

DISPOSITION AND DEVELOPMENT AGREEMENT

**[Freebird - 702 & 716 Bennett Valley Road and 921 & 927 Rutledge Avenue,
Santa Rosa, CA 95404]**

between the

THE CITY OF SANTA ROSA

and

FREEBIRD DEVELOPMENT COMPANY, LLC

and

ALLIED HOUSING, INC.

ATTACHMENTS

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (Freebird - 702 & 716 Bennett Valley Road and 921 & 927 Rutledge Avenue, Santa Rosa, CA 95404), dated for identification purposes only as of June 29, 2021, is entered into by and between the **CITY OF SANTA ROSA**, a California municipal corporation and charter city (the “City”), and [**FREEBIRD DEVELOPMENT COMPANY, LLC**, a California limited liability company and **ALLIED HOUSING, INC.**, a California nonprofit public benefit corporation] (collectively, “Developer”), with reference to the following:

R E C I T A L S

The following recitals are a substantive part of this Agreement:

A. The City is a California municipal corporation and charter city existing under the laws of the State of California.

B. The City has adopted a Housing Element to its General Plan pursuant to Government Code § 65580 *et seq.*, which sets forth City’s policies, goals and objectives to provide housing to all economic segments of the community, including the preservation and development of housing affordable to low and moderate income households.

C. The City owns that certain vacant lot of approximately 1.9 acres located at 702 & 716 Bennett Valley Road and 921 & 927 Rutledge Avenue, Santa Rosa, California (the “**City Property**”) as described and depicted in Attachment A. [The City issued a Request for Qualifications/Request for Proposals for the Development of Adjacent Parcels at 702 and 716 Bennett Valley Road and 927 and 921 Rutledge Avenue, Santa Rosa, CA 95404 dated May 29, 2019 with respect to the development of the City Property (“**RFQ/P**”). Developer’s proposal in response to the RFQ/P was selected.

D. Developer desires to acquire a fee interest in the City Property. The ownership interest in the City Property shall be conveyed to Developer from the City, together with all buildings, structures, fixtures, landscaping and other improvements erected or located thereon, and all easements, rights of way, privileges, licenses, appurtenances and other rights and benefits belonging to or in any way related to the City Property including minerals, oil and gas rights, air, water and development rights, roads, alleys, easements, streets and ways adjacent to the City Property (collectively, the “**Property**”).

E. Developer shall develop the Property in accordance with the applicable Entitlements for the Project as defined herein, including but not limited to any conditions of approval imposed by the City of Santa Rosa through the City’s consideration of Developer’s proposed development of the Property.

F. Developer intends to develop upon the Property approximately 62 units of affordable housing. As of the date of this Agreement, the Parties anticipate that units will be leased as follows: (a) approximately 50% of the units (other than the unrestricted Management Unit) to be leased to formerly homeless persons or households with incomes that do not exceed 20% or 30% of Area Median Income (AMI); (b) approximately 50% of the units (other than the

unrestricted Management Unit) to be leased to households with incomes that do not exceed 50% or 60% of AMI and (c) 1 two-bedroom unrestricted residential manager's unit (the "**Management Unit**"). The foregoing units to be developed on the Property, excluding the Management Unit, are referred to herein as the "**Affordable Units**". Developer also intends to include a community room, property management and social services offices, onsite laundry, a BBQ area, a children's play area, and community gardening beds. Developer's ownership interest in the City Property, and in the Improvements located thereon, together with the development thereof in accordance with this Agreement, are referred to herein as the "**Project**").

G. The Housing Authority of the City of Santa Rosa has awarded to Developer a conditional commitment of loan funds in the amount of \$5,800,000 (the "**Authority Loan**"), as evidenced in Attachment C provided that the Affordable Units are held for rent and rented to Qualified Tenants in accordance herewith. The Authority Loan will be documented and restricted pursuant to a loan agreement, promissory note, regulatory agreement, and deed of trust in forms to be approved by the parties hereto (the "**Loan Documents**").

H. Developer intends to form a limited partnership (the "**Tax Credit Partnership**") to own and finance the Project and who will be the successor in interest under this Agreement as to Developer's rights and obligations regarding the Project. The Tax Credit Partnership would secure other construction and permanent financing sources to cover the total cost of developing the Project. The anticipated funding sources for the Project include the sources shown in the Financing Summary attached as Attachment E to this Agreement.

I. Developer and City agree that the Authority Loan will facilitate the development of affordable rental housing and provide an opportunity for a more comprehensive and coordinated project consistent with and in furtherance of the goals and objectives of the City's Housing Element of its General Plan.

J. The development of the Project as contemplated by this Agreement is consistent with the City's Housing Element, is in the vital and best interest of the City, is necessary for the protection of the health, safety and welfare of the City's residents, and is in accord with the public purposes and provisions of applicable state and local laws and requirements. This Agreement further implements the City's policies for the production of housing for all economic segments of the population.

NOW, THEREFORE, the City and Developer hereby agree as follows:

1. DEFINITIONS

1.1. Defined Terms

As used in this Agreement, the following capitalized terms shall have the following meanings:

"**20% AMI**" means household aggregate gross income equal to 20% or less of Area Median Income (AMI), as adjusted for family size as published by the City of Santa Rosa from time to time, using information published by the United States Department of Housing and Urban Development, and the State of California. For purposes of this definition, "adjusted for family size" means the actual number of persons in the applicable household.

“30% AMI” means household aggregate gross income equal to 30% or less of AMI, as adjusted for family size as published by the City of Santa Rosa from time to time, using information published by the United States Department of Housing and Urban Development, and the State of California. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“50% AMI” means household aggregate gross income equal to 50% or less of AMI, as adjusted for family size as published by the City of Santa Rosa from time to time, using information published by the United States Department of Housing and Urban Development, and the State of California.. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“60% AMI” means household aggregate gross income equal to 60% or less of AMI, as adjusted for family size as published by the City of Santa Rosa from time to time, using information published by the United States Department of Housing and Urban Development, and the State of California. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“Affiliate” means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Developer which, if the party is a partnership or limited liability company, shall include each of the constituent members or general partners, respectively, thereof, or an entity in which Developer has an equity interest and is the managing member, managing partner or controlling shareholder. The term “control” as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

“Affordability Period” means the term of the affordability restrictions under the Regulatory Agreement, which shall be fifty-five (55) years from the Commencement of Term.

“Affordable Rent” means an amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum rent to be charged by Developer and paid by the Qualified Tenant occupying the Affordable Units as determined pursuant to HUD Regulations. The tenant utility allowance shall be determined by the Housing & Community Services Division of the City. The calculation of Affordable Rent shall be performed annually.

“Affordable Units” is defined in Recital F.

“Agreement” means this Disposition and Development Agreement by and between the City and Developer, including (i) the Recitals set forth herein, and (ii) all attachments hereto, which are incorporated herein by this reference.

“AMI” means the median family income figures and standards (adjusted for actual Household size) utilized by HUD for determining 20% AMI Households, 30% AMI Households, 50% AMI Households, and 60% AMI Households in Sonoma County.

“Authority” means the Housing Authority of the City of Santa Rosa.

“**Authority Loan**” is defined in Recital G.

“**Business Day(s)**” means Monday through Friday, except for federal and state holidays.

“**City**” means the City of Santa Rosa, a California municipal corporation.

“**City Indemnitees**” means City and its departments, divisions, agencies, elected officials, boards, officers, employees, representatives and agents.

“**City Property**” is defined in Recital C.

“**City Representative**” means the City Manager of the City or his or her designated representative.

“**City’s Conditions Precedent to Closing**” is defined in Section 3.7.1.

“**Closing**” means the date following Developer’s delivery of the Closing Notice to City upon which the conditions precedent set forth in Section 3.7.1 and 3.7.2 are satisfied or waived in writing and the Conveyance Documents are recorded in the Official Records conveying the Property to Developer and the City has made the City Loan to Developer.

“**Closing Notice**” is defined in Section 3.3.

“**Commencement of Term**” means the earlier of the date upon which Developer notifies Authority that the Affordable Units as defined in this Agreement are ready for occupancy, or the date upon which the Developer advertises any of the units for rent. The parties will execute and cause to be recorded in the Official Records of Sonoma County a suitable instrument confirming this date.

“**Construction Budget**” means the schedule of construction expenses actually and expected to be incurred by Developer in connection with the Project and reasonably approved by the City prior to the Closing, and as may be amended or modified pursuant to the Loan Documents.

“**Construction Contract**” is defined in Section 5.3.

“**Construction Lender**” means a lender providing construction financing for the Project selected by Developer in its sole and absolute discretion.

“**Construction Loan**” means the loan for construction of the Project from Construction Lender.

“**Construction Loan Documents**” means any agreements and documents evidencing or securing the Construction Loan and includes all attachments, modifications and amendments thereto.

“**Developer**” means, collectively, Freebird Development Company, LLC, a California limited liability company, and Allied Housing, Inc., and their respective successors and assigns as permitted pursuant to this Agreement. The parties that comprise the Developer are jointly and severally for the obligations of Developer as set forth in this Agreement.

“**Developer’s Conditions Precedent to Closing**” is defined in Section 3.7.2.

“Development Costs” shall mean the total cost of developing and constructing the Project, as set forth in the Construction Budget.

“Effective Date” means the date upon which this Agreement shall have been signed by Developer and the City.

“Eligible Project Costs” means all costs and expenses permitted and approved pursuant to this Agreement as set forth in the Construction Budget which are customarily incurred and shall have been actually incurred by Developer for the development and construction of the Project and shall include, without limitation, the following: construction costs; a developer fee in an amount not to exceed that permitted by the TCAC Regulations; property taxes and assessments; security services; utilities fees; insurance; and such other costs, fees and expenses, as agreed to in writing by the City; provided, however, that payment to parties related to Developer for Eligible Project Costs must not exceed reasonable and customary market rates.

“Entitlements” means and includes any and all general plan amendments, zoning approvals or changes, required approvals and certifications under the California Environmental Quality Act, tentative and final tract maps, variances, conditional use permits, demolition permits, excavation/foundation permits, grading permits, building permits, inspection reports and approvals, certificates of occupancy, and other approvals, permits, certificates, authorizations, consents, orders, entitlements, filings or registrations, and actions of any nature whatsoever required from any applicable governmental authorities in order to commence and complete the construction of the Project or any of the proposed development on the Project.

“Environmental Laws” means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environment or to any Hazardous Materials or Hazardous Materials Activity (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as heretofore or hereafter amended from time to time (“CERCLA”), and the applicable provisions of the Health & Safety Code and the Water Code, and any and all successor statutes and regulations, orders, decrees, guidelines, or pronouncements promulgated thereunder).

“Escrow” is defined in Section 3.3.

“Escrow Agent” means Old Republic Title Company or such other escrow agent reasonably approved by the City and Developer.

“Escrow Costs” is defined in Section 3.3.

“Event of Default” is defined in Section 7.1.

“Event(s) of Force Majeure” is defined in Section 8.7.

“Evidence of Financing” is defined in Section 5.1.

“Financing Summary” means the Financing Summary attached as Attachment E and incorporated hereby, which shows the estimated sources and uses for the development and

construction of the Project, as may be updated in accordance herewith; upon approval of a Project Pro Forma by the City, the approved Project Pro Forma shall constitute the Financing Summary.

“**General Contractor**” shall mean Sunseri Construction, Inc., or such other general contractor as may be approved by City.

“**Governmental Regulations**” means any local, state, and federal laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, Environmental Laws, labor relations, prevailing wage, notification of sale to employees, Hazardous Materials, occupational health and safety, water, earthquake hazard reduction and building and fire codes; and including the National Environmental Policy Act (NEPA) and all Environmental Laws) bearing on the demolition, alteration, replacement, repair, refurbishing, improvement, construction, maintenance, management, use, or operation of the Project.

“**Grant Deed**” shall mean the Grant Deed substantially in the form to be attached to this Agreement as Attachment Q, pursuant to which the City will convey a fee interest in the City Property for \$1.00 to Developer.

“**Hazardous Materials**” means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Materials Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Materials), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (xi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, *et seq.* (42 U.S.C. Section 6903) or (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601, *et seq.*, but shall not include, customary building maintenance and cleaning products, construction products, and landscape maintenance products as are used, stored, handled, transported, treated and disposed of in compliance with Environmental Laws by owners and operators of properties similar to the Project.

“**Household**” means one or more persons occupying an Affordable Unit.

“**HUD**” means the United States Department of Housing and Urban Development.

“**Improvements**” means and includes any buildings, structures, fixtures, foundations, excavation, parking, landscaping, or underground installations located on the City Property.

“**Insurance Requirements**” means the City’s insurance requirements attached as Attachment D and incorporated hereby.

“**Investor Limited Partner**” means, collectively, one or more investor limited partners selected by Developer in its sole and absolute discretion to be the limited partner(s) in the Tax Credit Partnership.

“**Loan Documents**” is defined in Recital G.

“**Loan Proceeds**” means funds disbursed from the Authority Loan.

“**Losses and Liabilities**” means and includes all claims, suits, causes of action, arbitration proceedings, administrative proceedings, regulatory proceedings, expenses, liabilities, losses, damages (including, without limitation, penalties, fines and monetary sanctions), injuries, charges, penalties or costs of whatsoever character, nature and kind, including reasonable attorney’s fees and costs, expert witness fees, court costs, interest and defense costs, consultant fees, investigation and laboratory fees, and remedial and response costs incurred by the indemnified party with respect to counsel of its choice, whether to property or to person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected, latent or patent, actual alleged or threatened.

“**Management Unit**” is defined in Recital F.

“**Notice**” means a notice in the form prescribed by Section 8.1 hereof.

“**Official Records**” means the official records of the Sonoma County Recorder’s Office.

“**Outside Closing Date**” is the date indicated in the Schedule of Performance. The City Representative may, with agreement of Developer, extend the Outside Closing Date by up to twenty-four (24) months. Any extensions to the Outside Date beyond such twenty-four (24) month period must be approved by the City Council.

“**Parties**” means the City and Developer, and any permitted successors and assigns thereof.

“**Permanent Loan**” shall mean any permanent loan, in an amount not to exceed the Construction Loan except as reasonably approved by the City, for the Project to be made to Borrower by the Construction Lender or other lender in accordance with the Project Pro Forma following Conversion, secured by a deed of trust against the Project.

“**Permitted Transfer**” is defined in Section 2.3.2.

“**Project**” is defined in Recital F.

“**Project Pro Forma**” means the financial information to be prepared by Developer, and any updates and amendments thereto, including without limitation, the Project

construction budget, estimated sources and uses of financing, Developer's projections for tax credit equity, loan balances for fifty-five (55) years, and the Project's operating budget and cash flows and reasonably approved by the City as of the date of Closing.

"Property" is defined in Recital D.

"Qualified Tenant(s)" means a Household who qualifies as a 20%, 30%, 50%, and/or 60% AMI Household, as applicable to the Affordable Unit occupied by the Households, and meets such other qualifications applicable to the Affordable Unit as set forth in the Regulatory Agreement, including but not limited to qualifying as a formerly homeless person or household referred by the County of Sonoma Coordinated Entry program.

"Regulatory Agreement" means the affordable housing regulatory agreement in a form to be approved and entered into by and among the City, the Housing Authority and Developer in connection with the Authority Loan and this Agreement.

"Schedule of Performance" means the Schedule of Performance attached hereto as Attachment B and incorporated hereby as may be amended from time to time, which establishes the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished, subject to Events of Force Majeure. The Schedule of Performance may be subject to revision from time to time as mutually agreed on in writing between Developer and the City.

"Senior Lender" means any lender of a Senior Loan.

"Senior Loan" means the Construction Loan and the Permanent Loan (but sequentially and not concurrently), any loan from the California Department of Housing and Community Development and any other loan in the Project Pro Forma with a principal amount in excess of the Authority Loan.

"Senior Loan Documents" means any agreements and documents evidencing or securing a Senior Loan and includes all attachments, modifications and amendments thereto.

"Social Services" means the social services to be provided to residents of the Project, which shall include, at a minimum, services for households with intellectual and/or developmental disabilities.

"State" means the State of California.

"Subordination Agreement" means an agreement between a Senior Lender and the Authority in such form as is reasonably approved by the Authority that subordinates the Authority Loan and Loan Documents to the applicable Senior Loan and Senior Loan Documents and contains such other terms as may be required by the applicable Senior Lender that are reasonably approved by the Authority; provided, however, that the Regulatory Agreement shall not be subordinated.

"Tax Credit Partnership" is defined in Recital G.

"Tax Credit Regulatory Agreement" means the regulatory agreement that will be recorded against the Project with respect to the Tax Credits.

“**Tax Credits**” means Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code.

“**TCAC**” means the California Tax Credit Allocation Committee.

“**TCAC Regulations**” means the California Tax Credit Regulations Implementing the Federal and State Low Income Housing Tax Credit Laws, California Code of Regulations, Title 4, Division 17, Chapter 1.

“**Title Company**” means Old Republic Title Company.

“**Unit(s)**” means any or all of the apartment units in the Project, including the Affordable Units and/or the Management Unit.

1.2. Singular and Plural Terms

Any defined term used in the plural herein shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3. Accounting Principles

Any accounting term used and not specifically defined herein shall be construed in conformity with, and all financial data required to be submitted herein shall be prepared in conformity with, Generally Accepted Accounting Principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to the City Representative.

1.4. References and Other Terms

Any reference to any document shall include such document both as originally executed and as it may from time to time be modified. References herein to Sections and Attachments shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include), without limitation.”

1.5. Attachments Incorporated; Attachments Additional Consideration

All Attachments, as now existing and as the same may from time to time be modified, are incorporated herein by this reference. Each Attachment or agreement delivered by Developer or another party substantially in the form of an Attachment hereto in connection with this Agreement is required as and constitutes consideration for the City to convey the Property.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1. Representations by City.

City represents and warrants to Developer, as of the Effective Date and as of the Closing, as follows:

2.1.1. Authority.

City is a California municipal corporation and charter city possessed of full right, power and lawful authority to perform its obligations hereunder, and the execution, delivery, and performance of this Agreement by City has been fully authorized by all requisite actions on the part of the City Council.

2.1.2. No Conflict.

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 City is a party or by which City is bound.

2.1.3. No Litigation or Other Proceeding.

To City's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform its obligations under this Agreement, or that would adversely affect the City Property, or Developer's use and development of the Property.

2.1.4. Eminent Domain.

To City's actual current knowledge there are no condemnation or eminent domain proceedings which are pending or have been threatened that affect the City Property.

2.1.5. Condition of City Property.

City has no notice of any pending or threatened action or proceeding arising out of the condition of the City Property or any alleged violation of any Environmental Law or Governmental Regulations. To City's actual current knowledge, the City Property is in compliance with all Environmental Laws and Governmental Regulations.

Each of the foregoing representations in this Section 2.1 shall be deemed to be an ongoing representation and warranty, and until the expiration or earlier termination of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, promptly give written notice of such fact or condition to Developer. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties of City shall survive the Closing of this Agreement for a period of twelve (12) months.

2.2. Representations by Developer.

Developer represents and warrants to the City, each as to itself only, as of the Effective Date and as of the Closing, as follows:

2.2.1. Organization

Developer is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own property and carry on its business as now being conducted and as contemplated hereby. The copies of the documents evidencing the organization of Developer delivered to the City are true and correct copies of the originals as of the Effective Date.

2.2.2. Authority

Developer has the legal power, right and authority to execute, deliver and enter into this Agreement, and to perform and observe the terms and provisions of this Agreement. Developer has been fully authorized to execute this Agreement and all other documents or instruments to be executed and delivered, pursuant to this Agreement, and all actions required under Developer'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 hereto, have been duly taken.

2.2.3. Valid and 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 constitute when so executed and delivered, legal, valid and binding obligations of Developer enforceable against it in accordance with the terms of each respective document or instrument.

2.2.4. Litigation

No action, suit or proceedings are pending or, to Developer's current actual knowledge, threatened before any governmental department, commission, board, bureau, agency or instrumentality to which Developer is or may be made a party or to which any of its property is or may become subject, which has not been fully disclosed to the City and which could adversely affect the ability of Developer to carry out its obligations hereunder.

2.2.5. No Conflict

Developer's execution and delivery of this Agreement and any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, and the performance of any provision, condition, covenant or other term hereof or thereof, do not or will not 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 whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

2.2.6. No Developer Bankruptcy

No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings are pending

or, to Developer's current actual knowledge, threatened against Developer or any other parties affiliated with Developer, nor are any of such proceedings contemplated by Developer or any parties affiliated with Developer.

2.2.7. Financing Summary; Project Pro Forma

For purposes hereof, the Financing Summary attached hereto shall constitute the Financing Summary as of the Effective Date. The Financing Summary and any written updates thereto provided to the City or Authority constitute Developer's reasonable estimates as of the anticipated financing for the development of the Project. To Developer's actual knowledge after due inquiry, there are no material omissions from the Financing Summary, and Developer agrees and acknowledges that the City is relying on the information set forth therein in conveying the City Property.

Developer shall submit to the City for approval a Project Pro Forma within 60 days of the Effective Date. The Project Pro Forma and any written updates thereto provided to the City constitute Developer's reasonable estimates as of the date of the Project Pro Forma with respect to the information set forth therein and shall include the Financing Summary and any updates thereto. Developer shall submit to the City any changes or updates to the Project Pro Forma (or a notice that there has been no such change) within two (2) weeks of each March 31, June 30, September 30 and December 31 after the date hereof, and in any event at the Project Pro Forma to be included in the application for Tax Credits and/or tax-exempt financing, if applicable, at least 20 days prior to the submission of any such application. To the actual knowledge of Developer after due inquiry, there are no material omissions from the Financing Summary or any updates thereto, and Developer agrees and acknowledges that the City is relying on the information set forth therein in agreeing to convey the Property to Developer on the terms set forth herein.

2.2.8. Developer hereby represents and warrants that it has not received and is not relying on any statements or representations by the City or any of its officers, agents or employees, specifically including but not limited to any statements or representations regarding the applicability of California Labor Code Section 1720, et seq. to the development or construction of the Project or related improvements, and Developer hereby expressly waives, releases and relinquishes any and all rights and interests in and to any claim it has, or may have in the future, against the City or Authority, including specifically but not limited to any right or interest in any claim pertaining to the payment of, or obligation to pay, prevailing wages pursuant to California Labor Code Section 1720, et seq. Developer shall be solely responsible for any fine, penalty, damages and award, and it shall indemnify, defend and hold harmless the City and their respective officers, officials, employees and agents from and against any and all liability, loss, cost or damages therefrom, including the cost of reasonable attorneys' fees incurred by the City or Authority in defending any legal or administrative proceeding arising out of or in any way connected to such lack of compliance (whether the legal or administrative proceeding is well founded or not).

In the event that any portion of the Project funds are from Federal funding sources, the Developer shall assure that it complies with the requirements of Davis-Bacon Federal labor standards (40 USC, Chapter 3, Section 276a-276a-5; and 29 CFR Parts 1, 3, 5, 6, and 7), and shall further ensure that Developer complies with all prevailing wage requirements triggered by other funding sources utilized by Developer.

2.2.9. Developer warrants that it will work in collaboration with the City to address concerns and issues the community identified in good faith while promptly making the City aware of any such issues.

Each of the foregoing representations in this Section 2.2 shall be deemed to be an ongoing representation and warranty, and until the expiration or earlier termination of this Agreement, Developer shall upon learning of any fact or condition which would cause any of the representations and warranties in this Section 2.2 not to be true, promptly give written notice of such fact or condition to City. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties of Developer shall survive the Closing of this Agreement for a period of twelve (12) months.

2.3. Limitation Upon Change in Ownership, Management and Control of Developer

The identity and qualifications of Developer and its respective members, officers and/or partners as experienced and successful developers and operator/managers of affordable housing are of particular concern to the City. It is because of this identity and these qualifications that the City has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

2.3.1. Prohibition

Except for Permitted Transfers, Developer shall not transfer or assign all or any part of this Agreement, or any interest herein, permit any change in the management or control of Developer, or permit a transfer or cumulative transfers of more than 25% of the equity interests in Developer, without the prior written approval of the City, which may be withheld in its sole and absolute discretion. Any such change (or assignment of this Agreement in connection therewith) shall be by instruments satisfactory to the City and be subject to the approval by the City of evidence of the proposed assignee's qualifications to meet the obligations of Developer under this Agreement.

2.3.2. Permitted Transfers by Developer

Notwithstanding any other provision of this Agreement, the City approval of an assignment of this Agreement or any interest herein shall not be required in connection with any of the following (each a "**Permitted Transfer**"): (i) nominating the Tax Credit Partnership to take title to the Project at the Closing, or any assignment or transfer of this Agreement to the Tax Credit Partnership, provided that in either event, the City has reasonably approved all general partners thereof; (ii) concurrently with or following the transfer to a Tax Credit Partnership, the transfer of limited partner interests to a tax credit investor limited partner and subsequent transfers of such limited partner interests; (iii) the removal of the general partner of the Tax Credit Partnership by the limited partner in accordance with the limited partnership agreement of the Tax Credit Partnership and the replacement of the general partner with an affiliate of the tax credit investor or with another nonprofit corporation approved by the City in its reasonable discretion; and (iv) the grant and exercise of an option and/or right of first refusal to the general partner of the Tax Credit Partnership in accordance with Section 42 of the Internal Revenue Code and the partnership agreement.

2.3.3. City Consideration of Requested Transfer

Except for Permitted Transfers, Developer shall provide the City with sixty (60) calendar days' prior written notice of its intent to assign or transfer all or any part of this Agreement or effect a change in the management or control of Developer and shall request any approval sought for such assignment or transfer, which approval may be withheld by the City in its sole and absolute discretion. The notice shall be accompanied by evidence regarding the proposed transferee's development, operation and management qualifications and experience and its financial commitments and resources sufficient to enable the City to evaluate whether the proposed assignee or purchaser is qualified and capable to perform Developer's obligations pursuant to this Agreement.

Within sixty (60) calendar days after the receipt of Developer's written request for the City approval of an assignment or transfer pursuant to this Section 2.3.3, the City shall respond in writing either approving or disapproving the proposed assignee or transferee or requesting further information required by the City in order to determine whether or not to grant the requested approval. Upon receipt of such a request for further information, Developer shall promptly furnish to the City such requested information.

If the City fails to approve or disapprove the requested transfer or assignment within the sixty (60) calendar days after receipt of Developer's written request (or receipt of any further information reasonably requested by City), Developer may send a second and final notice, together with a clear statement indicating that if City does not act upon such request within fifteen (15) days following receipt of this second notice, the request shall be deemed approved. Failure of the City to act within this fifteen (15) day period shall be deemed an approval of the request, provided Developer has included a statement to that effect in its second and final notice and has provided in a timely manner all other information required in connection with City's review of such request. Developer shall promptly pay the City's costs of evaluating and consummating any request for assignment or transfer, including any reasonable attorneys' fees or costs.

3. DISPOSITION OF SITE; ENVIRONMENTAL MATTERS

3.1. Transfer of the Property

The City is the owner in fee of the City Property. In consideration of the covenants and payment of consideration as set forth in this Agreement, upon satisfaction or waiver of the City's Conditions Precedent to Closing, the City shall convey the Property to Developer by execution of the Grant Deed. Developer agrees to accept conveyance of the Property in accordance with the terms of this Agreement upon satisfaction or waiver of Developer's Conditions Precedent to Closing. The Closing shall occur no later than the Outside Closing Date, subject to Events of Force Majeure.

3.2. Access; Condition of the Property; Environmental

3.2.1. Access to Property Prior to the Closing, City shall cooperate to enable representatives of Developer to obtain the right of access to all portions of the City Property for the purpose of obtaining data and making surveys and tests which Developer determines are reasonably necessary or desirable, including the investigation of the soils and environmental

condition of the City Property. Developer agrees to provide written notice to City at least twenty-four (24) hours prior to undertaking any studies or work upon the City Property. Developer shall keep the City Property free and clear of any liens and indemnify, defend, protect and hold City harmless from any claims arising out of the acts, omissions, negligence or willful misconduct of Developer or its employees, agents, contractors or representatives in connection with such studies and investigations, except for claims arising from or related to any pre-existing condition on or of the City Property or claims to the extent caused by the negligence or willful misconduct of City or its employees, agents, contractors or representatives. If any inspection or test conducted by or expressly on Developer's behalf disturbs the Property, Developer will restore the Property to substantially the same condition as existed prior to any such inspection or test. Prior to any entry or access to the City Property, Developer will provide the City with evidence that Developer has in place a policy of commercial general liability insurance in an amount not less than \$2,000,000.00 per occurrence covering any accident arising in connection with Developer or its employees and authorized agents, representatives, contractors and consultants entry upon the City Property, naming the City as additional insured. The obligations of Developer under this Section 3.2.1 shall survive the termination of the Agreement.

3.2.2. Disclosure

The City hereby represents and warrants to Developer that, to the best of the City's knowledge, the City has not received any prior written notice or communication from any government agencies having jurisdiction over the City Property, or from any other third party, notifying the City or any third party of the presence of surface or subsurface zone Hazardous Materials in, on, adjacent to, or under the City Property, or any portion thereof.

3.2.3. Developer's Investigation of the Property

Developer has had or will have full access to Property and the opportunity to obtain additional information and documentation as Developer deems necessary to evaluate the Property, to investigate and study the condition of the Property, and to make submissions and applications to all applicable governmental authorities with respect to the Entitlements. Developer shall provide all reports, studies, approvals, plans, drawings, appraisals, Phase I reports, surveys, title reports and other due diligence (collectively, "**Reports**") to the City upon execution of this Agreement or within fifteen (15) days of completion of such Reports, whichever is later. Developer acknowledges that except for the representations, warranties and covenants of the City contained in this Agreement, Developer has relied and shall rely solely upon (i) its own expertise and that of Developer's consultants in purchasing the Property, and (ii) Developer's own knowledge of the Property based on its investigations and inspections of the Property. Developer has conducted such inspections and investigations of the Property as Developer deemed or shall deem necessary, including, but not limited to, the physical and environmental conditions of the Property. Except for the City's representations, warranties and covenants and as may be expressly provided herein, upon Closing, Developer acknowledges and, as between the City and Developer, shall assume the risk, that there may be adverse matters, including, but not limited to, adverse physical and environmental conditions, that are not known to the City and that may not have been revealed by Developer's inspections and investigations. Developer acknowledges and agrees that except for the representations and warranties of the City herein, upon Closing, the City shall convey to Developer and Developer shall accept the Property "AS IS, WHERE IS," with all faults and defects (latent and apparent). Except for the representations and warranties of the City contained herein

and in any documents executed and delivered by the City at Closing pursuant to this Agreement, Developer further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property by the City or any agent, employee or contractor of the City or any third party. The City is not liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Property furnished by the City, or any real estate broker, contractor, agent, employee, servant or other person, unless the same are specifically set forth in this Agreement or any other documents executed and delivered by the City at Closing pursuant to this Agreement. Developer acknowledges that the consideration that Developer is delivering to the City reflects the “as is” nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with its counsel and understands the significance and effect thereof.

3.3. Escrow

Not later than sixty (60) days prior to Closing, the Parties shall open escrow (the “**Escrow**”) with Escrow Company for the conveyance of the Property and the closing of the City Loan. The Closing shall occur no later than the “Outside Closing Date” stated in the Schedule of Performance, subject to Events of Force Majeure. The Closing shall occur on a date selected by Developer in a written notice to City received at least 30 days in advance of the selected Closing date (the “**Closing Notice**”). If the City does not receive a Closing Notice at least 30 days prior to the Outside Closing Date, the Closing shall occur on the Outside Closing Date.

Developer shall pay and be solely responsible for any documentary transfer taxes in connection with the conveyance of the Property to Developer, and any and all title, recording, escrow and closing costs in connection herewith (the “**Escrow Costs**”), except for the costs and expense of the City’s own consultants, and Developer shall prepare and enter into such escrow instructions as are reasonably acceptable to Developer, the City and Escrow Agent.

3.4. [Intentionally deleted.]

3.5. Title Insurance

3.5.1 Concurrently with the Closing, Title Company shall issue to Developer (or its permitted nominees or assignees), at Developer’s cost, an owner’s policy of title insurance, in such amounts and with such endorsements as agreed to between Developer and the Title Company, which at Developer’s option may be an ALTA extended coverage owner’s policy provided that Developer satisfies all requirements therefor (the “**Developer Title Policy**”) (provided, however, that it shall not be a Developer Condition Precedent to Closing that any Developer Title Policy be in any particular amount or include any specific endorsements), insuring that Developer has a valid fee or leasehold interest in the Project, subject only to (A) the lien of non-delinquent real property taxes and assessments, (B) the exceptions to title identified on Attachment F hereto (the “**Permitted Exceptions**”), and (C) agreements expressly required by this Agreement to be recorded at the Closing. The City shall, at no cost or expense to the City, cooperate with and assist Developer in obtaining such policy, including providing any required indemnities or affidavits that are customary and commercially reasonable.

3.6. Submittals into Escrow for the Closing

The Parties shall submit documents and funds into Escrow for the Closing as set forth in this Section.

3.6.1 Submittals by Developer

At least five (5) Business Day prior to Closing (unless otherwise indicated below), Developer shall submit into Escrow the following:

(A) The Authority Loan Documents, duly executed by Developer and acknowledged where appropriate.

(B) The Regulatory Agreement duly executed and acknowledged.

(C) Any other documents or other deliverables reasonably requested by the City or the Escrow Agent (which may be deposited with Escrow one (1) Business Day prior to the Closing date).

(D) Sufficient funds to pay costs of escrow and title to effect the conveyance of the Property to Developer (which amounts may be deposited with Escrow on the Closing date).

3.6.2 Submittals by the City

At least one (1) Business Day prior to Closing, the City shall submit into Escrow the following:

(A) The Grant Deed duly executed by the City and acknowledged.

(B) The Regulatory Agreement duly executed by the City and the Housing Authority and acknowledged.

(C) A non-foreign transferor certification in accordance with the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and a California Form 593 certificate, each in a form acceptable to Developer and Escrow Agent and executed by City.

(D) Any other documents or other deliverables reasonably requested by Developer or the Escrow Agent.

3.7. Conditions Precedent to Closing

The Closing is conditioned upon satisfaction of the terms and conditions set forth in this Section.

3.7.1 The City's Conditions.

The City's obligation to close Escrow and convey the Property to Developer is conditioned upon the satisfaction or written waiver of each and every one of the conditions precedent described below ("**City's Conditions Precedent to Closing**"), which are solely for the benefit of the City, and which shall be satisfied or waived by the time periods provided for

herein. The City at its option may terminate this Agreement if any of the condition's precedent set forth below are not satisfied by Developer or waived in writing by the City by the Outside Closing Date, subject to Events of Force Majeure.

(A) Execution of Documents. Developer and any third party shall have executed and delivered into Escrow the documents listed in Section 3.6.1.

(B) Deposit of Funds. Developer shall have deposited or caused to be deposited all funds necessary for the Closing or otherwise required pursuant to this Agreement.

(C) Certificates of Good Standing; Authority. Developer shall have delivered to the City certificates of good standing, dated within thirty (30) days of the Closing, and resolutions or consent of Developer authorizing the acquisition of the Property.

(D) Evidence of Financing. Developer shall have submitted, and the City Representative shall have approved Developer's Evidence of Financing in accordance with this Agreement.

(E) Authority Loan. Developer shall have entered into and duly executed the Loan Document for the Authority Loan and satisfied all conditions precedent to the closing of the Authority Loan set forth in the Loan Documents.

(F) Entitlements. The City and Authority shall have received evidence reasonably acceptable to it that Developer has obtained all Entitlements necessary for the construction of the Project, provided that ready-to-issue letters with respect to building permits shall be acceptable.

(G) SLA Exemption. The City shall have submitted to the California Department of Housing and Community Development ("**HCD**") a written determination by Seller's City Council that the conveyance of the Property to Developer pursuant to this Agreement is exempt from the requirements of the Surplus Lands Act (Gov't Code §§54220 *et seq.*), and within thirty (30) days of submittal of such determination, HCD shall have affirmed that this conveyance of the Property is exempt from the Surplus Land Act, is being conveyed in compliance with the Surplus Lands Act or, such thirty (30) days shall have expired without HCD issuing a Notice of Violation finding that the sale of the Property as provided herein violates the Surplus Lands Act and/or HCD's Surplus Lands Act Guidelines.

(H) Labor Compliance. The City shall have received evidence reasonably acceptable to it that the construction of the Project and the payment of all wages in connection therewith shall be in accordance with the provisions of California Labor Code §§ 1720 through 1861 (the "**Prevailing Wage Law**"), to the extent applicable to the Project.

(I) Insurance. Developer, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the Insurance Requirements, and Developer shall have provided the City with evidence of insurance.

(J) No Litigation. No litigation shall be pending or threatened by any third parties which seeks to enjoin the transactions contemplated herein or challenge or overturn the Entitlements.

(K) No Default. There shall exist no condition, event or act which would constitute an Event of Default under this Agreement, or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(L) Representations and Warranties. All representations and warranties of Developer herein contained and contained in this Agreement shall be true and correct in all material respects as if made on and as of the date of Closing.

3.7.2 Developer's Conditions

Developer's obligation to close Escrow on the Property is conditioned upon the satisfaction or written waiver by Developer of each and every one of the conditions precedent described below (the "**Developer's Conditions Precedent to Closing**"), which are solely for the benefit of Developer, and which shall be satisfied or waived by the time periods provided for herein. Developer at its option may terminate this Agreement if any of the condition's precedent set forth below are not satisfied or waived in writing by Developer by the Outside Closing Date, subject to Events of Force Majeure:

(A) Execution of Documents. The City shall have executed and delivered into Escrow the documents listed in Section 3.6.2.

(B) No Litigation. No litigation shall be pending or threatened by any third parties which seeks to enjoin the transactions contemplated herein.

(C) No Default. There shall exist no condition, event or act which would constitute an Event of Default by the City under this Agreement, or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(D) Representations and Warranties. All representations and warranties of the City herein contained and contained in this Agreement shall be true and correct as if made on and as of the date of Closing.

(E) Developer Title Policy. The Title Company shall be irrevocably committed to issue the Developer Title Policy upon recordation of the Conveyance Documents.

(F) No Material Adverse Change. There shall not have occurred between the Effective Date and the Closing any material adverse change to the physical or environmental condition of the Property, except to the extent caused by Developer.

(G) No Leases or Parties in Possession. City shall have terminated any and all leases, licenses, and any other occupancy agreements affecting the Property effective no later than the Closing, and City shall have demonstrated the ability to deliver valid leasehold title to the City Property to Developer free and clear of any tenants, lessees, licensees or any third party occupants or parties in possession.

(H) Evidence of Financing. Developer shall have secured the sources of funding set forth in the Evidence of Financing and such funding shall be committed and available for the acquisition and construction of the Project as of the Closing.

3.7.3 Close of Escrow.

Provided that both Developer's Conditions Precedent to Closing and the City's Conditions Precedent to Closing have been satisfied or waived in writing, the conveyance of the Property to Developer shall close on the date selected by Developer in the Closing Notice. The Closing shall occur on or before the Outside Closing Date, subject to Events of Force Majeure.

3.7.4 Failure of Conditions to Close of Escrow.

In the event any of the City's Conditions Precedent to Closing or the Developer's Conditions Precedent to Closing are not satisfied prior to the Outside Closing Date, then the respective rights of the parties shall be determined under Section 7.2.

3.8. Indemnification

Following the conveyance of the Property to Developer, Developer agrees to save, protect, defend, indemnify and hold harmless the City Indemnitees from and against any and all Losses and Liabilities (including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, and remedial and response costs), but excluding the extent to which such Losses and Liabilities arises from the gross negligence or intentional misconduct of the City, the City Indemnitees, and/or their agents, representatives, invitees, licensees, consultants, and contractors, which may now or in the future be incurred or suffered by the City Indemnitees, by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (i) the ownership (or possession) of all or any part of the Property for purposes of any Governmental Regulations regulating Hazardous Materials with respect to any environmental or other condition of the Property relating to any Hazardous Materials not existing before the Closing and first released onto the Property and/or occurring following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees, (ii) any act or omission on the part of Developer, or its representatives, contractors, volunteers, or invitees with respect to the Property; (iii) the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person resulting from the negligence, intentional acts or omissions of Developer, its officers, agents, volunteers, contractors or employees, in the performance of its obligations under this Agreement, (iv) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials first released and/or occurring on the Property following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees, (v) any environmental or other condition of the Property relating to any Hazardous Materials not existing before the Closing and first released and/or occurring following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees. Developer's obligations under this Section shall survive the termination of this Agreement.

3.9. Occupants of the Property

The Property shall be conveyed to Developer free of any possession or right of possession by party except that of Developer.

3.10. Zoning of the Property

The City Property is zoned PD 73-001 with a General Plan designation of Medium Density Residential. The City has approved entitlements for the Project pursuant to Government Code Section 65913.4 to develop a 100% affordable residential development providing 62 Units and associated amenities as evidenced by Attachment G.

4. **FINANCING OF THE AFFORDABLE PROJECT**

4.1. Sources of Construction Financing

Developer anticipates that the Development Costs will be financed in accordance with the Financing Summary. Developer shall be permitted to submit a revised Project Pro Forma and financing different from that described herein prior to Closing, which shall be subject to the review and approval of the City in accordance herewith. City acknowledges Developer is seeking additional funding sources for the Project which may include Project Based Vouchers. In the event Developer is unsuccessful in securing anticipated funding sources, City acknowledges that project may have a funding gap and will work with Developer in good faith to address any shortfalls.

4.2. The Authority Loan

4.2.1 Closing

As of the Effective Date, it is anticipated that the Authority will provide the Authority Loan to Developer, subject to the terms and conditions set forth in the Loan Documents and all requisite approvals by the Authority.

5. **EVIDENCE OF FINANCING; CONSTRUCTION CONTRACT; DEVELOPER FEE**

5.1. Evidence of Financing

Developer covenants and agrees to submit timely applications for the financing sources set forth in the Financing Summary, and to apply for the Tax Credits by the date set forth in the Schedule of Performance subject to Events of Force Majeure. Developer shall also demonstrate that the sources set forth in the Financing Summary, or such other financing as may be obtained by Developer and approved by the City, will constitute sufficient financing such that the City Representative is reasonably satisfied that the Project can be constructed and operated as proposed by Developer and will be financially feasible.

As a condition precedent to the Closing, Developer shall provide the City with copies of written, enforceable documentation reasonably acceptable to the City that Developer has or will have the right and access to the financing indicated in the Project Pro Forma (collectively, the “**Evidence of Financing**”), which Evidence of Financing shall include, without limitation, executed loan documents for all loans, executed contracts for any rental subsidies, a reservation of Tax Credits from TCAC, and executed syndication documents evidencing the Investor Limited Partner’s capital obligations. Upon the Closing, the City shall be deemed to have approved all Evidence of Financing required hereunder.

5.2. Construction Budget; Construction Loan

Prior to the Closing, Developer shall submit to and obtain the City's approval of the Construction Budget, showing the projected predevelopment and construction costs of the Improvements and a sources-and-uses statement showing that the projected funding sources will be available as needed to fund all such projected costs at the time incurred.

The Construction Loan shall be secured by Developer's interest in the Project and the Improvements located thereon. In no event shall the Construction Loan be cross-defaulted with any loan secured by property other than the Project or assets attached to property other than the Project.

5.3. Construction Contract

If the City has not previously approved the Contractor, then at least 45 days prior to the Closing, Developer shall deliver to the City the name, resume and financial statement of the proposed Contractor for approval by the City, which shall not be unreasonably withheld, delayed or conditioned. At least 30 days prior to the Closing, Developer covenants and agrees to deliver to the City a fixed price or guaranteed maximum cost construction contract(s) (the "**Construction Contract**") for all of the Improvements for approval by the City, which shall not be unreasonably withheld, delayed or conditioned, which Construction Contract shall obligate the General Contractor to commence and complete the construction of those Improvements in accordance with the City Loan Agreement and at the price stated in the Construction Contract.

5.4 Developer Fee

The maximum developer fee shall be the amount permitted by TCAC, with the cash portion of the developer fee payable as follows: twenty five percent (25%) at construction start; twenty five percent (25%) during construction and fifty percent (50%) at conversion. Any portion of the developer fee that is deferred shall be repayable prior to determination of the residual receipts of the Project, with a maximum pay-off period of fifteen (15) years from the closing of the Authority Loan (or such later time as may be permitted by the Investor Limited Partner). No interest will accrue on the amount of the deferred fee. If any of the maximum allowed cash portion of development fee needs to be deferred, that "priority" portion of deferred fee may be repaid prior to residual receipts payments.

6. **COVENANTS AND RESTRICTIONS**

6.1. Use Covenants

Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Project or any part thereof, that the Project shall be used, maintained and operated in compliance with the Regulatory Agreement which shall be in a form mutually agreed upon by the Parties and recorded against Developer's fee or leasehold interest in the City Property (as applicable). Developer further covenants and agrees for itself and its successors and assigns that the Affordable Units shall be continuously occupied or held vacant and made available to Qualified Tenants at an Affordable Rent during the Affordability Period. Permanent supportive housing units at the Project shall be rented to households referred through the County of Sonoma's Coordinated Entry System. All uses conducted on the Project, including, without limitation, all activities undertaken by Developer pursuant to this Agreement, shall conform to all applicable

provisions of the Santa Rosa City Code. The Project shall at all times be managed by a reputable property management company approved by the City. The initial property management company shall be Housing for Independent People, Inc. Any change in the property management company shall require the prior written consent of the City.

6.2. Nondiscrimination Covenants

Developer covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Unit or the Project nor shall Developer establish or permit any such practice or practices of discrimination or segregation with reference to the location, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of the Project.

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

All deeds, rental agreements, leases, or contracts made or entered into by Developer as to the Units or the Project or any portion thereof, shall contain and be subject to the following nondiscrimination and nonsegregation clauses:

a. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 premises herein conveyed. The foregoing covenants shall run with the land.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in connection with the performance of this contract nor shall the contracting party himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, contractors, subcontractors or vendees with respect to the premises.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

The covenants established herein shall, without regard to technical classification and designation, be binding on Developer and any successors in interest to the Project, or any part thereof, for the benefit and in favor of the City and its successors and assigns. The covenants against discrimination shall run with the land and remain in effect in perpetuity.

6.3. Social Services

Developer covenants and agrees to provide a social services plan for the Project to the City prior to Closing (the “Social Services Plan”). Developer covenants and agrees to provide

Social Services to the residents of the Project in accordance with the Social Services Plan. The service provider shall be Abode Services, Inc. Any changes to the service provider shall require the City's prior written consent.

6.4. Leases and Service Contracts.

From the Effective Date hereof until the Closing, City shall not enter into any lease, contract, license or other delegation of right with respect the City Property that would either survive Closing or would reasonably be expected to have an material effect on the condition of the City Property after Closing. City shall also not cause nor voluntarily permit, any new lien, encumbrance or any matter to cause the condition of title to be changed in any way.

6.5. Interim Operation of City Property.

From the Effective Date hereof until the Closing, City shall operate and maintain the City Property, and shall continue to maintain insurance for the City Property, in a manner generally consistent with the manner in which City has operated and maintained the City Property prior to the date hereof.

6.6. Cooperation.

The City shall reasonably cooperate with Developer and support and assist Developer in the processing and permitting of all project related Entitlements from the City and any and all other regulatory agencies with jurisdiction over the Project. The City shall execute any and all applications, forms, and/or certificates as are reasonably required to process all entitlements, maps, and other approvals as reasonably requested by Developer. In the event that an appeal, requesting for rehearing, legal challenge, initiative and/or referendum is brought against any of the Entitlements or this Agreement, the City, at Developer's sole cost and expense, will cooperate with Developer in prosecuting an appropriate defense. Notwithstanding anything to the contrary herein, in no event shall the City be responsible for the cost of any legal fees necessary to defend the Project or any award of attorneys' fees in the event of a successful challenge to the Project. The City's compliance with this Section 6.6 shall not be deemed an approval of, or agreement with respect to, any such matters. The City's obligation to cooperate under this Section 6.6 shall be subject to the condition precedent that Developer provide all required information or documentation relating to such cooperation.

7. DEFAULTS, REMEDIES AND TERMINATION

7.1. Defaults - General

Subject to Events of Force Majeure and any other extensions of time approved in writing by the parties, failure or delay by either party to timely perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Agreement, at the time indicated in this Agreement, shall constitute a default under this Agreement. In addition to the foregoing, the following shall constitute a default hereunder: (a) Developer fails to perform an act by the time set forth therefore in the Schedule of Performance subject to Events of Force Majeure; or (b) a petition is filed in bankruptcy, or other bankruptcy or similar proceeding is commenced by or against Developer under any applicable bankruptcy, insolvency or similar law now or hereafter in effect which is not released within ninety (90) days.

As provided hereinbelow, the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the date of default.

Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until an Event of Default (as such term is hereinafter defined) has occurred. For purposes of this Agreement, an “**Event of Default**” for purposes of instituting legal proceedings by a non-defaulting party against the defaulting party shall mean that a default as described above has occurred, and such default has continued uncured for thirty (30) calendar days after notice thereof is received (as described in Section 8.1), or, if the default cannot reasonably be cured in thirty (30) calendar days, without the defaulting party commencing to diligently cure within thirty (30) calendar days after notice thereof in writing is received (as described in Section 8.1) by the injured party to the defaulting party; provided, however, that if a different period or notice requirement is specified for any particular default under any other provision of this Agreement, the specific provision shall control; and provided further, that if such failure is not reasonably capable of being cured within such thirty (30) day or different period, despite the defaulting party’s good faith and timely efforts, such time as is reasonably necessary to complete such cure, but in no event shall such time exceed ninety (90) calendar days after notice thereof is mailed to the defaulting party. Notwithstanding anything to the contrary herein, a cure period shall not extend the timing requirements set forth in the Schedule of Performance or the Outside Closing Date.

7.2. Remedies and Termination

7.2.1. City’s Remedies for Developer Event of Default

If an Event of Default by Developer occurs (including any Event of Default in connection with the failure by Developer to achieve Closing), City, as its sole and exclusive remedy hereunder, shall have the right to terminate this Agreement by delivering written notice thereof to Developer, in which case Developer shall pay all escrow termination charges, in which event this Agreement shall be terminated, or (b) seek specific performance of this Agreement.

7.2.2. Developer Remedies for City Event of Default

If an Event of Default by City occurs, Developer shall have the right to (a) terminate this Agreement by delivering written notice thereof to the City, in which case the City shall pay all escrow termination charges, in which event this Agreement shall be terminated, or (b) seek specific performance of this Agreement.

7.2.3. Developer's Right to Terminate Prior to the Closing.

At any time prior to the Closing, Developer shall have the right to terminate this Agreement by delivering written notice thereof to the City, in which case Developer shall pay all escrow termination charges, in which event this Agreement shall be terminated.

7.2.4. Automatic Termination upon Outside Closing Date

Subject to Events of Force Majeure, this Agreement shall automatically terminate upon the Outside Closing Date in the event the Closing has not occurred by the Outside Closing Date, in which case Developer shall pay all escrow termination charges and this Agreement shall be terminated.

7.3. Survival of Terms After Termination; Several Obligations After Closing

Following any termination, neither the City nor Developer shall have any further rights against or liability to the other under this Agreement. Developer's indemnification obligations under this Agreement shall remain in force following such termination with respect to any events occurring or claims accruing prior to the date of such termination.

7.4. Limitation on Liability

Neither Developer nor the City shall in any event be entitled to, and each hereby waives, any right to seek loss of profits, or any special, incidental or consequential damages of any kind or nature, however caused, from the other Party arising out of or in connection with this Agreement, even if the other Party has been advised of the possibility of the damages, and in connection with such waiver each Party is familiar with and hereby waives the provision of §1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

7.5. Legal Actions

7.5.1. Institution of Legal Actions

Any legal actions hereunder may be instituted in the Superior Court of the County of Sonoma, State of California, or in the Federal District Court in the Northern District of California.

7.5.2. Applicable Law

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

7.5.3. Acceptance of Service of Process

In the event that any legal action is commenced by Developer against the City, service of process on the City shall be made by personal service upon the City Representative, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against Developer, service of process on Developer shall be made by personal service upon Developer (or upon a general partner, managing member or officer of Developer), or in such other manner as may be provided by law.

7.6. Rights and Remedies are Cumulative

To the extent permitted by law and except with respect to rights and remedies expressly declared to be exclusive 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 time or different times, of any other rights or remedies for the same Event of Default or any other Event of Default by the other party.

7.7. 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.

7.8. Termination of this Agreement

Except for indemnification obligations of Developer hereunder, this Agreement shall terminate as of the Closing.

7.9. 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 or other proceeding shall be entitled, in addition to injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees.

As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" means the fees and expenses of counsel to the parties hereto (including, without limitation, in-house or other counsel employed by the City or Developer) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney and fees and costs for expert witnesses. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

8. GENERAL PROVISIONS

8.1. Notices, Demands and Communications Between the Parties

All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Agreement shall be in writing (“**Notice**”) and shall be given by personal delivery, certified mail, return receipt requested, or overnight guaranteed delivery service and addressed as follows, or at any other address as that party may later designate by Notice:

To the City: City of Santa Rosa
69 Stony Circle
Santa Rosa, California 95401
Attention: Real Estate Manager

Copy to: City Attorney’s Office
City of Santa Rosa
100 Santa Rosa Ave., Room 8
Santa Rosa, California 95404
Attention: City Attorney

Copy to: Housing Authority of the City of Santa Rosa
90 Santa Rosa Ave.
Santa Rosa, California 95404
Attention: Director of Housing

To Developer: Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimbler

Copy to: Allied Housing, Inc.
40849 Fremont Blvd.
Fremont, CA 94538
Attention: Louis Chicoine

Copy to: Gubb and Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attention: Evan A. Gross

Any Notice shall be deemed received immediately if delivered by hand, shall be deemed received on the third day from the date it is postmarked if delivered by certified mail, and shall be deemed received on the date of delivery if sent via overnight courier. Notices sent by a party’s attorney on behalf of such party shall be deemed delivered by such party.

8.2. Conflicts of Interest

No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law. The parties hereto represent and warrant that they do not have knowledge of any such interest.

8.3. Warranty Against Payment of Consideration for Agreement

Developer warrants that it has not paid or given and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as project managers, architects, engineers, attorneys, and public relations consultants.

8.4. Nonliability of the City Officials and Employees

No member, official, employee, representative or agent of the City shall be personally liable to Developer, or any successor in interest thereof, in the event of any default or breach by the City under the terms of this Agreement.

8.5. Non-liability of Officers and Employees of Developer.

No non-managing member, limited partner, shareholder, officer, director, or employee of Developer shall be personally liable to City, or any successor in interest thereof, in the event of any default or breach by Developer under the terms of this Agreement.

8.6. Approvals by the City and Developer

Approvals required of the parties shall be given within the time set forth in this Agreement, the Schedule of Performance or, if no time is given, within a reasonable time. Wherever this Agreement requires the City or Developer to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld, conditioned or delayed, unless expressly provided to the contrary.

8.7. Force Majeure

In addition to specific provisions of this Agreement, performance by any 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 due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God or any other deity; acts or threats of the public enemy or terrorists; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation, arbitration, administrative proceedings, initiatives and/or referenda, including challenges to the validity of this transaction or the Entitlements, or any element thereof, or any portion thereof; unusually severe weather; inability to secure necessary materials or tools; acts or failure to act of the City or any other public or governmental agency or entity (other than that acts or failure to act of the City shall not excuse performance by the City) (each of the foregoing an “**Event of Force Majeure**” and collectively “**Events of Force Majeure**”).

The lack of funding to complete the development of the Project shall not constitute an Event of Force Majeure pursuant to this Section 8.7. Developer expressly assumes the risk of

real estate market conditions, construction costs, interest rates, and other similar general economic circumstances that may make funding and/or construction of the Project difficult, more expensive, or infeasible, whether or not such events or causes are foreseeable as of the date of this Agreement. Developer acknowledges and agrees that the provisions of this Section 8.7 shall not operate to excuse Developer from prompt payment when due under the City Loan Documents.

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) calendar days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by mutual agreement between the City and Developer.

8.8. Interpretation

This Agreement shall be construed as a whole and in accordance with its fair meaning and as though both of the parties participated equally in its drafting. Captions and organizations are for convenience only and shall not be used in construing meaning.

8.9. Administration

This Agreement shall be administered by the City Representative following execution of this Agreement by the City. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the City, the City Representative or his or her designee are authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise. The City Representative or his or her designee shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement and to negotiate and finalize all agreements and documents referred to herein on behalf of the City, so long as such actions do not substantially change the uses or development permitted on the Project, or add to the costs of the City as specified herein or as agreed to by the City Council or other authorized body. Notwithstanding the foregoing, the City Representative or his or her designee may in their sole and absolute discretion refer any matter to the City Council of the City and/or other authorized body for action, direction or approval.

8.10. Mutual 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.

8.11. Independent Contractor

The parties agree that Developer, in the performance of this Agreement, is not and shall not act in the capacity of an agent, employee or partner of the City.

8.12. Time

Time is of the essence in the performance of this Agreement.

8.13. Third-Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of the City, its successors and assigns, and Developer, its permitted successors and assigns, and no other person or persons shall have any right of action hereunder.

9. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement constitutes the entire understanding and agreement of the Parties. Two (2) duplicate originals of this Agreement shall be executed, each of which shall be deemed to be an original. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

Except as otherwise provided herein, this Agreement contains all of the understandings of the parties relating to the transactions contemplated by this Agreement, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer. Notwithstanding the previous sentence, the parties agree that the City Representative, on behalf of the City, shall be entitled to extend the dates in the Schedule of Performance without the need for amending the Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Developer have signed this Agreement as of the date and year first above written.

“CITY”

CITY OF SANTA ROSA,
a California municipal corporation

By: _____
[_____] , City Manager

APPROVED AS TO FORM:

[_____] , City Attorney

[SIGNATURE PAGE TO DISPOSITION AND DEVELOPMENT AGREEMENT]

[PAGE 1 OF 2]

“DEVELOPER”

**FREEBIRD DEVELOPMENT COMPANY,
LLC, a California limited liability company**

By: _____
Robin Zimbler, Manager

**ALLIED HOUSING, INC., a California nonprofit
public benefit corporation**

By: _____
Louis Chicoine, Executive Director

[SIGNATURE PAGE TO DISPOSITION AND DEVELOPMENT AGREEMENT]

[PAGE 2 OF 2]

ATTACHMENT A

LEGAL DESCRIPTION OF CITY PROPERTY

Real property in the City of Santa Rosa, County of Sonoma, State of California, as follows:

PARCEL ONE:

BEING A PORTION OF LOTS 12, 13 AND 14, BLOCK 34, AS SHOWN UPON THE MAP ENTITLED "MAP OF BLOCKS NUMBERED 34 AND 35 BEING AN ADDITION TO SOUTH PARK ADDITION TO THE CITY OF SANTA ROSA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY ON MARCH 15, 1889 IN BOOK 2 OF MAPS, AT PAGE 2, SONOMA COUNTY RECORDS, DESCRIBED AS: COMMENCING AT THE NORTHWESTERLY CORNER OF LOT 14 OF SAID BLOCK 34; THENCE ALONG THE EASTERLY LINE OF A 10-FOOT ALLEY AND THE WESTERLY LINE OF LOTS 14, 13 AND 12, SOUTH 24° 45' EAST TO THE SOUTHWESTERLY CORNER OF LOT 12; THENCE ALONG THE SOUTHERLY LINE OF LOT 12, NORTH 65° 15' EAST, 37.5 FEET TO THE SOUTHWESTERLY CORNER OF THE LANDS CONVEYED TO ROMEO BERTOLI, ET UX, BY DEED RECORDED MARCH 29, 1950 UNDER RECORDERS SERIAL NO. D-10045; THENCE ALONG THE WESTERLY LINE OF BERTOLI, NORTH 24° 45' WEST TO THE NORTHERLY LINE OF LOT 14 OF THE SOUTHERLY LINE OF BENNETT AVENUE; THENCE ALONG THE SOUTHERLY LINE OF BENNETT AVENUE, SOUTH 70° 30' WEST TO THE POINT OF COMMENCEMENT.

PARCEL TWO:

THE EAST HALF OF THAT CERTAIN ALLEY LYING WESTERLY OF THE WESTERLY LINE OF PARCEL ONE, ABOVE AND HERETOFORE ABANDONED BY RESOLUTION FROM THE CITY OF SANTA ROSA, RECORDED SEPTEMBER 15, 1967 IN BOOK 2289 OF OFFICIAL RECORDS, AT PAGE 560, SONOMA COUNTY RECORDS, WHICH EXTENDS FROM THE WESTERLY PROLONGATION OF THE NORTH LINE OF LOT 14, BLOCK 34 OF THE MAP OF BLOCKS NUMBERED 34 AND 35 BEING AN ADDITION TO SOUTH PARK ADDITION TO THE CITY OF SANTA ROSA, RECORDED MARCH 15, 1889 IN BOOK 2 OF

MAPS AT PAGE 2, SONOMA COUNTY RECORDS SOUTHERLY TO THE SOUTH LINE OF THE WESTERLY PROLONGATION OF LOT 12, BLOCK 34 OF AFORESAID SUBDIVISION.

APN: 009-333-009

PARCEL A:

THE REAL PROPERTY DESCRIBED IN THE DEED DATED MARCH 16, 1923 AND RECORDED ON MARCH 19, 1923 IN BOOK 37, PAGE 378, OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

SAVE AND EXCEPTING THEREFROM THE REAL PROPERTY DESCRIBED IN THE DEED FROM THE CITY OF SANTA ROSA SCHOOL DISTRICT TO ANGELO PIERONI RECORDED ON APRIL 3, 1946 IN BOOK 684, PAGE 314 OF OFFICIAL RECORDS IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL B:

THE REAL PROPERTY DESCRIBED IN THE DEED DATED APRIL 7, 1930 FROM EMIL KRAFT AND FAE KRAFT TO THE CITY OF SANTA ROSA SCHOOL DISTRICT AND RECORDED APRIL 11, 1930 IN BOOK 257, PAGE 188 OF OFFICIAL RECORDS IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL C:

ANY REAL PROPERTY WHICH MAY HAVE BEEN ADDED TO THE SOUTH PARK SCHOOL GROUNDS BY REASON OF THE ACTION OF THE CITY COUNCIL OF THE CITY OF SANTA ROSA, AS SET FORTH IN CITY COUNCIL RESOLUTION NO. 8487, WHICH IS RECORDED IN BOOK 2289, PAGE 560 OF OFFICIAL RECORDS IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL D:

A PORTION OF LOTS 25, 26, 27 AND 28, BLOCK 34, SOUTH PARK ADDITION, SAID PORTION BEING

PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF WARE STREET WITH THE EASTERLY LINE OF RUTLEDGE STREET; THENCE N. $24^{\circ} 45'$ W. ALONG THE EASTERLY LINE OF RUTLEDGE STREET, 150.0 FEET; THENCE N. $65^{\circ} 15'$ E. 70.0 FEET; THENCE S. $24^{\circ} 45'$ E. 150.0 FEET TO A POINT ON THE NORTHERLY LINE OF WARE STREET; THENCE S. $65^{\circ} 15'$ W. 70.0 FEET TO THE POINT OF BEGINNING.

APN: 009-333-014, 038-151-004 and 038-151-011

ATTACHMENT B
SCHEDULE OF PERFORMANCE

Outside Closing Date July 1, 2023
Construction Start [TBD]
Construction Completion [TBD]
PIS [TBD]
100% Occupied [TBD]
8609 Certification [TBD]

ATTACHMENT C
RESOLUTION NO. 1717

ATTACHMENT D
INSURANCE REQUIREMENTS

[attached]

ATTACHMENT E
FINANCING SUMMARY

Bennett Valley Apartments - 62 units - June 2021

Sources

Construction Sources					
	Interest	Amortization	Term	Amount	Notes
Tax Credit Equity	N/A	N/A	N/A	\$ 2,724,769	20% of total tax credit equity
Private Bank Debt (Tax Exempt Bonds)	3.00%	N/A	30 months	\$ 19,000,000	Meets 50% test
Private Bank Debt (Taxable Bonds)	3.50%	N/A	30 months	\$ 9,188,997	
City of Santa Rosa	3.00%	N/A	55 years	\$ 5,800,000	
State MHP/NPLH	N/A	N/A	N/A	\$ -	Perm source only
Deferred Developer Fee	N/A	N/A	N/A	\$ 2,500,000	
Recontributed Equity	N/A	N/A	N/A	\$ -	
Deferred Operating/Transition Reserve	N/A	N/A	N/A	\$ 678,869	
Deferred Replacement Reserve	N/A	N/A	N/A	\$ 62,000	
Total Construction Sources				\$ 39,954,635	

Permanent Sources					
	Interest	Amortization	Term	Amount	Notes
Tax Credit Equity	N/A	N/A	N/A	\$ 13,623,846	See calculations on Tax Credit tab
Private Bank Debt (Tax Exempt Bonds)	4.50%	35 years	15 years	\$ 4,288,350	
City of Santa Rosa	3.00%	N/A	55 years	\$ 5,800,000	
State MHP/NPLH	0.42%	N/A	55 years	\$ 15,242,439	See calculations on State Funding tab
Deferred Developer Fee	N/A	N/A	N/A	\$ 300,000	
Recontributed Equity	N/A	N/A	N/A	\$ 700,000	
Deferred Operating Reserve	N/A	N/A	N/A	\$ -	
Deferred Replacement Reserve	N/A	N/A	N/A	\$ -	
Total Permanent Sources				\$ 39,954,635	

ATTACHMENT F
PERMITTED EXCEPTIONS

ATTACHMENT G
APPROVAL LETTER

[attached]

ATTACHMENT H
[RESERVED]

ATTACHMENT I
[RESERVED]

ATTACHMENT J-1

[RESERVED]

ATTACHMENT J-2

[RESERVED]

ATTACHMENT K-1

[RESERVED]

ATTACHMENT K-2

[RESERVED]

ATTACHMENT L-1

[RESERVED]

ATTACHMENT L-2

[RESERVED]

ATTACHMENT M

[RESERVED]

ATTACHMENT N
[RESERVED]

ATTACHMENT O
[RESERVED]

ATTACHMENT P
[RESERVED]

ATTACHMENT Q

GRANT DEED

[attached]

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO
AND MAIL TAX STATEMENTS TO:
[Tax Credit Partnership]
c/o Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimbler

Space above this line for Recorder's use

**GRANT DEED
(Improvements)**

THE UNDERSIGNED GRANTOR DECLARES:

DOCUMENTARY TRANSFER TAX \$ _____; CITY TRANSFER TAX \$ _____;
____ computed on full value of the property conveyed, or
____ computed on full value less value of liens or encumbrances remaining at time of sale, or
____ transfer is exempt from tax for the following reason: _____
in the City of Santa Rosa, California.

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of Santa Rosa, a California municipal corporation (the "**Grantor**") hereby grants and conveys to [Tax Credit Partnership], a California limited partnership (the "**Grantee**"), the real property (the "**Property**") located in the City of Santa Rosa, County of Sonoma, State of California more particularly described in Exhibit A attached to this Grant Deed.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Exhibit A to Grant Deed

LEGAL DESCRIPTION OF PROPERTY

[Improvements/City Property legal description, as applicable]

ATTACHMENT R

[RESERVED]

ATTACHMENT S
[RESERVED]