Seller Pre-Approved Transfers.

10.3.1 Except as permitted under Subsections 10.3.2, 10.3.3, 10.3.4 and 10.3.5, any Transfer shall be permitted only after (1) the Seller, in its reasonable discretion, has delivered to the Buyer its prior written approval of such Transfer, and (2) the transferee has assumed the Buyer's obligations under this Agreement by signing an assignment assumption and release agreement, in a form prepared by the Seller, and such other reasonable documentation as the Seller may reasonably require to evidence such transferee's assumption of the Buyer's duties and obligations under this Agreement.

10.3.2 Buyer anticipates syndicating the low income housing tax credits that will be generated by the Development, which syndication will require (i) formation of a limited partnership, the general partner of which shall be a wholly-controlled affiliate of Buyer (the "Partnership" or the "Borrower") and the initial limited partner shall be Buyer or a wholly-controlled affiliate of Buyer and (ii) a subsequent transfer of the limited partner interest in Borrower to the initial investor limited partner(s). The Seller hereby approves the initial Transfer of the limited partner interest in Borrower, provided that (i) the amended and restated partnership agreement is submitted to the Seller for review and approval; and (ii) the partnership documents do not conflict with this Agreement.

10.3.3 The Seller hereby approves future Transfers of the investor limited partner(s) interest(s) in the Partnership provided that: (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the amended partnership agreement approved by the Seller; and (ii) in subsequent Transfers, a wholly-owned or wholly-controlled affiliate of the initial investor limited partner retains a membership or partnership interest and/or serves as a managing member or managing general partner of the successor limited partner.

10.3.4 The Seller hereby approves a Transfer of the Property from the Borrower to a wholly-controlled affiliate of Eden Housing, Inc., and an assumption of this Agreement.

10.3.5 In the event a general partner of the Buyer is removed by an investor limited partner of the Buyer for cause following default under the partnership agreement, the Seller hereby approves the Transfer of the general partner interest to a 501(c)(3) tax

exempt nonprofit corporation selected by the limited partner and approved by the Seller, which approval shall not be withheld unreasonably.

## ARTICLE 11 DEFAULT AND REMEDIES

Section 11.1 Events of Default. Each of the following shall constitute a "Default" by the Buyer under this Agreement:

11.1.1 Failure to Obtain Approvals. Failure of the Buyer to diligently and in good faith seek Land Use Approvals.

11.1.2 Failure to Construct. Notwithstanding Sec 4.1.3, failure of the Buyer to commence and prosecute to completion, construction of the Development within the time frames set forth in Schedule of Performance.

11.1.3 Breach of Covenants. Other than the failures addressed above in Subsections 11.1.1 and 11.1.2, failure of the Buyer to duly perform, comply with, or observe any of the conditions, terms or covenants of this Agreement, and such failure having continued uncured for Thirty (30) days after receipt of written notice thereof from the Seller to the Buyer or, if the breach cannot be cured within Thirty (30) days, the Buyer shall not be in breach so long as the Buyer is diligently undertaking to cure such breach and such breach is cured within sixty (60) days; provided, however, that if a different period or notice requirement is specified under any other provision of this Article 11, the specific provisions shall control.

11.1.4 Default Under Other Loans. A default is declared under any Approved Financing by the lender of such Approved Financing (subject to applicable notice and cure).

11.1.5 Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Buyer to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Buyer or seeking any arrangement for the Buyer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Buyer in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of the Buyer, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) the Buyer shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the Seller, the indebtedness evidenced by the Note.

11.1.6 Assignment; Attachment. The Buyer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this Subsection shall act to accelerate automatically, without the need for any action by the Seller, the indebtedness evidenced by the Note.

11.1.7 Suspension; Dissolution. The Buyer shall have voluntarily suspended its business or the dissolution of the Buyer.

11.1.8 Liens on Property and the Development. There shall be filed any claim of lien (other than liens approved in writing by the Seller) against the Development, or any part thereof, or any interest or right made appurtenant thereto, and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days without discharge or satisfaction thereof or provision therefore (including, without limitation, the posting of bonds) satisfactory to the Seller.

11.1.9 Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development, except that condemnation by the Seller shall not be a Default.

11.1.10 Unauthorized Transfer. Any Transfer other than as permitted by Article 10.

11.1.11 Representation or Warranty Incorrect. Any representation or warranty of the Buyer contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the Seller proves to have been incorrect in any material and adverse respect when made.

11.1.12 Applicability to General Partner. In the event the Buyer is a partnership, the occurrence of any of the events set forth in Subsection 11.1.6, Subsection 11.1.7 or Subsection 11.1.8 in relation to the general partner of the Buyer.

Section 11.2 Remedies. The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the Seller or automatically where so specified, shall give the Seller the right to proceed with any and all remedies set forth in this Agreement, including but not limited to the following:

11.2.1 Assignment Agreement. The Seller may exercise all rights under the Assignment Agreements Plans and Specifications and Approvals ("Assignment of Agreements"), attached as Exhibit J. The Buyer shall promptly deliver to the Seller copies of all plans and specifications for the Development, all permits and approvals obtained in connection with the Development, and all applications for permits and approvals not yet obtained but needed in connection with the Development.

11.2.2 Right of Contest. The Buyer shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Seller or the rights of the Seller hereunder.

11.2.3 Remedies Cumulative. No right, power, or remedy given to the Seller by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Seller by the terms of any such instrument, or by any statute or otherwise against the Buyer and any other person. Neither the failure nor any delay on the part of the Seller to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Seller of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 11.3 Assignment of Agreements. Buyer assigns to the Seller its rights and obligations with respect to certain agreements, plans and specifications, and approvals, pursuant to the terms of the Assignment of Agreements. The Buyer shall execute the Assignment of Agreements concurrently with this Agreement. The Assignment of Agreements shall become effective upon an event of Default of the Buyer as defined in this Section, that remains uncured after expiration of the applicable cure period. The Seller shall not have any obligation under any contracts or agreements assigned pursuant to the Assignment of Plans until it expressly agrees in writing to be bound by such contracts or agreements. Upon an event of Default that has not been cured pursuant to this Agreement, the Seller may use any of the foregoing assigned documents for any purpose for which the Buyer could have used them for development of the Development subject to the limitations, if any, imposed by the third-party preparer of the assigned documents, or in the case of the assigned documents prepared by the Architect, subject to the terms of the Architect's consent executed by the Architect. The Buyer shall cooperate with the Seller to implement the Assignment of Plans and immediately deposit with the Seller for the Seller's use all the Documents.

## ARTICLE 12 GENERAL PROVISIONS

### Section 12.1 Relationship of Parties.

12.1.1 Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the Seller and the Buyer or the Buyer's agents, employees or contractors, and the Buyer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement for the development of the Development. In regards to the development of the Development, the Buyer shall be

solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. The Buyer agrees to be solely responsible for its own acts and those of its agents and employees.

12.1.2 The Architect has been selected by the Buyer as the architect for the Development, and the Buyer may, from time to time, select other consultants and vendors for the Development. Notwithstanding the preceding paragraph, the Seller shall have the right to provide input regarding the selection and, if necessary, the replacement of such other consultants or vendors employed by the Buyer to perform the construction contemplated by this Agreement, and shall have the right to provide input regarding the replacement of the previously selected Architect, if necessary. The Buyer shall consider in good faith such input from the Seller, and shall confer with the Seller, upon request, regarding such selection and replacement decisions.

Section 12.2 No Claims. Nothing contained in this Agreement shall create or justify any claim against the Seller, by any person the Buyer may have employed or with whom the Buyer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the construction of the Development.

Section 12.3 Amendments. No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the parties.

Section 12.4 Indemnification. Except as caused by the Seller's willful misconduct, the Buyer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Seller) the Seller and its respective council members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the performance or non-performance of the obligations under this Agreement by the Buyer, Parties, the purchase and ownership of the Property by the Buyer, the development, marketing, rental, operation and management of the Development by the Buyer, Parties, or any documents executed by the Buyer in connection with the Development. The provisions of this Section 12.4 shall survive termination of this Agreement. The "Buyer Parties" shall mean the Buyer and its general partner, agents and representatives. Notwithstanding the foregoing, Section 3.8.2 shall apply.

Section 12.5 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the Seller shall be personally liable to the Buyer Parties or their successors, in the event of any Default or breach by the Seller, or for any amount which may become due to the Buyer Parties or their successors or on any obligation under the terms of this Agreement. No director, officer, employee or agent of the Buyer Parties shall be personally liable to the Seller in the event of any Default or breach by the

Buyer, or for any amount which may become due to the Seller or on any obligation under the terms of this Agreement.

Section 12.6 No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

Section 12.7 Action by the Seller. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the Seller is required or permitted under this Agreement, such action may be given, made, or taken by the Seller's City Manager or his/her designee without further approval by the Seller's City Council, and any such action shall be in writing. The intended uses of the Property may not be changed, without approval of the Seller's City Council.

Section 12.8 Waivers. Any waiver by the Seller of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Seller to take action on any breach or default of the Buyer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to the Buyer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Seller to any act or omission by the Buyer shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the Seller's written consent to future waivers.

Section 12.9 Notices, Demands and Communications. Formal notices, demands, and communications between the Seller and the Buyer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, or faxed with a copy mailed within one business day of facsimile transmission, emailed with a copy mailed within one business day of emailed transmission to the principal office of the Seller and the Buyer as follows:

Seller:  
City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910  
Attention: City Manager

With a copy to: The City Attorney and Housing Manager

Buyer:  
Eden Housing, Inc.  
22645 Grand Street  
Hayward, California 94541-5031  
Attention: Executive Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt for delivery or refusal of delivery.

Section 12.10 Parties Bound. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors and assigns.

Section 12.11 Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

Section 12.12 Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 12.13 Future Seller Actions. The parties acknowledge and agree that this Agreement does not constitute Seller approval of the Land Use Approvals or construction of the Development. The Seller retains full discretion to approve or disapprove the Land Use Approvals and construction of the Development.

Section 12.14 Counterparts; Multiple Originals. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute this Agreement.

Section 12.15 Force Majeure. In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Buyer or Buyer's inability to finance the construction of the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) business days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten business (10) days of receipt of the notice. In no event shall the Seller be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 12.16 Time is of the Essence. Time is of the essence in this Agreement. Any reference to days means calendar days, unless otherwise specifically stated.

Section 12.17 Integration Clause. This Agreement, including all exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This

Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

Section 12.18 Law Governing. This Agreement shall in all respects be governed by and construed under the law of the State of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of San Joaquin County in the State of California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

Section 12.19 Ambiguity. The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

Section 12.20 Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identifications of the person or persons, firm or firms, corporation or corporations may require.

Section 12.21 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 12.22 Investor Limited Partner Provisions. If and when the Buyer transfers the Property to a limited partnership in accordance with Section 10.3 to qualify for low income housing tax credit financing, the Seller agrees to the following provisions for the benefit of Buyer's investor limited partner:

12.22.1 The Seller will give the limited partner a copy of any written notice (at the limited partner's address that the Seller gives to Buyer under this Agreement;

12.22.2 The Seller will give the limited partner Thirty (30) days after the limited partner's receipt of such notice to cure any other default under this Agreement;

12.22.3 If a default is incapable of being cured within Thirty (30) days, the Seller will give the limited partner an additional Ninety (90) days to cure such default provided the limited partner has commenced to cure such default and is diligently proceeding to cure such default through the end of such period;

12.22.4 If the limited partner cures such default, the Seller will accept such action as curing such default as if such cure were made by Buyer;

12.22.5 The Seller will permit the limited partner to transfer the limited partner's interest to any person or entity at any time provided that, if at the time of such transfer the limited partner has not made 100% of the capital contributions the limited partner is

required to make to Buyer, the limited partner shall remain liable to Buyer for such capital contributions;

12.22.6 The Seller will permit the limited partner to remove the general partner of Buyer, provided that the substitute general partner is reasonably acceptable to Seller; and

12.22.7 The Seller will permit insurance and condemnation proceeds to be used to rebuild the Development provided that (i) sufficient funds are provided from other sources to effectively rebuild the Development to a lawful multifamily housing complex, and (ii) subject to the rights of any senior lenders, Seller shall hold all such proceeds and disburse them based on the progress of construction, subject to such additional reasonable conditions as Seller may impose.

Section 12.23 HUD Required Provisions. If the Buyer receives a Section 202 Capital Grant from HUD and the Property and Buyer are subject to the HUD Use Agreement and HUD Regulatory Agreement, then upon the recordation of the HUD Use Agreement and HUD Regulatory Agreement against the Property, the Seller and Buyer agree to comply with the provisions contained in the HUD-Required Provisions Rider attached hereto as Exhibit I.

Section 12.24 Memorandum of Purchase and Development Agreement. The Parties shall execute and record a Memorandum of this Agreement in the form attached as Exhibit K hereto, giving notice of this Agreement.

[signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below the name of each of the parties.

Eden Housing, Inc., a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Linda Mandolini, Executive Director

City of Lodi, a municipal corporation

By: \_\_\_\_\_  
Its: City Manager

Approved as to Form:

\_\_\_\_\_  
City Attorney 

Attest:

\_\_\_\_\_  
City Clerk

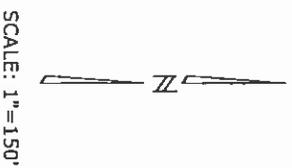
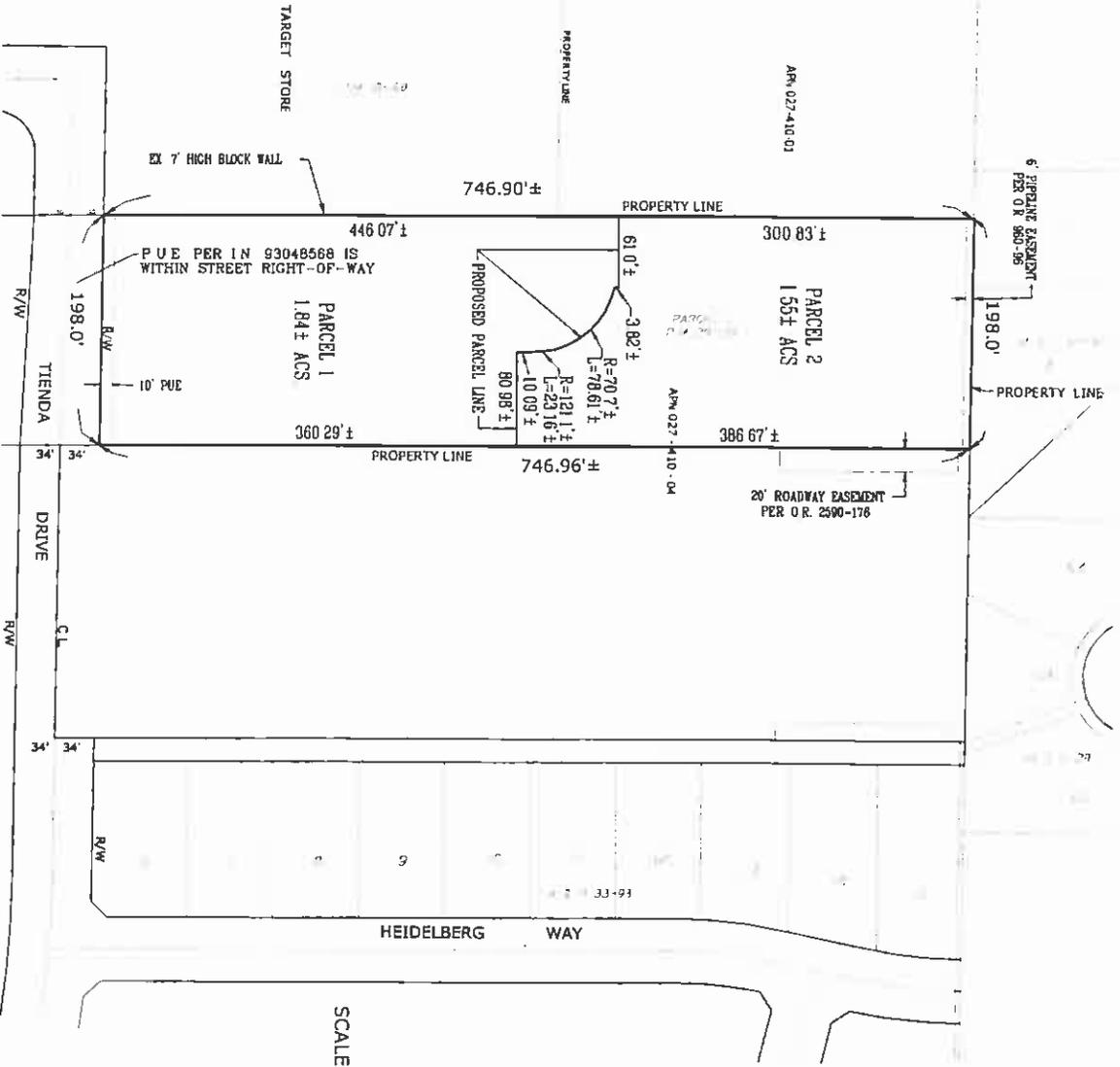
**EXHIBIT A-1**  
Legal Description of the Property

Parcel 1:

A portion of the south half of the southeast quarter of Section 10, Township 3 North, Range 6 East, Mount Diablo Base & Meridian, City of Lodi, San Joaquin County, California; being more particularly described as follows:

Parcel 1 as shown on that certain Parcel Map filed for record on \_\_\_\_\_,  
20\_\_, in Book \_\_\_\_\_ of Parcel Maps, Page \_\_\_\_\_, San Joaquin County Records.

A PORTION OF THE SOUTH HALF  
 OF THE SOUTHEAST QUARTER  
 OF SEC. 10, T.3 N., R.6 E., M.D.B.& M.,  
 City of Lodi, San Joaquin County,  
 California



PREPARED IN THE OFFICE OF:

**BAUMBACH & PIAZZA, INC.**  
 CIVIL ENGINEERS • SURVEYORS  
 www.bpengiengineers.net  
 209.368.6618  
 323 W. Elm St.  
 Lodi, CA 95240

S:\Projects\2009\09021\DWG\09021 - PM.dwg 03/24/10 3:15pm - SPECHIN - XREFS: 09021\_IP - TOPD.dwg 09021\_HC.dwg 09021\_TOPD.dwg 18X26\_PM-RS-PM.dwg BP-Tienda\_sitplan\_3-23-10.dwg

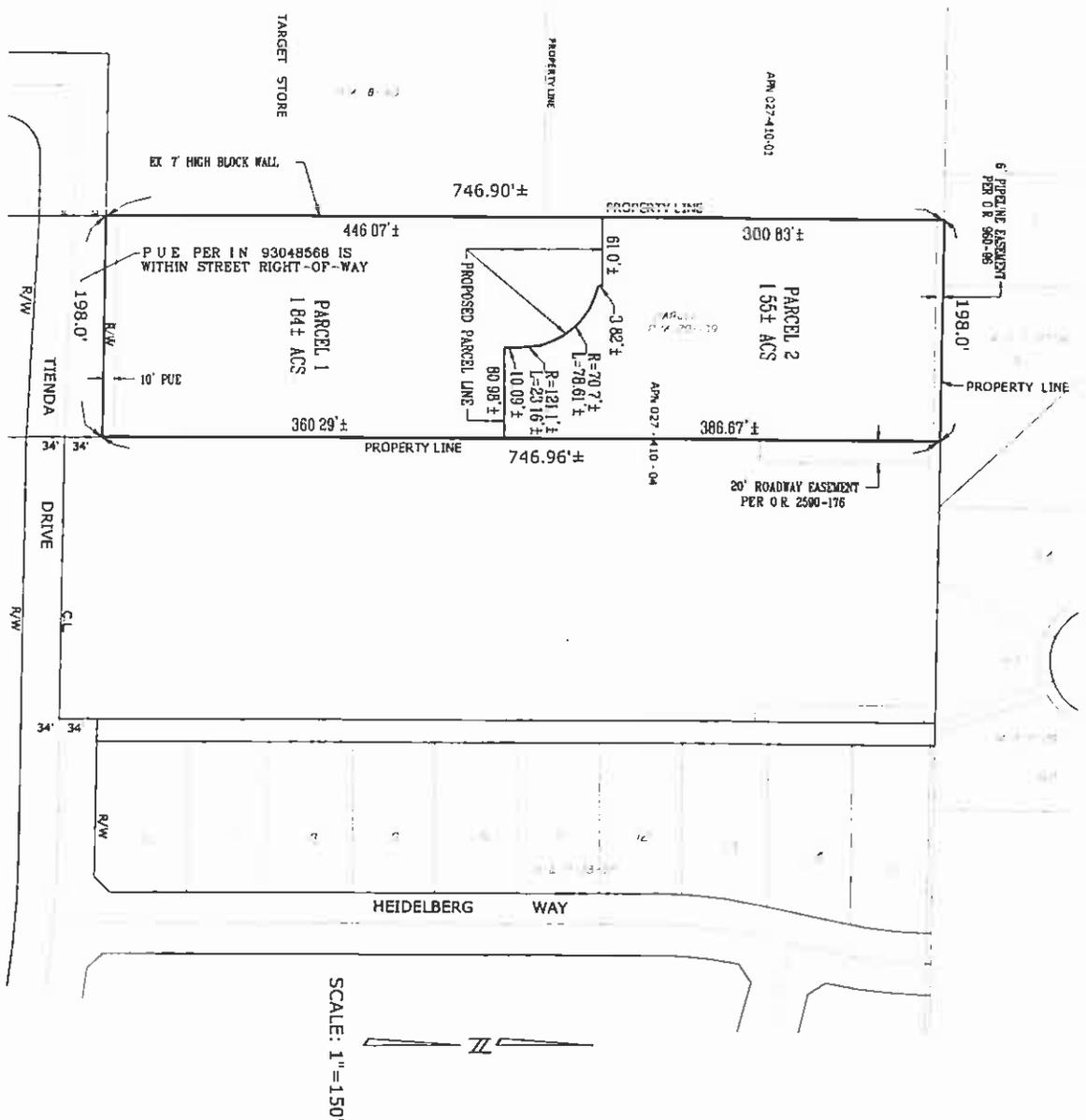
**EXHIBIT A-2**  
Legal Description of the Property

Parcel 2:

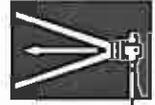
A portion of the south half of the southeast quarter of Section 10, Township 3 North, Range 6 East, Mount Diablo Base & Meridian, City of Lodi, San Joaquin County, California; being more particularly described as follows:

Parcel 2 as shown on that certain Parcel Map filed for record on \_\_\_\_\_,  
20\_\_, in Book \_\_\_\_\_ of Parcel Maps, Page \_\_\_\_\_, San Joaquin County Records.

A PORTION OF THE SOUTH HALF  
 OF THE SOUTHEAST QUARTER  
 OF SEC. 10, T.3 N., R.6 E., M.D.B. & M.,  
 City of Lodi, San Joaquin County,  
 California



SCALE: 1"=150'



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 www.bpengi.com  
 209.368.6618  
 323 W. Elm St.  
 Lodi, CA 95240

**EXHIBIT B**  
Exclusive Negotiating Rights Agreement

## EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

This Exclusive Right to Negotiate Agreement (“**Agreement**”) is entered into effective as of 8/5, 2009 (“**Effective Date**”), by and between the City of Lodi, a municipal corporation (“**City**”) and Eden Development, Inc., a California nonprofit public benefit corporation (“**Eden**”). City and Eden are referred to collectively as the “**Parties.**”

### RECITALS

A. The City owns that unimproved parcel consisting of approximately 3.39 acres located at 2245 Tienda Drive in the City of Lodi, more particularly described in Exhibit A attached hereto (the “**Property**”).

B. The City has determined that the desired future use of the Property shall be an affordable rental residential development that is age restricted for seniors. Accordingly, the City issued a Request for Qualifications (“**RFQ**”) inviting submissions from developers interested in developing the Property with affordable rental housing for seniors with restrictions compatible with the financing requirements of the Community Development Block Grant Program (“**CDBG**”), the Home Investment Partnership Act (“**HOME**”) and the Department of Housing and Urban Development (“**HUD**”) Section 202 Supportive Housing for the Elderly Program (“**HUD 202**”).

C. In response to the City’s RFQ, Eden submitted its qualifications to construct, own and operate rental housing affordable to very low and low income senior households at the Property (the “**Senior Project**”). On April 1, 2009, the City Council selected Eden as the developer for the Property and directed staff to proceed with the preparation of this Agreement for the exclusive right to negotiate an agreement whose terms and conditions would govern the conveyance of the Property to Eden for the development of the Senior Project, by Eden.

D. In reliance on the City Council’s selection of Eden as the developer of the Property, Eden will commence its due diligence and predevelopment activities for the acquisition of the Property and development of the Senior Project, including submitting applications for project financing, which include but are not limited to CDBG, HOME and HUD 202 funds.

E. Until such time that the appropriate environmental assessment of the Senior Project is complete in accordance with the provisions of the California Environmental Quality Act (“**CEQA**”) and the National Environmental Policy Act (“**NEPA**”), an Option to Purchase and Purchase Agreement (“**Purchase Agreement**”) or a Disposition Development and Loan Agreement (“**DDLA**”) cannot be entered into by the Parties. This Agreement is expressly conditioned on a subsequent determination to proceed with, modify or cancel the Senior Project based on the required environmental review, pursuant to CEQA and NEPA requirements.

F. The purpose of this Agreement is to set forth the Parties’ common understanding that Eden shall have the exclusive right to negotiate a Purchase Agreement or a DDLA to develop the Property, and that for the term set forth in this Agreement, the City shall not discuss or negotiate development opportunities or rights with respect to the Property with any other person or

entity other than Eden, and that the Parties shall enter into a Purchase Agreement or DDLA, to be negotiated, upon environmental approval of the Senior Project.

G. As more fully set forth in this Agreement, the Parties acknowledge and agree that this Agreement does not grant Eden the right to acquire the Property or construct the Senior Project, nor does it obligate Eden to any activities or costs to acquire the Property or construct the Senior Project

H. In addition to the purpose set forth in Recital F, this Agreement provides evidence of the Parties intention regarding Eden’s site control of the Property for the future acquisition and development of the Property, to induce potential project lenders to accept Eden’s applications for project financing for the Senior Project.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Disposition, Development and Loan Agreement. The Parties shall use their best efforts to successfully negotiate a Purchase Agreement or DDLA which shall describe the terms and conditions governing disposition of the Property for the development of the Senior Project. The Parties agree that a Purchase Agreement or DDLA shall include, without limitation, the following terms; provided however, nothing herein is intended to or shall limit the City’s discretionary authority to approve, deny or condition specific land use entitlements for the Senior Project based on the required environmental review.

1.1. Senior Project.

1.1.1. Development Concept. The concept for the Senior Project includes the development of up to Ninety (90) rental housing units serving low-income seniors. The concept of “aging in place” (i.e., making sure that seniors can live independently even as they become frail), will be integral to the Senior Project. Accessibility will also be a priority. The Senior Project will have an elevator, include community spaces, laundry facilities and management offices, and all units will be fully adaptable and/or accessible.

1.1.2. Affordability Requirements. Upon conveyance of the Property to Eden, the Property will be subject to a recorded regulatory agreement between Eden and the City that will require Forty Nine Percent (49%) of the rental units be offered for rent and occupancy by very low and low income senior households at an affordable rent for a term of not less than Fifty Five (55) years.

1.2. Financial Terms.

1.2.1. Purchase Price. The purchase price for the Property shall be Six Hundred Thirty Dollars (\$630,000), as is substantiated by a qualified appraisal dated July 2, 2009.

1.2.2. Financing.

1.2.2.1. City CDBG and/or HOME Loan to Eden. Eden shall apply to the City for a CDBG and HOME loan of funds which have been set aside by the City in the amount of \$1,100,000.00, to finance the closing cost for Eden’s acquisition of

the Property, with the balance of the loan proceeds used to finance predevelopment costs for the Senior Project. The City loan to Eden shall have, at a minimum, the following terms: be a nonrecourse loan secured by the Property; repaid on a residual receipts basis; shall bear interest at a simple rate not to exceed 3% per annum and shall be contingent (i.e., no accrual of interest if the interest is not paid current annually) if necessary to make the Senior Project financially feasible; and shall mature 55 years from the final certificate of occupancy issued for the Senior Project.

1.2.2.2. State HOME Funds. On or before August 14, 2009, Eden shall apply to the State of California ("State") for a State HOME grant of funds in the approximate amount of \$2,800,000.00 to finance pre-development and development costs.

1.2.2.3. HUD Section 202 Funds. On or around September, 2009, Eden shall apply for HUD 202 funds in response to I-IUD's 2009 Notice of Funding Availability ("NOFA"). If the Senior Project is not selected for 2009 funding, Eden shall submit for I-IUD 202 financing in 2010 and 2011.

1.3 City Approvals. Eden shall be responsible for obtaining all approvals required by City for the Senior Project in accordance with City's standard application process for discretionary land use entitlements, including payment for all of City's costs of processing such approvals. Nothing set forth herein shall be construed as a grant of any such approvals, or as an obligation on the part of City to grant such approvals.

2. Purchase Agreement or DDLA Acknowledgments. The Parties agree that they shall use good faith efforts to seek City Council approval of a Purchase Agreement or DDLA by April 30, 2010. Eden expressly acknowledges that a Purchase Agreement or DDLA resulting from negotiations contemplated by this Agreement shall become effective only if a Purchase Agreement or DDLA is approved by the City Council following notice and hearing as required by applicable law and compliance with all other requirements of law, including without limitation CEQA and NEPA requirements. Without limiting the generality of the foregoing, this Agreement does not impose a binding obligation on the City to convey the Property to Eden, nor does it obligate the City to grant any approvals or authorizations required for the Senior Project. The Parties acknowledge that approval and execution of a Purchase Agreement or DDLA may precede formal approval and adoption of entitlements necessary for the development of the Senior Project, and the Parties agree that a Purchase Agreement or DDLA will provide that conveyance of the Property will be expressly contingent upon City Council approval, as applicable, of all discretionary entitlements required for the Senior Project.

3. Eden's Exclusive Right to Negotiate with City; Term. For a period of two (2) years commencing on the Effective Date (the "**Term**"), the City agrees that it will not, during the Term of this Agreement, directly or indirectly, through any officer, employee, agent, or otherwise, solicit, the submission of bids, offers or proposals by any person or entity with respect to the acquisition of any interest in the Property or the development of the Property, and the City shall not engage any broker, financial adviser or consultant to initiate or encourage proposals or offers from other parties with respect to the disposition or development of the Property or any portion thereof.

4. Eden's Studies: Right of Entry. During the Term, Eden shall use its best efforts to prepare, at Eden's expense, any studies, surveys, plans, specifications and reports ("**Eden's Studies**") Eden deems necessary or desirable in Eden's sole discretion, to determine the suitability of the Property for the Senior Project. Such studies may include, without limitation, title investigation, relocation plans, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses and design studies. Eden shall be responsible for obtaining the City's advance written permission from the City Manager or his designee for access to the Property as may be necessary to prepare Eden's Studies. In connection with entry onto the Property, Eden shall and hereby agrees to indemnify, defend (with counsel approved by the City) and hold harmless the Indemnities (defined in Section 11) from and against all Claims (defined in Section 11) resulting from or arising in connection with entry upon the Property by Eden or Eden's agents, employees, consultants, contractors or subcontractors.
  - 4.1. Right of Entry Agreement; Copies of Reports/Tests. The City may require Eden to execute a right of entry agreement satisfactory to the City prior to entry onto the Property. The City Manager or his designee shall have authority to sign such agreement without further approval of the Council. Eden's inspection, examination, survey and review of the Property shall be at Eden's sole expense. Eden shall provide the City with copies of all reports and test results within ten (10) days following completion of such reports and testing, whether or not such reports and test results are completed prior to or after the expiration or earlier termination of this Agreement.
  - 4.2. Property Condition. Eden shall repair, restore and return the Property to its condition immediately preceding Eden's entry thereon at Eden's sole expense. Eden shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property. Eden's indemnification obligations, obligations to provide reports and test results, and obligations to discharge liens that attach to the Property as set forth in Section 11 shall survive the expiration or earlier termination of this Agreement.
5. The City's Reports and Studies. Within fifteen (15) days following the Effective Date, the City shall make available to Eden for review or copying, at Eden's expense, all non-privileged studies, non-confidential surveys, plans, specifications, reports, and other documents concerning the physical condition of the Property that the City has in its possession or control.
6. Relationship of Parties. The Parties agree that nothing in this Agreement is intended to or shall be deemed or interpreted to create among them the relationship of buyer and seller, or of partners or joint venturers.

Confidentiality: Dissemination of Information. During the Term, each Party shall obtain the consent of the other Party prior to issuing or permitting any of its officers, employees or agents to issue any press release or other information to the press with respect to this Agreement; provided however, no Party shall be prohibited from supplying any information to its representatives, agents, attorneys, advisors, financing sources and others to the extent necessary to accomplish the activities contemplated hereby so long as such representatives, agents, attorneys, advisors, financing sources and others are made aware of the terms of this Section. Nothing contained in this Agreement shall prevent any Party at any time from

complying with the California Public Records Act, furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual obligations.

8. Termination.

8.1. Mutual Consent. This Agreement may be terminated at any time by mutual written consent of the Parties.

8.2. City's Right to Terminate. The City shall have the right to terminate this Agreement upon its good faith and reasonable determination that Eden is not proceeding diligently and in good faith to carry out its obligations pursuant to this Agreement. The City shall exercise such right by providing at least thirty (30) days' advance written notice to Eden which notice shall describe the nature of Eden's default hereunder. Notwithstanding the foregoing, if Eden commences to cure such default within such thirty (30) day period and diligently prosecutes such cure to completion within the earliest feasible time, but not later than thirty (30) days following the date of the notice, this Agreement shall remain in effect.

8.3. Eden's Right to Terminate.

8.3.1. Financial or Physical Infeasibility. Eden shall have the right to terminate this Agreement, effective upon thirty (30) days' written notice to the City that Eden has determined the Senior Project is financially or physically infeasible and the City has reviewed and agreed, in its reasonable discretion, with Eden's determination.

8.3.2. Environmental and/or Entitlement Infeasibility. If the City Council is unable for any reason to adopt or approve the certification of environmental documents required for the Senior Project pursuant to NEPA, CEQA or to rezone the Property for the Senior Project, Eden shall have the right to terminate this Agreement and the City shall reimburse Eden for its actual out-of-pocket costs paid to third parties for predevelopment activities in connection with the proposed development of Property, provided the amount to be reimbursed shall not exceed Fifty Thousand Dollars (\$50,000.00).

9. Effect of Termination or Expiration of the Term. Upon termination as provided herein, or upon the expiration of the Term (and any extensions thereof) without the Parties having successfully negotiated a Purchase Agreement or DDLA, this Agreement shall be void, and there shall be no further liability or obligation on the part of any of the Parties or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 4.2, Section 7, Section 8.3.2 and Section 11, shall survive such termination.

10. Notices. Each notice, demand or other document required to be given hereunder ("Notice") shall be in writing and shall be delivered personally (including messenger or courier service with evidence of receipt) or sent by the United States Postal Service ("USPS"), certified mail, return receipt requested, with proper postage prepaid, addressed to the parties at the respective addresses set forth below. Each Notice shall be effective upon being so deposited, but the time

period in which a response to any such Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof.

If to the City: City of Lodi Community Development Department  
221 W. Pine Street  
Lodi, CA 95240  
Attention: Joseph Wood, Neighborhood Services Manager

If to Eden: Eden Development, Inc.  
22645 Grand Street  
Hayward, CA 94541-5031  
Attention: Executive Director

copy to: D. Stephen Schwabauer, City Attorney  
City of Lodi  
221 W. Pine Street  
Lodi, CA 95240

11. Indemnification. Eden hereby covenants to indemnify, hold harmless and defend the City and their respective elected and appointed officials, officers, agents, representatives and employees (all of the foregoing, collectively the “Indemnities”) from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney’s fees and costs of litigation) (all of the foregoing, collectively the “Claims”) arising out of any act of negligence, misfeasance or willful misconduct of Eden in connection with this Agreement or the activities contemplated hereby. Eden shall have no indemnification obligation with respect to the negligence, misfeasance or willful misconduct of the City or for any Claims arising from the presence of any hazardous materials on the Property prior to conveyance of the Property to Eden. Eden’s indemnification obligations set forth in this Section 11, shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, in the event a CEQA or NEPA lawsuit is brought which relates to this Agreement, and a Purchase Agreement or DDLA to be negotiated, and/or the Senior Project, the Parties shall meet and confer about whether to proceed with the Senior Project. If the parties are unable to agree, either party may terminate this Agreement without further obligation.
12. Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.
13. Amendments: Counterparts. This Agreement may be amended only by a written instrument executed by the Parties or their successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall

constitute one agreement.

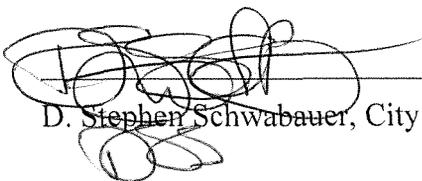
14. Successors and Assigns; No Third-Party Beneficiaries. 'This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided however, that Eden shall not transfer or assign any of its rights hereunder by operation of law or otherwise without the prior written consent of the City, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns. The Parties acknowledge that Eden shall have the right to have a Purchase Agreement or DDLA entered into by, or assigned to, a limited partnership in which the general partner is a wholly-controlled affiliate of Eden.
15. Captions. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.
16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first written above.

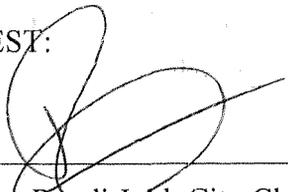
**CITY OF LODI**  
**a California municipal corporation**

By:   
Blair King, City Manager

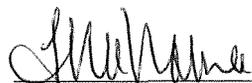
APPROVED AS TO FORM:

By:   
D. Stephen Schwabauer, City Attorney

ATTEST:

By:   
Randi Johl, City Clerk

**EDEN DEVELOPMENT, INC.,**  
**a California nonprofit public benefit corporation**

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

Name: Terese McNamee

Its: Chief Financial Officer and Acting Executive Director

EXHIBIT A:

The Property

**EXHIBIT C**  
Approved Development Budget

**Tienda Drive Senior Housing - Phase 1**  
**Estimated Acquisition and Predevelopment Budget**

Date

3/25/10

<b>SOURCES of FUNDS</b>	<b>Acq./Predev.</b>
Predevelopment Loan	\$ 684,522
Other Predevelopment Loan: Eden LOC	\$ -
County CDBG/HOME funds	\$ 865,000
State HOME funds	\$ -
HUD Capital Advance	\$ -
Tax Exempt Construction Loan	\$ -
FHLB - AHP	\$ -
LIH Tax Credit Equity - LP Contribution	\$ -
LIH Tax Credit Equity - GP Contribution	\$ -
Permanent Financing	\$ -
Permanent Financing - 2nd Mortgage	\$ -
Deferred Developer Fee	\$ -
<b>TOTAL SOURCES</b>	<b>\$ 1,549,522</b>

By 6-30-10  
Est. 5-2010

<b>USES of FUNDS</b>	<b>Acq./Predev.</b>	<b>Surplus/(Deficit)</b>		
		<b>Jul 09-Jun 10</b>	<b>Jul 10-Jun 11</b>	<b>Jul 11-Jul 12</b>
		HUD app - 8/09 0 Site Acquisition - 6/10	State HOME app - 8/10 Permit Submittal - 2/11	Permit Ready Letter - 7/11 CDLAC submit - 2/12 Construction close - 7/12
<b>LAND &amp; IMPROVEMENTS:</b>				
Land Cost	\$ 630,000	\$ 630,000	\$ -	\$ -
Extensions	\$ -	\$ -	\$ -	\$ -
Permanent Relocation	\$ -	\$ -	\$ -	\$ -
Demolition	\$ -	\$ -	\$ -	\$ -
Environmental Remediation	\$ -	\$ -	\$ -	\$ -
Site Maintenance (i.e. Security, Clean-Up)	\$ 5,000	\$ -	\$ 5,000	\$ -
Site Value Beyond Cost	\$ -	\$ -	\$ -	\$ -
Title & Escrow - Land Acquisition	\$ 5,000	\$ 5,000	\$ -	\$ -
Legal - Land Acquisition	\$ 30,000	\$ 25,302	\$ 4,698	\$ -
<b>Total Land &amp; Improvements</b>	<b>\$ 670,000</b>	<b>\$ 660,302</b>	<b>\$ 9,698</b>	<b>\$ -</b>
<b>DESIGN &amp; CONSULTING:</b>				
Architect	\$ 351,080	\$ 115,942	\$ 235,138	\$ -
Civil Engineer	\$ 57,350	\$ 42,653	\$ 14,698	\$ -
Joint Trench Utility Design	\$ 16,300	\$ -	\$ 8,150	\$ 8,150
Construction Estimating/Management Services	\$ 10,000	\$ -	\$ 5,000	\$ 5,000
Engineering Reports (i.e. Topo, Noise, Soils, Traffic, Biology)	\$ 60,000	\$ 21,988	\$ 10,000	\$ 28,012
Environmental	\$ 20,000	\$ 12,720	\$ 7,280	\$ -
Testing & Inspection	\$ -	\$ -	\$ -	\$ -
<b>Total Design &amp; Consulting</b>	<b>\$ 514,730</b>	<b>\$ 193,302</b>	<b>\$ 280,266</b>	<b>\$ 41,162</b>
<b>CONSTRUCTION:</b>				
Off-Site Improvements	\$ -	\$ -	\$ -	\$ -
On-Site Improvements	\$ -	\$ -	\$ -	\$ -
Commercial/Childcare Construction	\$ -	\$ -	\$ -	\$ -
Retail/Tenant Improvements	\$ -	\$ -	\$ -	\$ -
Unit Construction	\$ -	\$ -	\$ -	\$ -
Podium/Garage	\$ -	\$ -	\$ -	\$ -
General Requirements	\$ -	\$ -	\$ -	\$ -
GC Contingency	\$ -	\$ -	\$ -	\$ -
Contractor Overhead & Profit	\$ -	\$ -	\$ -	\$ -
Contractors Bond & Insurance	\$ -	\$ -	\$ -	\$ -
Pricing Escalation/Design Contingency	\$ -	\$ -	\$ -	\$ -
Furniture, Fixtures & Equipment (common area)	\$ -	\$ -	\$ -	\$ -
Construction Contingency	\$ -	\$ -	\$ -	\$ -
<b>Total Construction</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>INDIRECT COSTS:</b>				
Permits & Fees (not incl. building permit and related fees)	\$ 117,000	\$ 33,882	\$ 83,118	\$ -
Legal Fees - Constr. Loan Closing	\$ -	\$ -	\$ -	\$ -
Legal Fees - Perm. Loan Closing	\$ -	\$ -	\$ -	\$ -
Legal Fees - Organization	\$ 6,000	\$ 55	\$ 5,945	\$ -
Audit Fees	\$ -	\$ -	\$ -	\$ -
Sponsor Administration	\$ 100,000	\$ 100,000	\$ -	\$ -
Appraisal	\$ 3,500	\$ -	\$ 3,500	\$ -
Market Study	\$ 9,500	\$ 9,500	\$ -	\$ -
Rent/Up Marketing	\$ -	\$ -	\$ -	\$ -
Reserves:	\$ -	\$ -	\$ -	\$ -
Marketing & Bond Reserves	\$ -	\$ -	\$ -	\$ -
Initial Services Reserve	\$ -	\$ -	\$ -	\$ -
Operating Reserve	\$ -	\$ -	\$ -	\$ -
MHP Interest Reserve	\$ -	\$ -	\$ -	\$ -
Partnership Management	\$ -	\$ -	\$ -	\$ -
Investor Services Fee Reserve	\$ -	\$ -	\$ -	\$ -
HUD MCI	\$ -	\$ -	\$ -	\$ -
Soft Costs Contingency	\$ 35,000	\$ -	\$ 35,000	\$ -
<b>Total Indirect Costs</b>	<b>\$ 271,000</b>	<b>\$ 143,437</b>	<b>\$ 127,563</b>	<b>\$ -</b>
<b>FINANCE &amp; CARRYING COSTS:</b>				
Liability/COC Insurance	\$ -	\$ -	\$ -	\$ -
Real Estate Taxes	\$ -	\$ -	\$ -	\$ -
Predevelopment Loan Interest (includes land carry)	\$ 58,184	\$ 6,917	\$ 51,268	\$ -
Costs of Issuance (Bonds)	\$ -	\$ -	\$ -	\$ -
Construction Loan Fees & Expenses	\$ -	\$ -	\$ -	\$ -
Construction Loan Interest	\$ -	\$ -	\$ -	\$ -
Permanent Financing Fees & Expenses	\$ -	\$ -	\$ -	\$ -
Title & Escrow - Construction Loan	\$ -	\$ -	\$ -	\$ -
Title & Escrow - Permanent Loan	\$ -	\$ -	\$ -	\$ -
Lender-Appraisal, Legal & Consulting (Inspections incl)	\$ 8,000	\$ -	\$ -	\$ 8,000
<b>Total Finance &amp; Carry Costs</b>	<b>\$ 66,184</b>	<b>\$ 6,917</b>	<b>\$ 51,268</b>	<b>\$ 8,000</b>
<b>TAX CREDITS/SYNDICATION EXPENSES:</b>				
TCAC Application Fee	\$ 2,000	\$ -	\$ -	\$ 2,000
TCAC Reservation Fee	\$ 4,268	\$ -	\$ -	\$ 4,268
TCAC Performance Deposit	\$ -	\$ -	\$ -	\$ -
TCAC Performance Deposit Refund	\$ -	\$ -	\$ -	\$ -
TCAC Monitoring Fee	\$ -	\$ -	\$ -	\$ -
CDLAC Performance Deposit	\$ 21,339	\$ -	\$ -	\$ 21,339
CDLAC Performance Deposit Refund	\$ -	\$ -	\$ -	\$ -
Syndication Consultant	\$ -	\$ -	\$ -	\$ -
Syndication Legal Fees	\$ -	\$ -	\$ -	\$ -
Syndication-Investor Legal	\$ -	\$ -	\$ -	\$ -
Syndication Other: Bridge Loan Fees	\$ -	\$ -	\$ -	\$ -
Syndication Other: Bridge Loan/Dev Fee Interest	\$ -	\$ -	\$ -	\$ -
<b>Total TCAC/Syndication</b>	<b>\$ 27,607</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 27,607</b>
<b>TOTAL DEVELOPMENT EXPENSES</b>	<b>\$ 1,549,522</b>	<b>\$ 1,003,958</b>	<b>\$ 468,794</b>	<b>\$ 76,769</b>

**EXHIBIT D**  
Financing Plan

**Tienda Drive Senior Housing - Phase 1**  
**SOURCES AND USES OF FUNDS**

SOURCES of FUNDS	TOTAL	Acq./Predev.	Construction	Permanent	% of Total	Per Unit	Assumptions	TERMS	
Predevelopment Loan	\$ -	\$ 684,522	\$ (684,522)	\$ -	0.00%	\$ -	4.25%	24 As of 3.25.10	
Other Predevelopment Loan: Eden LOC	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -	6.00%	12	
County CDBG/HOME funds	\$ 550,000	\$ 865,000	\$ -	\$ (315,000)	4.73%	\$ 14,103			
State HOME funds	\$ 1,108,983	\$ -	\$ 1,108,983	\$ -	9.54%	\$ 28,435		Loan - 55 yr deferred loan @ 3% simple	
HUD Capital Advance	\$ 6,030,006	\$ -	\$ -	\$ 6,030,006	51.86%	\$ 154,616			
Tax Exempt Construction Loan	\$ -	\$ -	\$ 7,405,862	\$ (7,405,862)	0.00%	\$ -	4.50% int	Construction Loan @	
FHLB - AHP	\$ 380,000	\$ -	\$ 380,000	\$ -	3.27%	\$ 9,744		Loan - 10 year forgiven @ 0%	
LIH Tax Credit Equity - LP Contribution	\$ 2,909,616	\$ -	\$ 727,404	\$ 2,182,212	25.02%	\$ 74,606	0.65		
LIH Tax Credit Equity - GP Contribution	\$ 648,809	\$ -	\$ -	\$ 648,809	5.58%	\$ 16,636			
Permanent Financing	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -			
Permanent Financing - 2nd Mortgage	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -			
Deferred Developer Fee	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -			
<b>TOTAL SOURCES</b>	<b>\$ 11,627,414</b>	<b>\$ 1,549,522</b>	<b>\$ 8,937,728</b>	<b>\$ 1,140,165</b>	<b>100.00%</b>	<b>\$ 298,139</b>			
<b>Surplus/(Deficit)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0.00</b>					
USES of FUNDS	TOTAL	Acq./Predev.	Construction	Permanent	Basis Eligible	Cost/Unit	Cost/SqFt	Assumptions	Comments
<b>LAND &amp; IMPROVEMENTS:</b>									
Land Cost	\$ 315,000	\$ 630,000	\$ -	\$ (315,000)	\$ -	\$ 8,077	\$ 8		
Extensions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Permanent Relocation	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Demolition	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Environmental Remediation	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Site Maintenance (i.e. Security, Clean-Up)	\$ 5,000	\$ 5,000	\$ -	\$ -	\$ 5,000	\$ 128	\$ 0		
Site Value Beyond Cost	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Title & Escrow - Land Acquisition	\$ 5,000	\$ 5,000	\$ -	\$ -	\$ -	\$ 128	\$ 0		
Legal - Site Control and Land Acquisition	\$ 30,000	\$ 30,000	\$ -	\$ -	\$ -	\$ 769	\$ 1		
<b>Total Land &amp; Improvements</b>	<b>\$ 355,000</b>	<b>\$ 670,000</b>	<b>\$ -</b>	<b>\$ (315,000)</b>	<b>\$ 5,000</b>	<b>\$ 9,103</b>	<b>\$ 9</b>		
<b>DESIGN &amp; CONSULTING:</b>									
Architect	\$ 438,850	\$ 351,080	\$ 87,770	\$ -	\$ 438,850	\$ 11,253	\$ 12		
Civil Engineering	\$ 61,150	\$ 57,350	\$ 3,800	\$ -	\$ 61,150	\$ 1,568	\$ 2		Baumbach Contract
Joint Trench Utility Design	\$ 16,300	\$ 16,300	\$ -	\$ -	\$ 16,300	\$ 418	\$ 0		
Construction Estimating/Management Services	\$ 75,000	\$ 10,000	\$ 65,000	\$ -	\$ 75,000	\$ 1,923	\$ 2		
Engineering Reports (i.e. Topo, Noise, Soils, Traffic, Biology)	\$ 60,000	\$ 60,000	\$ -	\$ -	\$ 60,000	\$ 1,538	\$ 2		
Environmental	\$ 20,000	\$ 20,000	\$ -	\$ -	\$ 20,000	\$ 513	\$ 1		
Testing & Inspection	\$ 100,000	\$ -	\$ 100,000	\$ -	\$ 100,000	\$ 2,564	\$ 3		
<b>Total Design &amp; Consulting</b>	<b>\$ 771,300</b>	<b>\$ 514,730</b>	<b>\$ 256,570</b>	<b>\$ -</b>	<b>\$ 771,300</b>	<b>\$ 19,777</b>	<b>\$ 20</b>		
<b>CONSTRUCTION:</b>									
Off-Site Improvements	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
On-Site Improvements	\$ 988,539	\$ -	\$ 988,539	\$ -	\$ 494,270	\$ 25,347	\$ 26	\$400,000	Brown Estimate 11.06.09
Commercial/Childcare Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 130		
Retail/Tenant Improvements	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 65		Prevailing Wage/Davis Bacon Yes
Unit Construction	\$ 3,644,130	\$ -	\$ 3,644,130	\$ -	\$ 3,644,130	\$ 93,439	\$ 96	\$139	
Podium/Garage	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 70		
General Requirements	\$ 485,775	\$ -	\$ 485,775	\$ -	\$ 485,775	\$ 12,456	\$ 13	5%	Brown Estimate 11.06.09
GC Contingency	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	2%	Brown Estimate 11.06.09
Contractor Overhead & Profit	\$ 258,760	\$ -	\$ 258,760	\$ -	\$ 258,760	\$ 6,635	\$ 7	6.00%	Brown Estimate 11.06.09
Contractors Bond & Insurance	\$ 56,766	\$ -	\$ 56,766	\$ -	\$ 56,766	\$ 1,456	\$ 1	1.50%	Brown Estimate 11.06.09
Pricing Escalation/Design Contingency	\$ 787,926	\$ -	\$ 787,926	\$ -	\$ 787,926	\$ 20,203	\$ 21	14.5%	
Furniture, Fixtures & Equipment (common area)	\$ 39,000	\$ -	\$ 39,000	\$ -	\$ 39,000	\$ 1,000	\$ 1		
Construction Contingency	\$ 313,045	\$ -	\$ 313,045	\$ -	\$ 313,045	\$ 8,027	\$ 8	5.00%	
<b>Total Construction</b>	<b>\$ 6,573,940</b>	<b>\$ -</b>	<b>\$ 6,573,940</b>	<b>\$ -</b>	<b>\$ 6,079,671</b>	<b>\$ 168,563</b>	<b>\$ 173</b>	<b>262</b>	per NRSF, excl. contingency & FF&E
<b>INDIRECT COSTS:</b>									
Permits & Fees	\$ 1,170,000	\$ 117,000	\$ 1,053,000	\$ -	\$ 1,170,000	\$ 30,000	\$ 31	\$30,000	per unit estimate or per fee schedule if complete
Legal Fees - Constr. Loan Closing	\$ 30,000	\$ -	\$ 30,000	\$ -	\$ 30,000	\$ 769	\$ 1		
Legal Fees - Perm. Loan Closing	\$ 25,000	\$ -	\$ -	\$ 25,000	\$ 25,000	\$ 641	\$ 1		
Legal Fees - Organization	\$ 6,000	\$ 6,000	\$ -	\$ -	\$ 6,000	\$ 154	\$ 0		
Audit Fees	\$ 20,000	\$ -	\$ -	\$ 20,000	\$ -	\$ 513	\$ 1		
Sponsor Administration	\$ 1,297,618	\$ 100,000	\$ 150,000	\$ 1,047,618	\$ 1,297,618	\$ 33,272	\$ 34		re-certify the appraisal
Appraisal	\$ 3,500	\$ 3,500	\$ -	\$ -	\$ -	\$ 90	\$ 0		
Market Study	\$ 9,500	\$ 9,500	\$ -	\$ -	\$ 9,500	\$ 244	\$ 0		
Rent/Up Marketing	\$ 39,000	\$ -	\$ 39,000	\$ -	\$ -	\$ 1,000	\$ 1	1000	
Reserves:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Marketing & Bond Reserves	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Initial Services Reserve	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	1%	
Operating Reserve	\$ 105,300	\$ -	\$ -	\$ 105,300	\$ -	\$ 2,700	\$ 3		
Replacement Reserves	\$ 25,505	\$ -	\$ -	\$ 25,505	\$ -	\$ 654	\$ 1	0.6000%	
Partnership Management	\$ 119,379	\$ -	\$ -	\$ 119,379	\$ -	\$ 3,061	\$ 3		
Investor Services Fee Reserve	\$ 41,783	\$ -	\$ -	\$ 41,783	\$ -	\$ 1,071	\$ 1		
HUD MOI	\$ 10,000	\$ -	\$ -	\$ 10,000	\$ -	\$ 256	\$ 0		
Soft Costs Contingency	\$ 66,683	\$ 35,000	\$ 31,683	\$ -	\$ 66,683	\$ 1,710	\$ 2	2%	
<b>Total Indirect Costs</b>	<b>\$ 2,969,268</b>	<b>\$ 271,000</b>	<b>\$ 1,303,683</b>	<b>\$ 1,394,585</b>	<b>\$ 2,604,801</b>	<b>\$ 76,135</b>	<b>\$ 78</b>		
<b>FINANCE &amp; CARRYING COSTS:</b>									
Liability/COC Insurance	\$ 78,747	\$ -	\$ 78,747	\$ -	\$ 78,747	\$ 2,019	\$ 2	0.6450%	
Real Estate Taxes	\$ 3,528	\$ -	\$ 3,528	\$ -	\$ 3,528	\$ 90	\$ 0	1.120%	assumes 2 yrs, plus 1 yr during constr., reimb - per
Predevelopment Loan Interest (includes land carry)	\$ 58,184	\$ 58,184	\$ -	\$ -	\$ 58,184	\$ 1,492	\$ 2		
Costs of Issuance (Bonds)	\$ 161,252	\$ -	\$ 161,252	\$ -	\$ -	\$ 4,135	\$ 4		
Construction Loan Fees & Expenses	\$ 66,653	\$ -	\$ 66,653	\$ -	\$ 66,653	\$ 1,709	\$ 2	0.90%	
Construction Loan Interest	\$ 402,694	\$ -	\$ 402,694	\$ -	\$ 180,518	\$ 10,325	\$ 11	50% AOB	
Permanent Financing Fees & Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.8%	
Title & Escrow - Construction Loan	\$ 30,000	\$ -	\$ 30,000	\$ -	\$ 30,000	\$ 769	\$ 1		
Title & Escrow - Permanent Loan	\$ 15,000	\$ -	\$ -	\$ 15,000	\$ 15,000	\$ 385	\$ 0		
Lender-Appraisal, Legal & Consulting (Inspections incl)	\$ 55,000	\$ 8,000	\$ 47,000	\$ -	\$ 55,000	\$ 1,410	\$ 1		
<b>Total Finance &amp; Carry Costs</b>	<b>\$ 871,058</b>	<b>\$ 66,184</b>	<b>\$ 789,873</b>	<b>\$ 15,000</b>	<b>\$ 487,630</b>	<b>\$ 22,335</b>	<b>\$ 23</b>		
<b>TAX CREDITS/SYNDICATION EXPENSES:</b>									
TCAC Application Fee	\$ 2,000	\$ 2,000	\$ -	\$ -	\$ -	\$ 51	\$ 0		
TCAC Reservation Fee	\$ 4,268	\$ 4,268	\$ -	\$ -	\$ -	\$ 109	\$ 0	1%	of annual tax credit allocation
TCAC Performance Deposit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	4%	of annual tax credit allocation
TCAC Performance Deposit Refund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
TCAC Monitoring Fee	\$ 15,580	\$ -	\$ -	\$ 15,580	\$ -	\$ 399	\$ 0	410	per unit (not including manager's unit)
CDLAC Performance Deposit	\$ 21,339	\$ 21,339	\$ -	\$ -	\$ -	\$ 547	\$ 1	0.5%	of bond allocation
CDLAC Performance Deposit Refund	\$ (21,339)	\$ -	\$ (21,339)	\$ -	\$ -	\$ (547)	\$ (1)		
Syndication Consultant	\$ 30,000	\$ -	\$ -	\$ 30,000	\$ -	\$ 769	\$ 1		
Syndication Legal Fees	\$ 35,000	\$ -	\$ 35,000	\$ -	\$ -	\$ 897	\$ 1		
Syndication-Investor Legal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Syndication Other: Bridge Loan Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Syndication Other: Bridge Loan/Dev Fee Interest	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
<b>Total TCAC/Syndication</b>	<b>\$ 86,848</b>	<b>\$ 27,607</b>	<b>\$ 13,661</b>	<b>\$ 45,580</b>	<b>\$ -</b>	<b>\$ 2,227</b>	<b>\$ 2</b>		
<b>TOTAL DEVELOPMENT EXPENSES</b>	<b>\$ 11,627,414</b>	<b>\$ 1,549,522</b>	<b>\$ 8,937,728</b>	<b>\$ 1,140,165</b>	<b>\$ 9,948,402</b>	<b>\$ 298,139</b>	<b>\$ 306</b>		

**Tienda Drive Senior Housing - Phase 2**  
**SOURCES AND USES OF FUNDS**

SOURCES of FUNDS									
	TOTAL	Acq./Predev.	Construction	Permanent	% of Total	Per Unit	Assumptions	TERMS	
Predevelopment Loan	\$ -	\$ 446,766	\$ (446,766)	\$ -	0.00%	\$ -	4.25%	24	As of 3.25.10
Other Predevelopment Loan: Eden LOC	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -	6.00%	12	
City of Lodi CDBG/HOME funds	\$ 550,000	\$ 550,000	\$ -	\$ -	4.91%	\$ 13,415			
State HOME funds	\$ 391,652	\$ -	\$ 391,652	\$ -	3.49%	\$ 9,552			Loan - 55 yr deferred loan @ 3% simple
HUD Capital Advance	\$ 6,418,733	\$ -	\$ -	\$ 6,418,733	57.28%	\$ 156,554			
Tax Exempt Construction Loan	\$ -	\$ -	\$ 7,690,326	\$ (7,690,326)	0.00%	\$ -	4.50% int		Construction Loan
FHLB - AHP	\$ 400,000	\$ -	\$ 400,000	\$ -	3.57%	\$ 9,756			Loan - 10 year forgiven @ 0%
LIH Tax Credit Equity - LP Contribution	\$ 2,817,972	\$ -	\$ 704,493	\$ 2,113,479	25.15%	\$ 68,731	0.65		
LIH Tax Credit Equity - GP Contribution	\$ 628,373	\$ -	\$ -	\$ 628,373	5.61%	\$ 15,326			
Permanent Financing	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -			
Permanent Financing - 2nd Mortgage	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -			
Deferred Developer Fee	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -			
<b>TOTAL SOURCES</b>	<b>\$ 11,206,731</b>	<b>\$ 996,766</b>	<b>\$ 8,739,706</b>	<b>\$ 1,470,259</b>	<b>100.00%</b>	<b>\$ 273,335</b>			
Surplus/(Deficit) 0 0 0 0.00									
USES of FUNDS									
	TOTAL	Acq./Predev.	Construction	Permanent	Basis Eligible	Cost/Unit	Cost/SqFt	Assumptions	Comments
<b>LAND &amp; IMPROVEMENTS:</b>									
Land Cost	\$ 315,000	\$ 315,000	\$ -	\$ -	\$ -	\$ 7,683	\$ 8		
Extensions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Permanent Relocation	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Demolition	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Environmental Remediation	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Site Maintenance (i.e. Security, Clean-Up)	\$ 5,000	\$ 5,000	\$ -	\$ -	\$ 5,000	\$ 122	\$ 0		
Site Value Beyond Cost	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Title & Escrow - Land Acquisition	\$ 10,000	\$ 10,000	\$ -	\$ -	\$ -	\$ 244	\$ 0		
Legal - Land Acquisition	\$ 5,000	\$ 5,000	\$ -	\$ -	\$ -	\$ 122	\$ 0		
<b>Total Land &amp; Improvements</b>	<b>\$ 335,000</b>	<b>\$ 335,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 5,000</b>	<b>\$ 8,171</b>	<b>\$ 9</b>		
<b>DESIGN &amp; CONSULTING:</b>									
Architect (Civil included bc HUD)	\$ 340,000	\$ 272,000	\$ 68,000	\$ -	\$ 340,000	\$ 8,293	\$ 9		
Joint Trench Utility Design	\$ 16,300	\$ 16,300	\$ -	\$ -	\$ 16,300	\$ 398	\$ 0		
Construction Estimating/Management Services	\$ 65,000	\$ 10,000	\$ 55,000	\$ -	\$ 65,000	\$ 1,585	\$ 2		
Engineering Reports (i.e. Topo, Noise, Soils, Traffic, Biology)	\$ 40,000	\$ 40,000	\$ -	\$ -	\$ 40,000	\$ 976	\$ 1		
Environmental	\$ 20,000	\$ 20,000	\$ -	\$ -	\$ 20,000	\$ 488	\$ 1		
Testing & Inspection	\$ 70,000	\$ -	\$ 70,000	\$ -	\$ 70,000	\$ 1,707	\$ 2		
<b>Total Design &amp; Consulting</b>	<b>\$ 551,300</b>	<b>\$ 358,300</b>	<b>\$ 193,000</b>	<b>\$ -</b>	<b>\$ 551,300</b>	<b>\$ 13,446</b>	<b>\$ 14</b>		
<b>CONSTRUCTION:</b>									
Off-Site Improvements	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
On-Site Improvements	\$ 778,501	\$ -	\$ 778,501	\$ -	\$ 389,251	\$ 18,988	\$ 20	\$400,000	Brown Estimate 11.06.09
Commercial/Childcare Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 130		
Retail/Tenant Improvements	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 65		Prevailing Wage/Davis Bacon Yes
Unit Construction	\$ 3,439,373	\$ -	\$ 3,439,373	\$ -	\$ 3,439,373	\$ 83,887	\$ 89	\$139	
Podium/Garage	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 70		
General Requirements	\$ 485,775	\$ -	\$ 485,775	\$ -	\$ 485,775	\$ 11,848	\$ 13	5%	Brown Estimate 11.06.09
GC Contingency	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	2%	Brown Estimate 11.06.09
Contractor Overhead & Profit	\$ 237,810	\$ -	\$ 237,810	\$ -	\$ 237,810	\$ 5,800	\$ 6	6.00%	Brown Estimate 11.06.09
Contractors Bond & Insurance	\$ 52,542	\$ -	\$ 52,542	\$ -	\$ 52,542	\$ 1,282	\$ 1	1.50%	Brown Estimate 11.06.09
Pricing Escalation/Design Contingency	\$ 998,800	\$ -	\$ 998,800	\$ -	\$ 998,800	\$ 24,361	\$ 26	20.0%	
Furniture, Fixtures & Equipment (common area)	\$ 41,000	\$ -	\$ 41,000	\$ -	\$ 41,000	\$ 1,000	\$ 1		
Construction Contingency	\$ 301,690	\$ -	\$ 301,690	\$ -	\$ 301,690	\$ 7,358	\$ 8	5.00%	
<b>Total Construction</b>	<b>\$ 6,335,491</b>	<b>\$ -</b>	<b>\$ 6,335,491</b>	<b>\$ -</b>	<b>\$ 5,946,241</b>	<b>\$ 154,524</b>	<b>\$ 164</b>	<b>240</b>	per NRSF, excl. contingency & FF&E
<b>INDIRECT COSTS:</b>									
Permits & Fees	\$ 1,266,900	\$ 126,690	\$ 1,140,210	\$ -	\$ 1,266,900	\$ 30,900	\$ 33	\$30,900	per unit estimate or per fee schedule if complete
Legal Fees - Constr. Loan Closing	\$ 30,000	\$ -	\$ 30,000	\$ -	\$ 30,000	\$ 732	\$ 1		
Legal Fees - Perm. Loan Closing	\$ 25,000	\$ -	\$ -	\$ 25,000	\$ 25,000	\$ 610	\$ 1		
Legal Fees - Organization	\$ 6,000	\$ 6,000	\$ -	\$ -	\$ 6,000	\$ 146	\$ 0		
Audit Fees	\$ 20,000	\$ -	\$ -	\$ 20,000	\$ -	\$ 488	\$ 1		
Sponsor Administration	\$ 1,256,746	\$ 50,000	\$ 150,000	\$ 1,056,746	\$ 1,256,746	\$ 30,652	\$ 33		
Appraisal	\$ 3,500	\$ 3,500	\$ -	\$ -	\$ -	\$ 85	\$ 0		re-certify the appraisal
Market Study	\$ 9,500	\$ 9,500	\$ -	\$ -	\$ 9,500	\$ 232	\$ 0		
Rent/Up Marketing	\$ 41,000	\$ -	\$ 41,000	\$ -	\$ -	\$ 1,000	\$ 1	1000	
Reserves:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Marketing & Bond Reserves	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Initial Services Reserve	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Operating Reserve	\$ 110,700	\$ -	\$ -	\$ 110,700	\$ -	\$ 2,700	\$ 3	1%	
Replacement Reserves	\$ 25,251	\$ -	\$ -	\$ 25,251	\$ -	\$ 616	\$ 1	0.600%	
Partnership Management	\$ 119,379	\$ -	\$ -	\$ 119,379	\$ -	\$ 2,912	\$ 3		
Investor Services Fee Reserve	\$ 41,783	\$ -	\$ -	\$ 41,783	\$ -	\$ 1,019	\$ 1		
HUD MCI	\$ 10,000	\$ -	\$ -	\$ 10,000	\$ -	\$ 244	\$ 0		
Soft Costs Contingency	\$ 64,304	\$ 35,000	\$ 29,304	\$ -	\$ 64,304	\$ 1,568	\$ 2	2%	
<b>Total Indirect Costs</b>	<b>\$ 3,030,063</b>	<b>\$ 230,690</b>	<b>\$ 1,390,514</b>	<b>\$ 1,408,859</b>	<b>\$ 2,658,450</b>	<b>\$ 73,904</b>	<b>\$ 78</b>		
<b>FINANCE &amp; CARRYING COSTS:</b>									
Liability/COC Insurance	\$ 75,898	\$ -	\$ 75,898	\$ -	\$ 75,898	\$ 1,851	\$ 2	0.6450%	
Real Estate Taxes	\$ 3,528	\$ -	\$ 3,528	\$ -	\$ 3,528	\$ 86	\$ 0	1.1200%	assumes 2 yrs, plus 1 yr during constr., reimb - perm
Predevelopment Loan Interest (includes land carry)	\$ 37,975	\$ 37,975	\$ -	\$ -	\$ 37,975	\$ 926	\$ 1		
Costs of Issuance (Bonds)	\$ 162,568	\$ -	\$ 162,568	\$ -	\$ -	\$ 3,965	\$ 4		
Construction Loan Fees & Expenses	\$ 69,213	\$ -	\$ 69,213	\$ -	\$ 69,213	\$ 1,688	\$ 2	0.90%	
Construction Loan Interest	\$ 418,161	\$ -	\$ 418,161	\$ -	\$ 187,452	\$ 10,199	\$ 11	50% AOB	
Permanent Financing Fees & Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
Title & Escrow - Construction Loan	\$ 30,000	\$ -	\$ 30,000	\$ -	\$ 30,000	\$ 732	\$ 1		
Title & Escrow - Permanent Loan	\$ 15,000	\$ -	\$ -	\$ 15,000	\$ 15,000	\$ 366	\$ 0		
Lender-Appraisal, Legal & Consulting (Inspections incl)	\$ 55,000	\$ 8,000	\$ 47,000	\$ -	\$ 55,000	\$ 1,341	\$ 1		
<b>Total Finance &amp; Carry Costs</b>	<b>\$ 867,343</b>	<b>\$ 45,975</b>	<b>\$ 806,368</b>	<b>\$ 15,000</b>	<b>\$ 474,065</b>	<b>\$ 21,155</b>	<b>\$ 22</b>		
<b>TAX CREDITS/SYNDICATION EXPENSES:</b>									
TCAC Application Fee	\$ 2,000	\$ 2,000	\$ -	\$ -	\$ -	\$ 49	\$ 0		
TCAC Reservation Fee	\$ 4,133	\$ 4,133	\$ -	\$ -	\$ -	\$ 101	\$ 0	1%	of annual tax credit allocation
TCAC Performance Deposit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	4%	of annual tax credit allocation
TCAC Performance Deposit Refund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
TCAC Monitoring Fee	\$ 16,400	\$ -	\$ -	\$ 16,400	\$ -	\$ 400	\$ 0	410	per unit (not including manager's unit)
CDLAC Performance Deposit	\$ 20,667	\$ 20,667	\$ -	\$ -	\$ -	\$ 504	\$ 1	0.5%	of bond allocation
CDLAC Performance Deposit Refund	\$ (20,667)	\$ -	\$ (20,667)	\$ -	\$ -	\$ (504)	\$ (1)		
Syndication Consultant	\$ 30,000	\$ -	\$ -	\$ 30,000	\$ -	\$ 732	\$ 1		
Syndication Legal Fees	\$ 35,000	\$ -	\$ 35,000	\$ -	\$ -	\$ 854	\$ 1		
Syndication-Investor Legal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Syndication Other: Bridge Loan Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Syndication Other: Bridge Loan/Dev Fee Interest	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
<b>Total TCAC/Syndication</b>	<b>\$ 87,533</b>	<b>\$ 26,801</b>	<b>\$ 14,333</b>	<b>\$ 46,400</b>	<b>\$ -</b>	<b>\$ 2,135</b>	<b>\$ 2</b>		
<b>TOTAL DEVELOPMENT EXPENSES</b>	<b>\$ 11,206,731</b>	<b>\$ 996,766</b>	<b>\$ 8,739,706</b>	<b>\$ 1,470,259</b>	<b>\$ 9,635,056</b>	<b>\$ 273,335</b>	<b>\$ 290</b>		

**EXHIBIT E**  
Schedule of Performance

**TIENDA DRIVE SENIOR HOUSING**  
**Preliminary HUD Schedule**  
**April 7, 2010**

(All dates set forth below are preliminary and are subject to change as the process moves forward. Each performance deadline is conditioned upon all prior performance deadlines being met in a timely manner.)

<b>Project Milestone</b>	<b>Est. Target Date</b>
1. Predevelopment activities started by Developer	April 2009 (Completed)
2. Developer submitted development concept to City for review.	May 2009 (Completed)
3. City to introduce development concepts to key community members	June 2009 (Completed)
4. Developer submits preliminary development proposal to City for review.	June 2009 (Completed)
5. Community Meeting – Introduce Development Team and present Proposed Site	July 14, 2009 (Completed)
6. City Council approves predevelopment and acquisition loan request and Exclusive Right to Negotiate	August 5, 2009 (Completed)
7. Developer submits application to State for HOME Investment Partnerships Program	August 14, 2009 (Completed)
8. Developer submits for Project Entitlements	October 20, 2009 (Completed)
9. Execute Option Agreement to Purchase Real Property	November 4, 2009 (Completed)
10. City completes Public Review of Draft of Initial Study/Mitigated Negative Declaration	November 24, 2009 (Completed)
11. Developer submits application to HUD for grant under Section 202	December 14, 2009 (Completed). If the project is not selected, Developer shall submit for HUD 202

Housing for the Elderly	Financing in 2010 and 2011.
12. Developer obtains Project Entitlements	February 10, 2010 (Completed)
13. City obtains Authority to Use Grant Funds	No later than April 7, 2010.
14. City Council approves General Plan Amendment	Anticipated for April 7, 2010.
15. City Council authorizes Purchase and Development Agreement	Anticipated for April 7, 2010.
16. Close of Escrow and Funding of HOME/CDBG Loan	No later than June 30, 2010.
17. Developer receives HUD 202 award	Approx. 7 months from item #11. If the project is not selected, Developer shall submit for HUD 202 Financing in 2010 and 2011.
18. Developer re-submits application to State (HCD) for HOME Investment Partnerships Program	Est. August 2010 (Developer intends to apply for State HOME application in response to 2010 NOFA; however, if the project is not selected, Developer shall submit for State HOME funds in 2011 and 2012)
19. Developer obtains permit ready letter	Approx. 12 months from item #17.
20. Developer to obtain final project bids and finalize construction contract	Approx. 3 months from item #19.
21. HUD project cost review	Approx. 2 months from item #20.
22. State announces HOME conditional reservation awards	Approx. 6 months from item #18.
23. State HOME loan documents finalized	Approx. 7 months from item #22.
24. Developer submits HUD "Firm Commitment Application"	After completion of the latter of items 21 and 23.

25. Gap Financing Identified and Approved by City.	Not later than 60 days prior to CDLAC/TCAC application submittal date.
26. Developer submits applications for bond financing through California Debt Limit Allocation Committee (CDLAC) and 4% Tax Credits through State Tax Credit Allocation Committee (TCAC) CDLAC and TCAC applications	Borrower shall monitor HUD's processing of the HUD Firm Commitment and shall submit the CDLAC application when it is reasonable to project that HUD will be able to issue the Firm Commitment within the 90-day CDLAC construction start deadline. Borrower shall not be obligated to obtain a CDLAC or TCAC allocation after September of any year.
27. Close on Construction Financing and Commencement of Construction	Within 90 days of CDLAC and TCAC allocations.
28. Construction Completion	Within 24 months of commencement of construction, or within deadlines established by funding source used, HUD, TCAC and/or CDLAC.
29. 100% Occupancy	Within 6 months of construction completion.

**EXHIBIT F**  
Scope of Development

[to be inserted when approved by Seller]



**EXHIBIT G**  
Preliminary Site Plan



**EXHIBIT H**  
Seller Insurance Requirements

USE THE FOLLOWING ONLY IF THE SELLER DOES NOT HAVE ITS OWN INSURANCE REQUIREMENTS.

The Buyer shall maintain and keep in force, at the Buyer's sole cost and expense, the following insurance applicable to the Development in a form acceptable to the Seller's Executive Director with evidence of such coverage provided to the Seller's Executive Director within ten (10) days of execution of this Agreement, but in no event later than the initial disbursement of Loan funds pursuant to this Agreement:

(a) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence for Bodily Injury and Property Damage, including coverage for Contractual Liability, Personal Injury, Broadform Property Damage, and Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Buyer does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

(d) Upon acquisition of the Property, property insurance, including during the course of construction builder's risk insurance, covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the Seller, naming the Seller as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) For any design professionals working on the Development, errors and omission coverage in a minimum amount of One Million Dollars (\$1,000,000).

(f) The Buyer shall cause any general contractor or subcontractor working on the Development under direct contract with the Buyer or subcontract, to maintain insurance of the types and in at least the minimum amounts described in Subsections (a), (b), and (c) above, except that each subcontractor shall only be required to maintain the abovementioned insurance to the extent that such coverage is customarily maintained by such subcontractor and shall require that such

insurance shall meet all of the general requirements of subsections (i), (j) and (k) below.

(g) The required insurance shall be provided under an occurrence form, and the Buyer shall maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be two times the occurrence limits specified above; provided, however, that for subcontractors the general aggregate shall not be required to apply on a per project basis.

(h) Commercial General Liability and Comprehensive Automobile Liability insurance policies shall be endorsed to name as an additional insured the Seller and its officers, agents, employees and members of the Seller Council.

(i) All policies and bonds shall contain (a) the agreement of the insurer to give the Seller at least thirty (30) days' notice prior to cancellation (including, without limitation, for non payment of premium) or any material change in said policies; (b) an agreement that such policies are primary and non contributing with any insurance that may be carried by the Seller; (c) a provision that no act or omission of the Buyer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the Seller and its authorized parties in connection with any loss or damage thereby insured against. Buyer shall provide certificates of insurance and original written endorsements as evidence of the required insurance coverage.

(j) If in connection with the use of the Seller Loan funds, death, serious personal injury, or substantial property damage occurs, Buyer shall immediately notify the Seller. Buyer shall promptly submit to the Seller a written report, in such form as may be required by the Seller, of all accidents which occur in connection with this Agreement. This report shall include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Buyer's contractor or subcontractor, if any; (3) name and address of Buyer's liability insurance carrier; and (4) a detailed description of the accident and whether any of the Seller's equipment, tools or material were involved.

**EXHIBIT I**  
HUD-REQUIRED PROVISIONS RIDER

For value received, the undersigned agree that the following provisions shall be incorporated into and made a part of the following documents as amended (the "Junior Loan Documents") relating to the property commonly known as Tienda Drive Senior Housing (the "Project"): That certain Purchase and Development Agreement dated     , ~~2009~~2010 ("Agreement") and memorandum thereof recorded     , 2010 as series no.      of San Joaquin County by the City of Lodi (the "City") and Eden Housing, Inc., its successors and assigns ("Eden Housing")

In the event of any conflict, inconsistency or ambiguity between the provisions of this Rider and the provisions of the Junior Loan Documents, the provisions of this Rider shall control. All capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the Junior Loan Documents. As used in this Rider, the term "HUD Loan Documents" shall mean the following documents relating to the HUD Section 202 Capital Advance for the Project (HUD Project No. 121-EE    -NP-WAH).

- A. Deeds of Trust recorded concurrently herewith on the Property among Eden Housing as Trustor, North American Title Company as trustee and Eden Housing, Inc. as beneficiary, which beneficial interest will be assigned to HUD by that collateral assignment at closing (the "HUD Deed of Trust");
- B. Regulatory Agreement between Eden Housing and HUD recorded currently herewith on the Property ("HUD Regulatory Agreement");
- C. Capital Advance Program Use Agreement between Eden Housing and HUD recorded concurrently herewith on the Property (the "HUD Use Agreement"), incorporated by reference in the HUD Deed of Trust;
- D. HUD Security Agreement between Eden Housing as the debtor and Eden Housing, Inc. as the secured party, which interest shall be assigned to HUD by that collateral assignment (the "HUD Security Agreement");
- E. HUD Project Rental Assistance Contract (the "PRAC"); and
- F. Other HUD Capital Advance documents.

1. Term of Rider. Notwithstanding anything else in this Rider to the contrary, the provisions of this Rider shall be and remain in effect only so long as any of the HUD Loan Documents are in effect; thereafter, this Rider and its requirements shall be deemed no longer in effect.

2. Subordination. The covenants contained in the Junior Loan Documents shall be subordinate to the rights of HUD under the HUD Loan Documents, and to the HUD rules and regulations pertaining thereto; and furthermore, the Junior Loan Documents shall not be enforceable against the HUD Secretary, his or her successors and assigns, should the HUD Secretary acquire title to the Project by power of sale, foreclosure, or by deed-in-lieu of foreclosure. In addition, so long as the HUD Loan Documents are in effect, in the event that there are any conflicts between the terms and conditions in the Junior Loan Documents and the terms and conditions of the HUD Loan Documents and HUD rules and regulations pertaining thereto, the HUD Loan Documents and HUD rules and regulations shall prevail. No default may be declared under the Junior Loan Documents without prior written HUD consent.

3. HUD Rules. During the time period in which Section 202 or the PRAC regulations apply to the Project, rents approved by HUD pursuant to the Section 202 program and the PRAC shall be deemed to be in compliance with the City Regulatory Agreement, and compliance by the Eden Housing with the Section 202 Regulations and the PRAC with respect to continued occupancy by households whose incomes exceed the eligible income limitations in Section 2 of the City Regulatory Agreement, or other matters set forth in the City Regulatory Agreement, shall be deemed to be in compliance with the requirements of the Junior Loan Documents. Nothing in the Junior Loan Documents shall in any way limit, interfere or conflict with the rights of HUD with respect to development, operation and management of the Project; nor can the Junior Loan Documents in any way jeopardize the continued operation of the project on terms at least as favorable to existing as well as future tenants.

4. Maturity Date. The Junior Note may not mature, and may not bear a maturity date, prior to the date on which the HUD Note matures. The term of the Junior Loan Documents shall be extended if the Junior Note matures, there are no residual receipts or non-Project funds available for repayment and the HUD Mortgage has not been retired in full or if HUD grants a deferment of amortization or forbearance that results in an extended maturity of the HUD Loan Documents.

5. Residual Receipts. As long as HUD, its successors or assigns, is the holder of the HUD Documents, any payments due from Project income from the Section 202 units under the Junior Loan Documents, or any prepayments made with Project income from the Section 202 units, shall be payable only from residual receipts of the Project, as that term is defined in the HUD Regulatory Agreement between HUD and the Eden Housing, and subject to the availability of residual receipts in accordance with the provision of said HUD Regulatory Agreement. No payments or prepayments using residual receipts can be made without HUD approval. Eden Housings may make payments or prepayments at any time without HUD approval using funds that do not come from Project income from the Section 202 units. The restrictions on payment imposed by this paragraph shall not excuse any default caused by the failure of the makers to pay the indebtedness evidenced by the City's junior Note.

6. Indemnification. Enforcement by the City of any indemnification provisions in the Junior Loan Documents will not and shall not result in any monetary claim against the Project, the HUD Capital Advance proceeds, any reserve or deposit required by HUD in connection with the HUD Capital Advance, or the rents or other income from the Section 202 units in the Project other than residual receipts authorized for release by HUD, without the prior written consent of HUD, but City shall have the right to add any amounts due the City pursuant to indemnification provisions in the Junior Loan Documents to the principal amount of the Loan and the Note and interest shall accrue thereon commencing on the date indemnification payments are due. In addition, any indemnification provisions shall not be enforceable against the HUD Secretary, his or her successors and assigns, should the HUD Secretary acquire title to the Project by power of sale, foreclosure, or by deed-in-lieu of foreclosure.

7. Transfer. Approval by HUD of a Transfer of Physical Assets (as defined in Handbook 4350.1, REV-1, Chapter 13) ("TPA") shall constitute approval of the transfer by the City, and the Eden Housing shall deliver to the City at the same time as its delivery to HUD, any application for HUD's approval of a proposed transfer. Also, the Eden Housing shall require the transferee to expressly assume the Eden Housing's obligations under the Junior Loan Documents; provided, however, HUD shall not be required to enforce the requirements of this sentence and if Eden Housing and any transferee fail to include such assumption in transfer documents, such failure shall not affect the validity of the transfer. The City shall have the right to specifically enforce the requirement that any transferee assume the Eden Housing's obligations under the Junior Loan Documents. In the absence of such written assumption, no transfer shall be deemed to relieve the transferor from any obligations under the Junior Loan Documents.

8. Default under Junior Loan Documents. The City shall not declare a default under the Junior Loan Documents unless it has received the prior written approval of HUD, and the right of the City to accelerate the Junior Note during the term of the HUD Loan Documents shall be enforceable only with the prior written approval of HUD.

9. Receiver. The City, for itself, its successors and assigns, further covenants and agrees that in the event of the appointment of a receiver in any action by the City, its successors and assigns, to foreclose the City's junior Deed of Trust, no rents, revenue or other income of the Project collected by the receiver or by the mortgagee-in-possession shall be utilized for the payment of interest, principal, or any other charges due and payable under the City's junior Deed of Trust, except from Residual Receipts, if any, as the term is defined in the HUD Regulatory Agreement. The appointment of a receiver shall require approval by the Secretary of HUD, and pursuant to HUD regulations, as long as the City is beneficiary under the Deed of Trust, the City cannot be mortgagee-in-possession. In the event of the appointment, by any court, of any person, other than HUD, the City, as a receiver or a mortgagee or party in possession, or in the event of any enforcement of any assignment of leases, rents, issues, profits, or contracts contained in the Junior Loan Documents, with or without court action, no rents, revenue or other income of the Project collected by the receiver, person in

possession or person pursuing enforcement as aforesaid, shall be utilized for the payment of interest, principal or any other amount due and payable under the provisions of the Junior Loan Documents, except from Residual Receipts in accordance with the HUD Regulatory Agreement. The receiver, person in possession or person pursuing enforcement shall operate the Project in accordance with all provisions of the HUD Documents.

10. Deed-in-Lieu of Foreclosure. In the event that HUD acquires title to the Project by deed-in-lieu of foreclosure, the lien of the City's junior Deed of Trust will automatically terminate subject to the conditions as hereinafter described. HUD may cure a default under the HUD Deed of Trust prior to conveyance by deed-in-lieu of foreclosure. HUD shall give written notice to the City of a proposed tender of title in the event HUD decides to accept a deed-in-lieu of foreclosure. HUD will only give such written notice if, at the time of the placing of the subordinate lien against the Property, HUD receives a copy of an endorsement to the title policy of the Eden Housing or City which indicates that (a) the City's junior Deed of Trust has been recorded, and (b) HUD is required to give notice of any proposed election or tender of a deed-in-lieu of foreclosure. Such notice shall be given at the address stated in the City's junior Deed of Trust or such other addresses as later on provided to HUD by written notice, and designated by the City as its legal business address. The City shall have thirty (30) days to cure the default after notice of intent to accept a deed-in-lieu of foreclosure is mailed.

11. Eden Housing's Notice to City. Notwithstanding the requirements set forth in Paragraph 10 above, in the event that Eden Housing contemplates executing a deed-in-lieu of foreclosure, Eden Housing shall first give the City thirty (30) days prior written notice; provided, however, that the failure of the Eden Housing to give said notice shall have no effect on the right of HUD to accept a deed-in-lieu of foreclosure.

12. Sale, Transfer or Assignment of the Junior Note. The City's junior Note is non-negotiable and may not be sold, transferred, assigned or pledged by the City except with the prior approval of HUD.

13. Amendment. No amendment to the Junior Loan Documents made after the date of this Rider shall have any force or affect until and unless such amendment is approved in writing by HUD.

[signature page to follow]

IN WITNESS WHEREOF, the undersigned have executed this Rider as follows:

EDEN HOUSING, INC. a California CITY OF LODI  
Nonprofit Public Benefit Corporation

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

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

Name: \_\_\_\_\_  
City Manager

**EXHIBIT J**  
**ASSIGNMENT OF AGREEMENTS, PLANS AND SPECIFICATIONS, AND APPROVALS**

**EDEN HOUSING, INC.**

FOR VALUE RECEIVED, the undersigned, Eden Housing, Inc., a California nonprofit public benefit corporation (the "Buyer"), hereby assigns and transfers to the Seller of Lodi, a municipal corporation (the "Seller"), all of its right, title and interest in and to:

(1) All architectural, design, engineering, and construction contracts and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively "Agreements"), heretofore or hereafter entered into by any Contractor (as defined below) relating to the Property (identified in the Purchase and Development Agreement defined below)

(2) All studies and analyses, surveys, plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively "Studies, Plans and Specifications") heretofore or hereafter prepared by any Contractor (as defined below); and

(3) All land use approvals, building permits, and other governmental approvals of any nature obtained for the Development (collectively, the "Land Use Approvals").

This Assignment is made pursuant to the terms of the Purchase and Development Agreement, dated as of \_\_\_\_\_, ~~2009~~2010 entered into between the Buyer and the Seller (the "Purchase and Development Agreement" or "Agreement"). Capitalized terms used but not defined in this Assignment shall have the meanings set forth in the Agreement.

For purposes of this Assignment, the term "Contractor" means any consultant, architect, construction contractor, engineer or other person or entity entering into Agreements with the Buyer and/or preparing Studies, Plans and Specifications for the Buyer with respect to the Development.

The Buyer hereby irrevocably appoints the Seller as its attorney-in-fact (which Seller is coupled with an interest) to, upon the occurrence of a Default by Buyer (after notice and opportunity to cure) or an event which, with notice or the passage of time or both would constitute a Default (after notice and opportunity to cure) under and as defined in Article 11 of the Agreement, demand, receive, and enforce any and all of the Buyer's rights with respect to the Studies, Plans and Specifications, Agreements and Land Use Approvals, and perform any and all acts in the name of the Buyer or in the name of the Seller with the same force and effect as if performed by the Buyer in the absence of this Assignment.

The Buyer represents and warrants to the Seller that no previous assignment(s) of its rights or interest in or to the Studies, Plans and Specifications, Agreements, and/or Land Use Approvals, has or have been made, and the Buyer agrees not to assign, sell, pledge, transfer, mortgage, or hypothecate its rights or interest therein (without prior written approval of the Seller Manager) so long as the Seller holds or retains any security interest under the Agreement.

This Assignment is made to secure: (1) payment to the Seller of all sums now or hereafter owing under the Promissory Note dated as of the date hereof made by the Buyer to the Seller, and any and all additional advances, modifications, extensions, renewals and amendments thereof; and (2) payment and performance by the Buyer of all its obligations under the Agreement.

This Assignment shall be governed by the laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California, and the Buyer consents to the jurisdiction of any federal or State Court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of the Buyer and the Seller; provided, however, this shall not be construed and is not intended to waive the restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by the Buyer contained in the Agreement.

Executed by the Buyer on \_\_\_\_\_, ~~2009~~2010.

BUYER

EDEN HOUSING, INC., a California nonprofit public  
benefit corporation

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

## ARCHITECT'S/ENGINEER'S CONSENT

The undersigned architect and/or engineer (collectively referred to as "Architect") hereby consents to the foregoing Assignment of Agreements, Plans and Specifications, and Approvals ("Assignment"), of which this Architect's/Engineer's Consent ("Consent") is a part, and acknowledges that there presently exists no unpaid claims presently due to the Architect except as disclosed to the Seller with a copy to Architect arising out of the preparation and delivery of the Plans and Specification to the Buyer and/or the performance of the Architect's obligations under the Agreements, as the term "Agreements" is defined in the Assignment.

Architect agrees that if, at any time, the Seller shall become the owner of said Property, or, pursuant to its rights under the Agreement, elects to undertake or cause the completion of construction of the Development on any of the Property, in accordance with the Plans and Specifications, and gives Architect written notice of such election; then so long as the Architect has received, receives or continues to receive the compensations called for under the Agreements, the Seller may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Agreements for the benefit and account of the Seller in the same manner as if performed for the benefit or account of the Buyer in the absence of this Assignment.

Architect further agrees that, in the event of a breach by the Buyer of the Agreements, or any agreement entered into with Architect in connection with the Plans and Specifications, so long as the Buyer's interest in the Agreements and Plans and Specifications is assigned to the Seller, Architect will give written notice to the Seller at the address shown below of such breach. The Seller shall have thirty (30) days from the receipt of such written notice of Default to remedy or cure said Default; provided, however, nothing herein shall require the Seller to cure said Default or to undertake completion of construction of the Improvements.

Architect warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment or the Predevelopment Loan Agreement, as applicable.

Executed by the Architect on \_\_\_\_\_, 20\_\_

Address of Seller:  
City of Lodi  
Community Development Dept.  
221 W. Pine Street, Lodi, CA 945240  
(P.O. Box 3006, Lodi, CA 95241-1910)  
Attention: Manager,  
Neighborhood Services Division  
Community Improvement

Address of Architect:  
  
Architect: \_\_\_\_\_  
  
By: \_\_\_\_\_  
  
Its: \_\_\_\_\_

**EXHIBIT K**

**Memorandum of Purchase and Development Agreement**

**Recording Requested By  
And When Recorded Mail To:**  
City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910

With a Copy to and  
Mail Tax Statements to:  
Eden Housing, Inc.  
22645 Grand Street  
Hayward, CA 94541-5031

FREE RECORDING REQUESTED  
(Gov't Code Section 6103)

**MEMORANDUM OF PURCHASE AND  
DEVELOPMENT AGREEMENT**

By this Memorandum of Purchase and Development Agreement made \_\_\_\_\_, 20\_\_ made concurrently with the Purchase and Development Agreement ("Agreement") between the same parties covering the same property, more particularly described as the City of Lodi, a California municipal corporation and Eden Housing, Inc., a California nonprofit public benefit corporation (individually "Party" and collectively, "Parties") hereby agree the real property commonly known as approximately 3.39 acres located at 2245 Tienda Drive in the City of Lodi ("Property"), which Property is more particularly described in Exhibit A, attached hereto, shall be held, maintained and operated pursuant to the terms of the Agreement and the Exhibits attached, thereto.

This Memorandum may be executed in multiple originals, each of which is deemed an original, and may be signed in Counterparts.

IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum as of the date set forth above.

Eden Housing, Inc.,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
| 20092010  
Linda Mandolini,  
Executive Director

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

City of Lodi,  
a California municipal corporation

By: \_\_\_\_\_  
| 20092010  
Blair King, City Manager

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

Approved as to Form:

By: \_\_\_\_\_  
D. Stephen Schwabauer, City Attorney

STATE OF CALIFORNIA    )  
  ) ss:  
COUNTY OF                    )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF CALIFORNIA    )  
  ) ss:  
COUNTY                        )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

RESOLUTION NO. 2010-43

A RESOLUTION OF THE LODI CITY COUNCIL  
AUTHORIZING THE CITY MANAGER TO EXECUTE A  
PURCHASE AND DEVELOPMENT AGREEMENT WITH  
EDEN HOUSING, INC. REGARDING A SENIOR  
HOUSING PROJECT AT 2245 TIENDA DRIVE

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Purchase and Development Agreement with Eden Housing, Inc., a California corporation, for Eden's acquisition of City-owned property located at 2245 Tienda Drive, Lodi, California, and the subsequent development of an affordable senior housing project known as the "Tienda Drive Senior Housing Project" at that location.

Dated: April 7, 2010

=====

I hereby certify that Resolution No. 2010-43 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 7, 2010, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, and  
Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Mounce

ABSTAIN: COUNCIL MEMBERS – None

  
RANDI JOHL  
City Clerk



# Eden Housing - Purchase & Development Agreement

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Presentation by  
Community Development Department

April 7, 2010



# Purchase & Development Agreement

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- PDA Sets Terms and Conditions
  - Sale of 2245 Tienda Drive to Eden Housing, Inc.
  - Subsequent Development of Senior Housing Project
  - Requires Execution of Loan, Regulatory Agreements & Promissory Note with San Joaquin County.
    - These documents are between Eden Housing, Inc. and San Joaquin County, as CDBG/HOME funds are through Urban County.



# History to This Point

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- April 1, 2009, Council authorized City Manager to negotiate with Eden Housing to develop an affordable senior housing project at 2245 Tienda Drive.
- August 5, 2009, Council authorized City Manager to execute an Exclusive Right to Negotiate.
- October 21, 2009, Council authorized City Manager to execute Option Agreement for purchase of Tienda Drive property.



# Public Outreach

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- Meetings with:
  - Surrounding Neighborhood, Local Agencies and Organizations
- Community Review and Input
  - Initial Design Options Presented
    - Utilized more of the rear of the Roget Park property to address security concerns in deepest corner of the park.
  - General Consensus From Adjacent Property Residents
    - Maintain current park boundaries.
    - Maintain buffer between rear of project and adjacent residential properties to the north.
    - Overwhelming support for the project.



# Planning Commission Approval

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- February 10, 2010
  - Planning Commission approved:
    - Site Plan and Architectural Review
    - Tentative Map
  - No opposition to the project.



# Next Steps

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- Executing documents between Eden & SJC.
- Closing escrow by June, 2010.
- With HUD 202 Program funding, Eden Housing could have construction starting for Phase I in 2012, with occupancy approximately one year later.
- Pursue additional funding:
  - State HOME Program