

**RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:**

City of Merced
678 W. 18th Street
Merced, CA 95340
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

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

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Among

CITY OF MERCED
a California charter municipal corporation,

Acting in its own capacity, and in its capacity as the
Housing Successor to the former Merced Redevelopment Agency

and

Linc I Street Apts LP,
a California limited partnership

1823 "I" Street (APN 031-074-009)
1815 "I" Street (APN 031-074-010)
205 West 18th Street (APN 031-074-011)
211 W. 18th Street (APN 031-074-012)
202 W. 19th Street (APN 031-074-008)
Merced, California

ATTACHMENTS

Attachment No. 1	Legal Description of Properties
Attachment No. 2	Depiction of Properties
Attachment No. 3	Grant Deed
Attachment No. 4	Schedule of Performance
Attachment No. 5	Scope of Development
Attachment No. 6	Site Plan
Attachment No. 7	Release of Construction Covenants
Attachment No. 8	Affordability Covenants
Attachment No. 9	Deed of Trust
Attachment No. 10	Promissory Note
Attachment No. 11	Deed Restriction Covenant and Loan Agreement

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (“Agreement”) is entered into between the City of Merced, a California charter municipal corporation (“City”) in its own capacity and acting in its capacity as housing successor pursuant to California Health & Safety Code (“HSC”) Section 34176 (“Housing Successor”) to the former Merced Redevelopment Agency (“Agency”) and Linc I Street Apts LP, a California limited partnership (“Developer”), or its assignee. The effective date of this Agreement shall be the date the Agreement is executed by City (“Effective Date”).

RECITALS

A. City owns the certain real properties consisting of approximately 0.52 acres combined located at 1823 “I” Street (Assessor’s Parcel No. or “APN” 031-074-009), 1815 “I” Street (APN 031-074-010), 205 West 18th Street (APN 031-074-011), 211 W. 18th Street (APN 031-074-012), and 202 W. 19th Street (APN 031-074-008) (“**Properties**”), more particularly described in **Attachment No. 1** and depicted in **Attachment No. 2**.

B. After following the California Surplus Land Act, the City made the Properties available for sale and private development. Developer expressed interest in purchasing the Properties for development of affordable housing.

C. Pursuant to HSC 34176, the City elected to retain the housing assets and functions previously performed by the Redevelopment Agency, including all rights, powers, assets, liabilities, duties and obligations associated with the housing activities of the Agency excluding any amounts on deposit in the Low and Moderate Income Housing Fund, to the Agency, as provided in resolution No. 2012-5 adopted on January 12, 2012. City continues to serve as the Housing Successor to the Agency.

E. Developer is an experienced residential developer, and desires to purchase the Properties for the purposes of building affordable housing units in accordance with this Agreement.

F. City desires to sell the Properties to Developer for the purpose of developing the Properties to include fifty-three (53) multifamily residential rental units and one (1) manager unit, for a total of fifty-four (54) units, in accordance with this Agreement and as described further in the Scope of Development in **Attachment No. 5** (the “**Project**” or “**Site**”). Of the fifty-four (54) units, twenty-two (22) units shall be restricted for extremely low to low income households earning 30% to 60% of the Area Median Income for Merced County, adjusted for family size (“AMI”) as further described in the Affordability Covenants.

G. On November 21, 2022, the City Council of the City of Merced authorized the commitment of One Million Six Hundred Eight Thousand Eight Hundred Thirty Dollars (\$1,608,830) in Permanent Local Housing Allocation (“PLHA”) funds to assist with the development of the 30% to 60% AMI units.

H. The City's disposition of the Properties, and the construction, completion, and operation of affordable housing on the Properties pursuant to the terms of this Agreement, are in the vital and best interest of the City and the health, safety, and welfare of its residents, and will serve the public purpose in the City.

NOW, THEREFORE, upon the mutual covenants and consideration provided herein, the Parties agree as follows:

AGREEMENT

1. CONVEYANCE OF THE PROPERTIES

A. Disposition of the Properties. The Developer agrees to purchase the Properties from the City, and the City agrees to sell the Properties to Developer, in accordance with and subject to all of the terms, covenants, and conditions of this Agreement, for the "Purchase Price" set forth below. The conveyance of the Properties shall be by "Grant Deed" substantially in the form of **Attachment No. 3**.

B. Purchase Price. City agrees to sell the Properties to Developer for the amount of One Dollar (\$1.00) per property, or Five Dollars (\$5.00) total (the "**Purchase Price**"). Developer shall deposit the Purchase Price into Escrow, as defined below, within three (3) working dates after execution of this Agreement.

C. Escrow. Within three (3) working days after the execution of this Agreement by both parties, the parties shall open escrow ("Escrow") with Commonwealth Land Title Company located at 601 S. Figueroa Street, Suite 4000, Los Angeles, California 90017, or another escrow company mutually satisfactory to both parties (the "**Escrow Agent**").

D. Costs of Escrow. The Developer shall pay the premium for the Title Policy as set forth in Section 1K hereof; the City shall pay for the documentary transfer taxes due, if any, with respect to the conveyance of the Properties; and the Developer shall pay all of the Escrow fee, notary fee, recording fee, costs of drawing the deed, and all usual and customary costs typically incurred by a purchaser in real estate transactions.

E. Escrow Instructions. This Agreement constitutes the joint escrow instructions of the Developer and the City, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close this Escrow in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and the City will cancel its own policies after the Closing. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements to or on behalf of the City shall be made by check from such account unless otherwise approved by the City in its sole and absolute discretion.

If in the opinion of either party it is necessary or convenient in order to accomplish the Closing, such party may require that the parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place as set forth in Section 1G. The Escrow Agent is instructed to release the City's escrow closing statement and the Developer's escrow closing statement to the respective parties.

F. Authority of Escrow Agent. Escrow Agent is authorized to, and shall:

(1) Charge the City any amount necessary to place title in the condition necessary to satisfy Section 1J of this Agreement.

(2) Pay and charge the Developer and the City for their respective shares of the Escrow fee, charges, and other costs payable under Section 1D of this Agreement.

(3) Disburse funds and deliver and record the Grant Deed, and the Affordability Covenants, when both the Developer Conditions Precedent and the City Conditions Precedent have been fulfilled or waived, as confirmed jointly in writing by the Developer and the City.

(4) Do such other actions as necessary, including obtaining or issuing the Title Policy, to fulfill its obligations under this Agreement.

(5) Do such other actions as necessary to comply with any federal, state, or local reporting requirements, including directing the City and the Developer to execute any required forms, statements or certificates.

G. Closing. This transaction shall close escrow ("**Closing**") after the satisfaction of all of the City and Developer Conditions Precedent to Closing as set forth in Section 1.L of this Agreement, but in no event later than three hundred sixty five (365) days after Escrow is opened or three hundred sixty five (365) days after a tax credit award is secured, whichever is later (the "**Closing Deadline**"), unless otherwise extended by written agreement of the parties; the City Manager or their representative may authorize extensions on behalf of the City at their sole discretion. The Closing shall occur at a location within Merced County at a time and place reasonably agreed to by the parties. The Closing shall mean the time and day the Grant Deed is filed for record with the Merced County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

H. Termination. If Escrow is not in condition to close by the Closing Deadline, then either party which has fully performed under this Agreement may, in writing, demand termination of the Escrow. Under these circumstances, the Escrow Agent shall return all money, papers and documents deposited in Escrow to the respective depositing party. If either party makes a written demand for termination of Escrow, the Escrow shall not terminate until ten (10) days after the Escrow Agent shall have delivered copies of such demand to the other party at the address shown

in this Agreement. If any objections are raised within that ten (10) day period, the Escrow Agent is authorized to hold all money, papers, and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of the Escrow shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

I. Closing Procedure. The Escrow Agent shall close Escrow for the Properties as follows:

(1) Record the Grant Deed with instructions for the Recorder of Merced County, California to deliver the Grant Deed to the Developer.

(2) Record the Affordability Covenants (**Attachment No. 8**) with instructions for the Recorder of Merced County, California to deliver the Affordability Covenants to the City.

(3) Instruct the Title Company to deliver the Title Policy to the Developer and a copy of the Title Policy to the City.

(4) File and deliver any informational reports, forms, statements, and certificates as required by federal, state or local law.

(5) Forward to both the Developer and the City a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

J. Review of Title. The City shall cause Commonwealth Title Company, or another title company mutually agreeable to both parties (the "**Title Company**"), to deliver to Developer a standard preliminary title report (the "**Title Report**") with respect to the title to the Properties, together with legible copies of the documents underlying the exceptions ("**Exceptions**") set forth in the Title Report, within thirty (30) days from the Effective Date of this Agreement. The Developer shall have the right to reasonably approve or disapprove the Exceptions; provided, however, that the Developer hereby approves the following Exceptions:

(1) Property interests held by a public body or public bodies, including without limitation easements, franchises, licenses, or other property interests of the public body or public bodies, on the Properties and/or within the public rights-of-way around the perimeter of the Properties.

(2) The lien of any non-delinquent property taxes and assessments (to be prorated at the Closing).

(3) Any incidental easements or other matters affecting title which do not preclude Developer's use of the Properties as proposed herein.

(4) Such other exceptions to title as may hereafter be mutually approved by the City and the Developer.

Within sixty (60) days after the Effective Date, Developer shall give written notice to the City and the Escrow Agent of the Developer's approval or disapproval of any of the Exceptions. The Developer's failure to give written disapproval of the Title Report within such time limit shall be deemed approval of the Title Report. If the Developer notifies the City of its disapproval of any Exceptions in the Title Report, the City shall have the right, but not the obligation, to remove any disapproved Exceptions within thirty (30) days after receiving written notice of the Developer's disapproval or provide assurances satisfactory to the Developer that such Exception(s) will be removed on or before the Closing. If the City cannot or does not elect to remove any of the disapproved Exceptions within that period, the Developer shall have fifteen (15) days after the expiration of the thirty (30) day period to either give the City written notice that Developer elects to proceed with the purchase of the Properties subject to the previously disapproved Exceptions or to give the City written notice that the Developer elects to terminate this Agreement. The Exceptions to title approved by the Developer as provided herein shall hereinafter be referred to as the "**Condition of Title.**" The Developer shall have the right to approve or disapprove any further Exceptions reported by the Title Company after the Developer has approved the Condition of Title for the Properties (which are not created by the Developer). The City shall not voluntarily create any new exceptions to title following the date of this Agreement.

K. Title Insurance. Upon recordation of the Grant Deed the Title Company shall issue to the Developer an ALTA or CLTA policy of title insurance, as requested by Developer (the "**Title Policy**"), together with such endorsements as are reasonably requested by the Developer, issued by the Title Company ensuring that the title to the Properties is vested in the Developer in the condition required by Section 1J of this Agreement. The Title Policy shall be for the amount of the Purchase Price. The Title Company shall provide the City with a copy of the Title Policy. The Developer shall be responsible for the cost of providing title insurance.

L. Conditions of Closing. The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below.

(1) **City's Conditions of Closing.** City's obligation to proceed with the Closing of the sale of the Properties is subject to the fulfillment or waiver by the City of each and all of the conditions precedent (a) through (h), inclusive, described below ("**City Conditions Precedent**"), which are solely for the benefit of the City, and which shall be fulfilled or waived by the time periods provided for herein:

(a) **No Default.** Prior to the Close of Escrow, the Developer shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of the Developer contained herein shall be true and correct in all material respects.

(b) **Execution of Documents.** The Developer shall have executed the Grant Deed, the Affordability Covenants, Deed of Trust, Promissory Note

and any other documents required hereunder and delivered such documents into Escrow.

(c) Payment of Funds. Prior to the Closing, the Developer shall have deposited the Purchase Price and all required costs of the Closing into Escrow in accordance with Sections 1B and 1D hereof.

(d) Design Approvals. The Developer shall have obtained City's approval of the Preliminary Design Drawings, Site Plan Drawings, and Construction Drawings for the Developer Improvements as set forth in Section 2B hereof; provided that if City disapproves any of the foregoing, such disapproval shall be in writing and provide the bases for disapproval and any measures that can be taken by the Developer to obtain approval.

(e) Land Use Approvals. The Developer shall have received all land use approvals for the Developer Improvements required pursuant to Section 2C hereof, provided that ready-to-issue letters shall be acceptable in lieu of issued permits.

(f) Financing. The City shall have approved financing, or proof of financial capacity to complete the Developer Improvements, as provided in Section 2M hereof, and such financing shall have closed and funded or be ready to close and fund upon the Closing.

(g) Insurance. The Developer shall have provided proof of insurance as required by Section 2F hereof.

(h) Plans and Permits. The Developer shall have obtained City approval of its final building plans for all of the Developer Improvements and building permits shall be ready to be issued (upon payment of necessary fees, posting of required security, and similar items).

(2) **Developer's Conditions of Closing**. Developer's obligation to proceed with the Closing of the purchase of the Properties is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent (a) through (e), inclusive, described below ("**Developer Conditions Precedent**"), which are solely for the benefit of Developer, and which shall be fulfilled or waived by the time periods provided for herein:

(a) No Default. Prior to the Close of Escrow, the City shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of the City contained herein shall be true and correct in all material respects.

(b) Execution of Documents. The City shall have executed the Grant Deed, the Affordability Covenants, and any other documents required hereunder, and delivered such documents into Escrow.

(c) Review and Approval of Title. The Developer shall have reviewed and approved the condition of title of the Properties, as provided in Section 1J hereof.

(d) Title Policy. The Title Company shall, upon Developer's payment of Title Company's regularly scheduled premium, have agreed to provide to the Developer the Title Policy for the Properties upon the Close of Escrow, in accordance with Section 1K hereof.

(e) Feasibility. The Developer shall have approved or be deemed to have approved the feasibility of the development contemplated hereunder pursuant to Section 1N hereof.

(f) Financing. The Developer shall have obtained financing approved by the City, as provided in Section 2M hereof, and such financing shall have closed and funded or be ready to close and fund upon the Closing.

M. Representations and Warranties.

(1) **City Representations**. City represents and warrants to Developer as follows:

(a) Authority. The City has the full right, power and lawful authority to acquire, grant, sell and convey the Properties as provided herein, and the execution, performance and delivery of this Agreement by the City has been fully authorized by all requisite actions on the part of the City.

(b) FIRPTA. City is not a "foreign person" within the parameters of FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute, or that City has complied and will comply with all the requirements under FIRPTA or any similar state statute.

(c) No Conflict. To the best of the City's knowledge, the City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the City is a party or by which it is bound.

(d) Litigation. To the best of the City's knowledge, there are no actions, suits, material claims, legal proceedings or any other proceedings affecting the Properties, or any portion thereof, at law or in equity, before any court or governmental agency, domestic or foreign.

All of the representations and warranties set forth in this Section 1M(1) are made with the acknowledgment that they are material, and with the intention that the City shall rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 1M(1) shall each survive the execution of this Agreement and the Closing.

(2) **Developer Representations.** Developer represents and warrants to the City as follows:

- (a) Authority. The Developer has the full right, power and lawful authority to purchase and accept the conveyance of the Properties, or any portion thereof, and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by the Developer has been fully authorized by all requisite actions on the part of the Developer.
- (b) Experience. The Developer is an experienced developer and operator of residential properties.
- (c) No Conflict. To the best of the Developer's knowledge, the Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer is a party or by which it is bound.
- (d) No Developer Bankruptcy. The Developer is not the subject of a bankruptcy or other insolvency proceeding.
- (e) FIRPTA. The Developer is not a "foreign person" within the parameters of FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute, or that Developer has complied and will comply with all the requirements under FIRPTA or any similar state statute.
- (f) Patriot Act. Developer is in compliance with all laws, statutes, rules, and regulations or any federal state or local governmental authority applicable to Developer and all beneficial owners of Developer with respect to or arising out of the requirements of any Orders and other similar requirements contained in the rules and regulations of OFAC. Neither Developer nor any beneficial owner of Developer: (i) is listed on the Lists; (ii) has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (iii) is owned or controlled by, not acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

(g) Deliveries. All documents, instruments and other information delivered by the Developer to the City pursuant to this Agreement are, to the best of Developer's knowledge, true, correct and complete.

(h) Commissions. To the best of the Developer's knowledge, there are no broker's commissions or finder's fees payable in connection with the Properties.

All of the representations and warranties set forth in this Section 1.M(2) are made with the acknowledgment that they are material, and with the intention that the City shall rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 1.M(2) shall each survive the execution of this Agreement and the Closing.

N. Studies and Reports. Prior to the Closing, representatives of the Developer shall have the right of access to all portions of the Properties for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement, including the investigation of the environmental condition of the Properties pursuant to Section 1O hereof. Developer acknowledges that permission from City has been granted by a Right of Entry Agreement dated June 3, 2022, between Developer and City. Developer shall indemnify and hold harmless the City, and its officers, agents, employees, and volunteers, from any liability arising out of the Developer's access to the Properties for these purposes. Any preliminary work undertaken on the Properties by the Developer prior to the Closing shall be done at the sole expense of the Developer, and the Developer's execution of a right of entry agreement to be provided by the City. Any preliminary work shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

O. Condition of the Properties.

(1) **Disclosure.** The City and the Developer hereby represent and warrant to the other that they have no actual knowledge, and have not received any notice or communication from any government agency having jurisdiction over the Properties, notifying such party of the presence of surface or subsurface zone Hazardous Materials in, on, or under the Properties, or any portion thereof. "Actual knowledge," as used herein, shall not impose a duty of investigation, and shall be limited to the actual knowledge of the City and the Developer employees and agents who have participated in the preparation of this Agreement.

(2) **No Further Warranties As To Properties; Release of City.**

Notwithstanding any provisions of this Agreement to the contrary, the conveyance of all or any portion of the Properties shall be conveyed to the Developer in an "AS IS" condition, with no warranty, express or implied by the City, as to the condition of improvements on the Properties, the soil, its geology, the presence of known or unknown faults or Hazardous Materials, and the Developer agrees to and shall indemnify and hold the City, and their officers, agents, employees, and volunteers, harmless from and against all liability, loss, damages, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the existence of such faults or substances. It shall be the sole responsibility of the Developer at its expense to investigate and

determine the soil and improvement conditions on the Properties for the development to be constructed. If the soil environmental condition is not in all respects entirely suitable for the use or uses to which the Properties will be put, then it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the soil conditions of the Properties in a condition entirely suitable for its development.

Upon conveyance of the Properties to Developer, the Developer hereby waives, releases and discharges forever the City, and its officers, agents, employees, and volunteers, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with the condition of the Properties, any Hazardous Materials on the Properties, or the existence of Hazardous Materials contamination due to the generation of Hazardous Materials from the Properties, however they came to be placed there, except that arising out of the negligence or misconduct of the City or its employees, officers, agents or representatives.

The Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

As such relates to this Section 1O, the Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Linc I Street Apts LP,
a California limited partnership

By: Linc I Street Apts LLC,
a California limited liability company,
its general partner

By: Linc Housing Corporation,
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Anders Plett
Senior Vice President of Housing Development

(3) **Developer Precautions After Closing.** Upon the Closing, the Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Properties. Such precautions shall include

compliance with all governmental requirements with respect to Hazardous Materials. In addition, the Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

(4) **Developer Indemnity.** Upon the Closing, Developer agrees to indemnify, defend and hold the City, and its officers, agents, employees, and volunteers, harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon: (a) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Properties which occurs after the Closing; or (b) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Properties which occurs after the Closing. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. At the request of the Developer, the City shall cooperate with and assist the Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the City shall not be obligated to incur any expense in connection with such cooperation or assistance.

(5) **Hazardous Materials Definition.** For purposes of this Section 1.O, Hazardous Materials means any substance, material, or waste which is or becomes defined and is regulated as hazardous by any governmental authority, the State of California, or the United States government.

P. Performance Conditions. The performance by the Developer shall include the diligent construction of the Developer Improvements in conformity with all provisions of this Agreement, including without limitation the Schedule of Performance, and includes: (1) the payment by the Developer of all required public entity fees in connection with the Developer Improvements; (2) the provision of defense, indemnification, assumption of responsibility for, and provision of insurance as required pursuant to each of Section 2.F and Section 2.G of this Agreement; (3) upon conveyance of the Properties to Developer, the payment prior to delinquency of all property taxes and assessments on the Properties; (4) the substantially continuous, uninterrupted operation of Conforming Business Activities and no other uses on the Properties; (5) compliance with all documents recorded pursuant to this Agreement; and (6) compliance, in the course of performing pursuant to this Agreement, with all applicable laws, including without limitation state labor standards.

Q. Merger of Parcels. Any merger of the parcels which make up the Properties, and all lot line adjustments, as and when required by the City and/or the County of Merced, as applicable,

in order to issue building permit ready-to-issue letters and building permits, and the City shall reasonable cooperate with, implement, execute and/or record such merger or lot line adjustments, which must occur prior to Closing.

2. DEVELOPMENT OF THE PROPERTY

A. Developer's Obligation to Construct Improvements. The Developer shall develop or cause the development of the Developer Improvements in accordance with the Schedule of Performance (**Attachment No. 4**) the Scope of Development (**Attachment No. 5**), the Site Plan (**Attachment No. 6**), the City of Merced Municipal Code, and the plans, drawings and documents submitted by the Developer and approved by the City as set forth herein. The “**Developer Improvements**” shall generally consist of the construction of fifty-three (53) multifamily residential rental units and one (1) manager unit, for a total of fifty-four (54) units, on the Properties, as more fully set forth in the Scope of Development. The Developer agrees to restrict twenty-two (22) units for rent to households earning 30%-60% AMI, of which six (6) units are restricted at 30% AMI, five (5) units are restricted at 50% AMI, and eleven (11) units are restricted 60% AMI.

B. Design Review.

[Omitted.]

C. Land Use Approvals. Before commencement of the applicable stage of construction and development of the Developer Improvements or other related works of improvement upon or adjacent to the Properties, the Developer shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required by the City (solely in its capacity as a governmental agency with jurisdiction over the Property) or any other governmental agency affected by such construction or work, except for those which are the responsibility of the City as set forth herein. The Developer shall, without limitation, apply for and secure the following, and pay all costs, charges and fees associated therewith:

(1) All permits and fees required by the City, County of Merced, and other governmental agencies with jurisdiction over the Developer Improvements.

(2) Any environmental studies and documents required pursuant to the California Environmental Quality Act.

D. Schedule of Performance. The Developer shall submit all Construction Drawings, commence and complete all construction of the Developer Improvements, and satisfy all other obligations and conditions of this Agreement, within the respective times established therefor in the Schedule of Performance. The Schedule of Performance shall be deemed a material part of this Agreement.

E. Cost of Construction. Except to the extent otherwise expressly set forth in this Agreement, all of the costs of planning, designing, developing, and constructing the Developer Improvements, including site preparation and grading, shall be borne solely by the Developer.

F. Insurance Requirements. The Developer shall take out prior to commencement of construction of the Developer Improvements, and maintain or shall cause its contractor to take out and maintain until issuance of the Release of Construction Covenants pursuant to Section 2L of this Agreement, a comprehensive general liability policy in the amount of Five Million Dollars (\$5,000,000) combined single limit policy, and if Developer owns automobiles, a comprehensive automobile liability policy in the amount of One Million Dollars (\$1,000,000), combined single limit, or such other policy limits as the City may approve at its discretion, including contractual liability, as shall protect the Developer, the City from claims for such damages, and which policy shall be issued by an "A" rated insurance carrier. Such policy or policies shall be written on an occurrence form. The Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that the Developer and any contractor with whom it has contracted for the performance of work on the Properties or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. The Developer shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by the City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the City and its respective officers, agents, employees, and volunteers, as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify the City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Developer shall be primary insurance and not be contributing with any insurance maintained by the City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City. The required certificate shall be furnished by the Developer at the time set forth therefor in the Schedule of Performance or, if no time is specified, prior to the commencement of construction of the Developer Improvements.

G. Developer's Indemnity. The Developer shall defend, indemnify, assume all responsibility for, and hold the City and its officers, agents, employees, and volunteers, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation thereof and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which may be caused by any acts or omissions of the Developer under this Agreement, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement, except to the extent caused by the negligence or willful misconduct of the City or its agents or employees.

The Developer shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Developer determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Developer shall compromise or settle such action in a way that fully protects City from any liability or obligation. In this regard, the Developer's obligation and right to defend shall include the right to hire (subject to written approval by the City) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against the Developer or City. If Developer defends any such action, as set forth above, it shall indemnify and hold harmless the City and its officers, agents, employees, and volunteers, from and against any claims, losses, liabilities, or damages assessed or awarded against either of them by way of judgment, settlement, or stipulation.

H. Rights of Access. Prior to the issuance of a Release of Construction Covenants (as specified in Section 2.L of this Agreement), for purposes of assuring compliance with this Agreement, including construction of the Developer Improvements, representatives of the City shall have the right of access to the Properties conveyed to the Developer without charges or fees, at normal construction hours during the period of construction. City representatives shall comply with all safety rules during any such inspection. The City (or its representatives) shall, except in emergency situations, notify the Developer in writing 2 business days prior to exercising its rights pursuant to this Section 2.H.

I. Compliance With Laws. The Developer shall carry out the design, construction and operation of the Developer Improvements in conformity with all applicable laws, including all applicable state labor standards, prevailing wage laws, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City 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., California Government Code Section 4450, et seq., California Government Code Section 11135, et seq., the Unruh Civil Rights Act, Civil Code Section 51, et seq, and California Labor Code 1720 et seq.

J. Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, California Government Code Section 12900, et seq., the California Equal Pay Law, California Labor Code Section 1197.5, California Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., and all other anti-discrimination laws and

regulations of the United States and the State of California as they now exist or may hereafter be amended.

K. Taxes and Assessments. The Developer shall pay (or challenge in good faith through appropriate venue) prior to delinquency all ad valorem real estate taxes and assessments on the Properties conveyed to the Developer. The Developer shall remove or have removed any levy or attachment made on any portion of the Properties, or assure the satisfaction thereof within a reasonable time. The Developer shall not apply for or receive any exemption from the payment of property taxes or assessments on any interest in or to the Properties or the Developer Improvements.

L. Release of Construction Covenants. Promptly after completion of the Developer Improvements in conformity with this Agreement, the City shall furnish the Developer with a "Release of Construction Covenants," substantially in the form of **Attachment No. 7** hereto which is incorporated herein by reference. The City shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Developer Improvements and the Release of Construction Covenants shall so state.

If the City refuses or fails to furnish the Release of Construction Covenants, after written request from the Developer, the City shall, within fifteen (15) days of written request therefor, provide the Developer with a written statement of the reasons the City refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the City's opinion of the actions the Developer must take to obtain the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Developer Improvements, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

M. Financing of Improvements.

(1) **Approval of Financing.** As required herein and as a City Condition Precedent to the Closing, the Developer shall submit to City evidence that the Developer has obtained sufficient equity capital and/or has obtained firm and binding commitments (or substantially final copies thereof) for construction and permanent financing necessary to undertake the development of the Properties and the construction of the Developer Improvements in accordance with this Agreement. The City shall approve or disapprove such evidence of financing commitments within thirty (30) days of receipt of a complete submission. Approval shall not be unreasonably withheld or conditioned. If the City shall disapprove any such evidence of financing, the City shall do so by Notice to Developer stating the reasons for such disapproval and the Developer shall promptly obtain and submit to City new evidence of financing. City shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 2.M(1) for the approval or disapproval of the evidence of financing as initially submitted to the City. The Developer shall close the approved construction financing prior to or concurrently with the Closing.

Such evidence of financing shall include the following: (a) a copy of a legally binding, firm and enforceable loan commitment(s) obtained by the Developer from one or more financial institutions for the mortgage loan or loans for financing to fund the construction, completion, operation and maintenance of the Developer Improvements, subject to such lenders' reasonable, customary and normal conditions and terms; and/or (b) a certification from the chief financial officer of the Developer that the Developer has sufficient funds for such construction, and that such funds have been committed to such construction, and/or other documentation satisfactory to the City as evidence of other sources of capital sufficient to demonstrate that the Developer has adequate funds to cover the difference between the total cost of the construction and completion of the Developer Improvements, less financing authorized by those loans set forth in subparagraph (a) above. A binding and enforceable loan commitment may include transaction (equity and loan) documents that will be executed and delivered at Closing, provided that Developer shall provide City up to thirty (30) days to review and provide comments to any such transaction documents. Developer shall resubmit such transaction documents in response to City comments and any such resubmittal shall provide City up to thirty (30) days to review and provide comments, or approval.

(2) **Mortgages, Deeds of Trust, Affordability Restrictions or Sale and Lease-Back for Development.** Mortgages, deeds of trust, affordability restrictions, easements reasonably necessary for the development or operation of the Properties and sales and leases-back shall be permitted before the completion of the Developer Improvements only with the City's prior written approval, which shall not be unreasonably withheld or delayed, and only for the purpose of securing loans of funds to be used for financing the construction of the Developer Improvements (including architecture, engineering, legal, and related direct costs as well as indirect costs) on or in connection with the Developer Improvements, permanent financing, and any other purposes necessary and appropriate in connection with development under this Agreement. In no event, however, shall the principal amount or amounts of indebtedness secured by mortgages or deeds of trust exceed the projected cost of constructing and/or developing the Developer Improvements, as evidenced by a pro forma and a construction contract which set forth such construction and/or development costs. The Developer shall notify the City in advance of any mortgage, deed of trust or sale and lease-back financing, if the Developer proposes to enter into the same before completion of the construction of the Developer Improvements. The words "mortgage" and "trust deed" as used hereinafter shall include sale and lease-back.

(3) **Holder Not Obligated to Construct Improvements.** The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Developer Improvements or any portion thereof, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Properties to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

(4) **Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.** With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever

the City may deliver any notice or demand to Developer with respect to any breach or default by the Developer in completion of construction of the Developer Improvements, the City shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights granted by the City 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 and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Developer Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement reasonably satisfactory to the City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 2L of this Agreement, to a Release of Construction Covenants. It is understood that a holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of that portion of the Properties which shall have been conveyed to the Developer if and to the extent any such holder has within such thirty (30) day period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and cures or remedies the default.

(5) **Failure of Holder to Complete Developer Improvements.** In any case where, thirty (30) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Properties or any part thereof receives a notice from City of a default by the Developer in completion of construction of any of the Developer Improvements under this Agreement, and such holder has not exercised the option to construct as set forth in this Section 2M, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, the City may purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Properties or any part thereof has vested in the holder, the City, if it so desires, shall be entitled to a conveyance from the holder to the City of all or a portion of the Properties, as applicable, upon payment to the holder of an amount equal to the sum of the following:

- (a) The unpaid mortgage or deed of trust debt at the time title 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);
- (b) All expenses with respect to foreclosure including reasonable attorneys' fees;

- (c) The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part thereof;
- (d) The costs of any improvements made by such holder;
- (e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City; and
- (f) Any customary prepayment charges imposed by the lender pursuant to its loan documents and agreed to by the Developer.

(6) **Right of the City to Cure Mortgage or Deed of Trust Default.** In the event of a mortgage or deed of trust default or breach by the Developer prior to the completion of the construction of any of the Developer Improvements or any part thereof, Developer shall immediately deliver to City a copy of any mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, the City shall have the right but no obligation to cure the default. In such event, the City shall be entitled to reimbursement from the Developer of all proper costs and expenses incurred by the City in curing such default. The City shall also be entitled to a lien upon the Properties to the extent of such costs and disbursements. Any such lien shall be junior and subordinate to the mortgages or deeds of trust pursuant to this Section 2M.

3. DEVELOPER ASSISTANCE.

The City will not provide additional financial assistance to Developer except as expressly provided herein.

A. Intent. Due to land prices, inflation, material costs, and interest, many persons of low or moderate income cannot afford housing. It is the intent and purpose of the City and the Developer in entering into this Agreement that the Site is developed with new high-quality apartment units and such units are made available to low and moderate income tenants. In order to accomplish these goals, it will be necessary for the City to sell the Properties to the Developer at a rate below fair market value.

Assistance is contingent upon satisfactory financial condition of Developer to be substantiated by submission of financial reports to City. The Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement to add additional financial assistance or to respond to requests made by any of the parties hereto, lending institutions, equity or tax credit investors, bond counsel, or financial consultant to the City necessitated by requirements of the assistance programs involved in the financing of the Project. Such amendments shall be in writing and approved by the parties hereto, including the City Council.

B. Fee Deferral. , The project qualifies for reduced or waived Public Facilities Impact Fees pursuant to Administrative Policies and Procedures A-32 for both affordable housing and infill housing. The City therefore agrees to reduce its Public Facilities Impact Fee by 50%. Such fee deferral shall be evidenced by documents to be negotiated by the City and Developer in good faith and in a commercially reasonable manner.

C. Permanent Local Housing Allocation (“PLHA”) Funds. The City has agreed to provide a \$1,608,830 loan from PLHA funds to assist with Project development pursuant to the terms detailed in the Promissory Note attached hereto as **Attachment No. 9** and the Deed Restriction Covenant and Loan Agreement attached hereto as **Attachment No. 10**.

D. Funding Commitment. Developer understands and acknowledges that the funding commitments for the Project (“Commitment”) are expressly contingent upon the City’s receipt of approval and actual receipt of funds from the funding sources including, but not limited to the California Department of Housing and Community Development (“HCD”). The Commitment for City funding shall be solely provided from the funding sources outlined in this Agreement. In the event that the City’s funding allocation from any of the funding sources including, but not limited to, HCD is less than the amount outlined and anticipated in Section 3(C)(2)-(3) of this Agreement, the City is not obligated to fund the difference for the Project or provide any additional funding from its general fund or any other funding source. The Commitment is not intended to describe all of the requirements, terms, conditions and documents necessary for the Loan or construction of the Project.

4. DEFAULTS AND REMEDIES

A. Default Remedies. Subject to the extensions of time set forth in Section 5B of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written Notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such Notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

B. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Merced, State of California, or in the District of the United States District Court in which such county is located.

C. Specific Performance. If the Developer or the City defaults under any of the provision of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time period described in Section 506, the

non-defaulting party, at its option, may institute an action for specific performance of the terms of this Agreement; provided, however, that prior to Closing, the sole remedy available to the City due to a default by the Developer shall be as described in Section 4.E. below.

D Termination by the Developer Prior to Conveyance of the Properties. In the event that prior to the conveyance of the Properties the Developer is not in default under this Agreement and: (1) the City does not tender title pursuant to the Grant Deed in the manner and condition and by the date provided in this Agreement; or (2) one or more of the Developer Conditions Precedent to the Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not caused by the Developer; or (3) any default of the City prior to the Closing is not cured within the time set forth in Section 4A hereof, after written demand by the Developer; or (4) Developer timely disapproves the feasibility of the development contemplated hereunder pursuant to Section 1N hereof; or (5) the Developer timely disapproves the environmental condition of the Site pursuant to Section 1O hereof; then this Agreement may, at the option of the Developer, be terminated by written Notice thereof to the City. From the date of the Notice of termination of this Agreement by the Developer to the City and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties with respect to the Properties by virtue of or with respect to this Agreement.

E. Termination by the City Prior to Conveyance of the Properties. In the event that prior to conveyance of the Properties the City is not in Default under this Agreement and: (1) the Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Properties in violation of this Agreement; or (2) one or more of the City Conditions Precedent to the Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not caused by the City; or (3) the Developer is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 4A hereof; then this Agreement and any rights of the Developer or any assignee or transferee with respect to or arising out of the Agreement or the Properties, shall, at the option of the City, be terminated by the City by written Notice thereof to the Developer. From the date of the Notice of termination of this Agreement by the City to the Developer and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties.

F. Reentry and Revesting of Title in the City for Failure to Timely Commence and Complete Developer Improvements or for an Unlawful Transfer.

(1) **After the Closing and Prior to Completion of the Developer Improvements.** The City has the right, at its election, to reenter and take possession of the Properties transferred to the Developer pursuant to this Agreement, with all improvements thereon, and terminate and revest in the City the estate conveyed to the Developer if after the Closing the Developer (or its successors in interest) shall:

(a) Fail to start the construction of the Developer Improvements as required by this Agreement for a period of thirty (30) days after written notice thereof from the City; or

(b) Abandon or substantially suspend construction of the Developer Improvements required by this Agreement for a period of thirty (30) days after written notice thereof from the City, unless such abandonment or suspension is not caused by Developer's acts or omissions or as provided for in Section 5B; or

(c) Fail to complete the Developer Improvements within the time limits set forth in the Schedule of Performance, but in no event later than two (2) years after the Closing; or

(d) Contrary to the provisions of Section 5C, Transfer or suffer any involuntary Transfer in violation of this Agreement.

(2) **Conditions of Reentry and Revesting Rights.** The City's right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

(a) Any mortgage or deed of trust permitted by this Agreement; or

(b) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

(3) To exercise its right to reenter, repossess, and re-vest in the City the estate with respect to the Site theretofore conveyed to the Developer, the City shall execute a Deed of Trust in the form attached hereto as **Attachment No. 9** to give effect to the City's right, as set forth in this Section under specified circumstances prior to the recordation of the Release of Construction Covenants, to reenter and take possession of the Site with all improvements thereon and terminate and re-vest in the City the estate conveyed to the Developer.

(4) **Proceeds from Sale.** The Deed of Trust shall contain appropriate reference and provision to give effect to the City's right as set forth in this Section 4F, to reenter and take possession of the Properties, with all improvements thereon, and to terminate and revest in the City the estate conveyed to the Developer. Upon the revesting in the City of title to the Properties transferred to the Developer by Grant Deed as provided in this Section 4F, the City shall use its reasonable efforts to resell the Properties as soon and in such manner as the City shall find feasible to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to the City and in accordance with the uses specified for the Properties. Upon such resale of the Properties, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Properties which is permitted by this Agreement, shall be applied:

(a) First, to reimburse the City, on its own behalf or on behalf of the City, all costs and expenses incurred by the City, excluding City staff costs, but specifically, including, but not limited to, any expenditures by the City in connection with the recapture, management and resale of the Properties (but less any income derived by the City from the Properties in connection with

such management); all taxes, assessments and water or sewer charges with respect to the Properties which the Developer has not paid (or, in the event that Properties is exempt from taxation or assessment of such charges during the period of ownership thereof by the City, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Properties were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Properties or part thereof at the time or revesting of title thereto in the City, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Properties; and any amounts otherwise owing the City; and in the event additional proceeds are thereafter available; then

(b) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of the costs incurred for the acquisition and development of the Properties transferred to the Developer by Grant Deed and for the Developer Improvements existing on such Properties at the time of the reentry and possession, less any gains or income withdrawn or made by the Developer from the Properties transferred to the Developer by Grant Deed or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the City as its property. The rights established in this Section 4F are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the City will have conveyed the Properties to the Developer for redevelopment purposes, particularly for development and operation of residential and commercial facilities, and not for speculation in undeveloped land.

(5) The rights established in this Section 4F are to be interpreted in light of the fact that the Site is to be conveyed to the Developer under this Agreement for a specific development project and not for speculation in undeveloped land. The rights established in this Section 4F shall terminate upon the recordation of the Release of Construction Covenants.

5. GENERAL PROVISIONS

A. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To City: City of Merced, A California Charter
Municipal Corporation
678 W. 18th Street
Merced, CA 95340
Attention: City Manager

With a copy to: City Attorney's Office
678 W. 18th Street
Merced, CA 95340
Attn: City Attorney
Fax No.: 209-388-7907

To Developer: Linc I Street Apts LP
c/o Linc Housing Corporation
3590 Elm Avenue
Long Beach, CA 90807
Attn: Sr. Vice President of Housing Dev.

With copies to:

Carle, Mackie, Power & Ross LLP
100 B Street, Suite 400
Santa Rosa, CA 95401
Attention: Henry Loh II

Any written notice, demand or communication shall be deemed received immediately if delivered by hand, 24 hours after delivery to a receipted, overnight delivery service such as Federal Express, and shall be deemed received on the third (3rd) day from the date it is postmarked if delivered by registered or certified mail.

B. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: War; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; governmental restrictions or priority; litigation; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the City which shall not excuse performance by the City). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer; the City Manager or their representative may authorize extensions on behalf of the City at their sole discretion. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to

complete the Developer Improvements shall not constitute grounds of enforced delay pursuant to this Section 5B.

C. Transfers of Interest in Properties or Agreement.

(1) **Prohibition.** The qualifications and identity of the Developer as a developer and operator or lessor of Affordable Housing are of particular concern to the City. Furthermore, the parties acknowledge that the City has negotiated the terms of this Agreement in contemplation of the development and operation of a high quality residential development on the Properties. Accordingly, for the period commencing upon the date of this Agreement and until furnishing of the Release of Construction Covenants: (a) no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement; (b) nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Properties or the Developer Improvements thereon; (c) nor shall any business other than Conforming Business Activities be operated thereon; collectively referred to herein as a "**Transfer,**" without the prior written approval of the City, except as expressly set forth herein.

(2) **Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, City approval of a Transfer shall not be required in connection with any of the following:

(a) Any Transfer to an entity or entities in which the Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

(b) The conveyance or dedication of any portion of the Properties to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction or operation of the Developer Improvements (as defined herein).

(c) Any requested assignment for financing purposes (subject to such financing being considered and approved by the City pursuant to Section 2M herein), including the grant of a deed of trust to secure the funds necessary for land acquisition, construction and permanent financing of the Developer Improvements.

(d) Any transfer to a limited partnership in which the Developer, Linc Housing Corporation or an affiliate of either of the foregoing is a general partner.

(e) A Transfer to Linc Community Development Corporation.

(f) The inclusion of equity participation in the Developer by addition of limited partners to Developer's partnership or similar mechanism, and any

transfers, sales or pledges of limited partnership interests in Developer's partnership.

(g) The lease for occupancy of all or any part of the Improvements on the Property.

(h) The withdrawal, removal and/or replacement of a general partner of the Developer pursuant to the terms of the Developer's limited partnership agreement, provided that any required substitute general partner is reasonably acceptable to the City and is selected with reasonable promptness. The investor limited partner or an affiliate thereof is an acceptable successor general partner of Borrower.

(i) The sale, transfer or pledge of any limited partnership interest in Borrower or of any partnership interest in the Investor Limited Partner.

In the event of a Transfer by Developer under subparagraph (a) above not requiring the City's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to City of such assignment and satisfactory evidence that the assignee has assumed in writing through an assignment and assumption agreement of all of the obligations of this Agreement. Such assignment shall not, however, release the assigning Developer from any obligations to the City hereunder.

(3) **City Consideration of Requested Transfer.** The City agrees that it will not unreasonably withhold approval of a request for approval of a Transfer made pursuant to this Section 5C, provided the Developer delivers written Notice to the City requesting such approval. Such Notice shall be accompanied by evidence regarding the proposed transferee's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 5C and as reasonably determined by the City. The City may, in considering any such request, take into consideration such factors as: (a) the quality of any new and/or replacement operator; (b) the sales tax revenues projected to be received from the Properties; (c) the transferee's past performance as developer and operator of residential and commercial facilities; (d) the current financial condition of the transferee, and similar factors. The City agrees not to unreasonably withhold its approval of any such requested Transfer, taking into consideration the foregoing factors.

An assignment and assumption agreement in form satisfactory to the City's legal counsel shall also be required for all proposed Transfers. Within thirty (30) days after the receipt of the Developer's written Notice requesting City approval of a Transfer pursuant to this Section 5C, the City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the City such further information as may be reasonably requested.

D. Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

E. Assignment by City. The City may assign or transfer any of its rights or obligations under this Agreement with the approval of the Developer, which approval shall not be unreasonably withheld.

F. Relationship Between City and Developer. It is hereby acknowledged that the relationship between the City and the Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Except as expressly provided herein or in the Attachments hereto, the City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Developer Improvements. The Developer agrees to indemnify, hold harmless and defend the City, and its officers, agents, employees, and volunteers, from any claim made against the City arising from a claimed relationship of partnership or joint venture between the City and the Developer with respect to the development, operation, maintenance or management of the Properties, or the Developer Improvements, as set forth in this Agreement. The Developer has obtained legal advice from counsel of its choosing regarding this Agreement and all matters which may pertain thereto, including without limitation any consequences as to income tax or property tax, and the City has made no representations and has provided no advice in connection therewith. The Attachments hereto are subject to review and approval by other financing parties to the Project, and the City and Developer agree to negotiate in good faith any commercially reasonable requests to modify the Attachments hereto from such financing parties, the City or the Developer.

G. No Third-Party Beneficiaries. There shall be no third party beneficiaries of this Agreement.

H. City Approvals and Actions. The City shall maintain authority over this Agreement and the authority to implement this Agreement through the City Manager (or his/her duly authorized representative). The City Manager shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or development permitted on the Properties, or add to the costs incurred or to be incurred by the City as specified herein, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

I. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement shall be executed in three (3) originals, each of which is deemed to be an original.

J. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Attachment Nos. 1 through 11, which are incorporated herein.

K. Real Estate Brokerage Commission. The City and the Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with the Developer's acquisition of the Properties from the City. The parties agree to defend and hold harmless the other party from any claim to any such commission or fee from any other broker, agent or finder with respect to this Agreement which is payable by such party.

L. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

M. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement has been prepared with input from both parties, and shall be interpreted as though prepared jointly by both parties.

N. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

O. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

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

Q. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California

Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

R. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

S. Time of Essence. Time is expressly made of the essence with respect to the performance by the City and the Developer of each and every obligation and condition of this Agreement.

T. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

U. Conflicts of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

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

W. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

X. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

Y. Non-Liability of Officials and Employees of the City. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

Z. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

[signatures on next page]

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IN WITNESS WHEREOF, the City and the Developer have executed this Disposition and Development Agreement as of the date set forth above.

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

CITY OF MERCED
A California Charter Municipal Corporation

By: _____
City Clerk

By: _____
D. Scott McBride, City Manager

Date: _____

APPROVED AS TO LEGAL FORM:

By:  _____

DEVELOPER:
Linc I Street Apts LP,
a California limited partnership

(Attach Notary Acknowledgement)

By: Linc I Street Apts LLC,
a California limited liability
company,
its general partner

By: Linc Housing Corporation,
a California nonprofit public
benefit corporation,
its sole member and manager

By: _____
Anders Plett
Senior Vice President of
Housing Development

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ACKNOWLEDGMENT

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

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)