

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between the City of Moreno Valley, a municipal corporation, (“City”), and the California Department of Housing and Community Development, a public agency of the State of California (“HCD”). In this Agreement, the City and HCD are sometimes referred to individually as a “Party” and collectively as the “Parties.” This Agreement is effective July 15, 2024 (“Effective Date”).

RECITALS

- A. In 1985, the City purchased approximately 56.42 acres of vacant, undeveloped land located at the northwest corner of Alessandro Boulevard and Nason Street in Moreno Valley, California (APNs 487-470-030 & 487-470-031) (collectively, the “Property”).
- B. In November 2019, the City issued a Request for Proposals for the development of the Property for the Town Center Project.
- C. In March 2020, the City awarded the Town Center Project to Lewis Acquisition Company, LLC, a Delaware limited liability company (“Developer”).
- D. Effective October 20, 2020, the City and the Developer entered into a Purchase and Sale Agreement and Escrow Instructions (“P&S”) whereby the City agreed to sell the Property to the Developer for \$5,600,000.00.
- E. On April 10, 2023, the City’s attorney wrote a letter to HCD to provide some background information about the City’s proposed sale of the Property.
- F. On April 12, 2023, HCD held its first meeting with the City to provide technical assistance to help the City comply with the Surplus Land Act (“SLA”) regarding its proposed disposition of the Property.

- G. On May 5, 2023, HCD held a further meeting with the City to provide additional technical assistance regarding the City's proposed disposition of the Property.
- H. On May 30, 2023, the City's attorney sent a second letter to HCD regarding the City's position that the disposition of the Property was not subject to the SLA.
- I. On June 16, 2023, HCD held another meeting with the City to discuss the City's proposed disposition of the Property.
- J. On July 6, 2023, HCD sent a Letter of Technical Assistance to the City to respond to the City's May 30, 2023 letter.
- K. On September 19, 2023, the City Council adopted Resolution No. 2023-63 ("Resolution"). The Resolution addresses various issues related to the City's proposed sale of the Property to the Developer. Furthermore, in the Resolution, the City takes the position that the SLA does not apply to the proposed sale of the Property. As a result, the City did not declare the Property "surplus" under Government Code section 54221 or otherwise comply with the requirements of the SLA.
- L. On September 26, 2023, the City's attorney submitted additional documentation to HCD relating to the Property.
- M. On October 10, 2023, HCD met with the City again. At this meeting, the City informed HCD of its plans to proceed with the sale of the Property in full awareness of the risks associated with a potential violation of the SLA.
- N. On October 18, 2023, HCD issued a Notice of Violation to the City for violating the SLA in relation to the City's proposed sale of the Property to the Developer.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements contained herein, the Recitals stated above, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

A G R E E M E N T

1. **City's Payment of 30% Statutory Penalty.** The City will pay the statutory penalty of 30% of the applicable disposition value ("30% Penalty") for its first violation of the SLA as follows:

- a. The SLA defines "disposition value" as: the greater of the final sale price of the Property (i.e., \$5,600,000.00) or the fair market value of the Property at the time of sale, as determined by an independent appraisal of the Property. (*See* Gov. Code, § 54230.5, subds. (a)(1), (a)(2).)
- b. No later than sixty (60) days prior to the close of escrow for the sale of the Property, the City will retain a MAI (Member Appraisal Institute) real property appraiser approved in advance by HCD in writing to determine an "Updated Disposition Value" of the Property using the definition of "disposition value" in Section 2.a. directly above. The appraiser shall prepare a highest and best use appraisal as defined by the Member Appraisal Institute as: "The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value." The City will bear all costs associated with this appraisal.
- c. The City will provide HCD a copy of the appraisal within ten (10) days of the City's receipt of the final appraisal.

- d. The 30% Penalty will be calculated based on the higher of the final sale price of the Property (i.e., \$5,600,000.00) and the Updated Disposition Value.
- e. In no event will the 30% Penalty exceed the final sale price of the Property (i.e., \$5,600,000.00).

2. **Deposit 30% Penalty into the Building Homes and Jobs Trust Fund.** The City will deposit the 30% Penalty into the Building Homes and Jobs Trust Fund, to be awarded by HCD through the City's allocation under the Permanent Local Housing Allocation entitlement program ("PLHA") for the sole purpose of financing newly constructed housing units in the City that are affordable to extremely low-, very low-, or low-income households. In expending the 30% Penalty, the City will follow all applicable PLHA requirements. For purposes of this Agreement, "expend" means "irrevocably transfer or encumber."

3. **Source of Funds.** In paying the 30% Penalty, the City will not use any funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds; funds dedicated to housing for very low-, low-, and moderate-income households; and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The source of funds to pay the 30% Penalty must be from general funds or proceeds of the City's sale of the Property. To the extent any sales and/or disposition agreement includes installment payments, full payment of the 30% Penalty will still be due immediately upon the first installment.

4. **50% Statutory Penalty for Subsequent Violation(s) of the SLA.** The City will be liable for a statutory penalty of 50% of the applicable disposition value for any subsequent violation(s) of the SLA. (Gov. Code, § 54230.5, subd. (a)(1).)

5. **100% Affordability Covenant.**

- a. Except as discussed in (b) below, the City will not be required to record an affordable housing covenant or restriction for the Property.
- b. The City and the Developer will amend the P&S as follows:
 - (i) The close of escrow for the City's sale of the Property will be conditioned upon no less than three (3) acres of the Property being sold for development as a 100% affordable housing apartment complex ("Affordable Housing Site").
 - (ii) The developer of the Affordable Housing Site, which shall be selected by the City, will be required to record a covenant or restriction against the Affordable Housing Site that will provide that the affordable housing units developed on the Affordable Housing Site will be sold or rented at affordable housing cost, as defined in Health and Safety Code section 50052.5, or affordable rent, as defined in Health and Safety Code section 50053, to lower income households, as defined in Health and Safety Code section 50079.5. The covenant or restriction shall require that rental units remain affordable to, and occupied by, lower income households for a period of at least 55 years for rental housing and 45 years for ownership housing. The initial occupants of all ownership units will be lower income households, and the ownership units will be subject to an equity sharing agreement consistent with Government Code section 65915, subdivision (c)(2). The covenant or restriction will run with the land and will be enforceable, against any owner

who violates a covenant or restriction and each successor in interest who continues the violation, by any of the entities described in Government Code section 54222.5, subdivisions (a)-(f). The City will provide HCD a copy of the covenant or restrictions recorded against the Affordable Housing Site no later than ten (10) business days following recordation. The covenant or restriction will include the language required by Government Code section 54233. The provisions of this paragraph do not prevent the City from requiring covenants that are more restrictive or as may be required by a provider of debt and/or equity funds necessary to finance the Affordable Housing Site so long as those provisions do not conflict with the terms in this Agreement.

(iii) The total number of affordable housing units ultimately required by the covenant or restriction will be equal to the greater of 100 affordable housing units or 15% of the total number of residential units developed on the Property, including the Affordable Housing Site.

6. **Prohousing Designation.** On July 14, 2023, the City earned a Prohousing Designation pursuant to HCD's Prohousing Designation Program ("PDP"). The PDP's regulations provide that HCD "may revoke a Prohousing Designation at any time...." (25 CFR § 6607(a).) One of the specified grounds for revocation of PDP status is that a jurisdiction "has failed to comply with state housing law...." (25 CFR § 6607(a)(1)(E).) HCD will not revoke the City's Prohousing Designation based on the City's disposition of the Property as long as the City fully complies with all terms in this Agreement.

7. **Monitoring by HCD & Reporting by the City.** Beginning six months after the Effective Date, the City will provide HCD semi-annual (i.e., every six months) emails to update HCD on the status of the City's fulfillment of the terms of this Agreement including, but not limited to, submitting documentation to HCD that the 30% Penalty was deposited into the Building Homes and Jobs Trust Fund and expended as provided by the SLA and this Agreement. If deemed reasonably necessary by HCD, the Parties will schedule and hold phone calls and/or meetings to discuss the City's fulfillment of the terms of this Agreement.

8. **Breach & Opportunity to Cure.** If the City fails to comply with any of the terms of this Agreement, HCD will provide the City written notice identifying the term(s) with which the City has failed to comply. HCD will allow the City a reasonable time to cure of no less than thirty (30) calendar days from the date of HCD's written notice before HCD may pursue judicial action against the City including, but not limited to, the remedies provided by Government Code sections 65585 and 65585.1. To the extent the City must call a special session of its governing body(ies) (including the City Council) to timely cure any failure to comply with this Agreement, the City will promptly call such special session.

9. **City Action to Comply with the SLA.** In the event that the PSA is terminated and the sale that is the subject of the P&S is not finalized, then this Agreement shall terminate. In such case and at such a time that the City may seek to dispose of the Property in the future, the City will follow the standard SLA protocols to dispose of the Property as surplus land or identify a qualifying exemption in the SLA to dispose of the Property as exempt surplus land. To ensure compliance with the SLA, the City will receive written approval from HCD at each step of the process (i.e., declaration of the Property as "surplus land," sending Notice of Availability to

required entities, 90-day good faith negotiation process, affordability covenant, and prior to agreeing to disposition terms). In addition, for twenty-four (24) months following the Effective Date, the City will work closely with HCD on all proposed dispositions of real property owned by the City in fee simple to ensure that the City fully complies with the SLA. To work closely with HCD includes, but is not limited to, seeking technical assistance prior to declaring property “surplus” or “exempt surplus,” consulting with HCD throughout the process to dispose of surplus or exempt surplus land, and submitting necessary documents and information to HCD in a timely manner to confirm compliance with the SLA. The City’s promise to comply with the applicable provisions of the SLA on a going forward basis shall survive the expiration or early termination of this Agreement.

10. **Third Party Actions.** This Agreement will not shield the City from any lawsuit or other action under the SLA.

11. **Final Resolution Between the Parties.** Upon full execution of this Agreement by both Parties, such Agreement will settle and resolve all matters between the Parties relating to the issues addressed in the Notice of Violation and this Agreement. This Agreement will be enforceable as if entered pursuant to Code of Civil Procedure section 664.6.

12. **Attorneys’ Fees & Costs.** Should either Party need to enforce this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees and costs under Civil Code section 1717.

13. **Governing Law, Jurisdiction, and Venue.** The laws of the State of California shall apply to the interpretation and enforcement of this Agreement. Any action or claim to be filed against either Party must be filed in the Superior Court of the County of Sacramento, California.

14. **Notices.** Notices and communications required under this Agreement shall be delivered by First Class Mail and email as follows:

City: City of Moreno Valley

City Manager's Office

14177 Frederick Street

P.O. Box 88005

Moreno Valley, CA 92552-0805

HCD: Department of Housing and Community Development

Housing Policy Development Division

651 Bannon Street, Suite 400

Sacramento, CA 95811

15. **Further Assurances.** Each Party agrees to perform any further actions, execute and deliver any further documents, and obtain consents as may be reasonably requested to fully effectuate the purposes, terms and conditions of this Agreement.

16. **Time of the Essence.** The Parties understand and agree that time is of the essence in the performance of each Party's respective obligations hereunder.

17. **Construction.** Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

18. **Severability.** The provisions of this Agreement are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

19. **Integration and Modification.** This Agreement represents the sole and entire agreement among the Parties related to the matters set forth herein, and except as expressly provided to the contrary herein, supersedes any and all prior agreements, negotiations, and discussions between the Parties and/or their representatives. Any amendment to or deletion from this Agreement must be in writing specifically referring to this Agreement, and must be signed by the duly authorized representatives of each Party. The Parties have not relied upon any oral representation(s) in deciding whether to enter into this Agreement.

20. **Titles and Headings.** The titles and headings of the respective articles and sections of this Agreement are inserted for convenience only and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

21. **No Waivers Unless in Writing.** The failure of any Party to enforce any of the provisions of this Agreement shall in no way be construed as a present or future waiver of such provisions, nor in any way affect the right of any Party to enforce each and every such provision thereafter. No breach of any provision hereof shall be waived unless expressly waived in writing by the Party granting such waiver. A waiver of one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

22. **Term of Agreement.** This Agreement is for a term commencing upon the Effective Date and ending when the City has fulfilled all its obligations under this Agreement. The term of this Agreement does not limit the liability of the City for any obligations which are expressly stated herein as surviving the expiration or earlier termination of this Agreement.

23. **Advice of Counsel.** The Parties, and each of them, represent and declare that in executing this Agreement they have relied solely upon their own judgment, belief and knowledge,

and the advice and recommendation of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by the other Party or any other person.

24. **Binding on Successors**. This Agreement is binding upon and inures to the benefit of the Parties and their heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, plaintiffs, and/or persons or entities connected with each of them, including, without limitation, their insurers, sureties, attorneys, consultants and experts.

25. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute a single Agreement. This Agreement may also be delivered by facsimile or email transmission and in such event all facsimile or email signatures will be deemed complete for all purposes hereof.

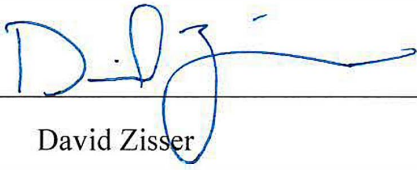
26. **Authority**. Each Party represents and warrants to the other that the individual executing and delivering this Agreement on behalf of such Party is duly authorized by such Party to do so, and thereby to bind such Party to each and all of the terms of this Agreement.

This Agreement has been executed by the Parties hereto as of the dates indicated opposite their respective signatures.

(Signatures Contained on Following Page)

HCD:

CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY DEVELOPMENT,
a public agency of the State of California

By:  Date: 7/15/24
David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

APPROVED AS TO FORM:

By: _____ Date: _____
Stephen J. Byers, Attorney for HCD

CITY:

CITY OF MORENO VALLEY,
a municipal corporation

By: _____ Date: _____
Brian Mohan
Assistant City Manager

APPROVED AS TO FORM:

By: _____ Date: _____
Colin Kirkpatrick, Attorney for the City

HCD:

CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY DEVELOPMENT,
a public agency of the State of California

By: _____ Date: _____

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

APPROVED AS TO FORM:

By: Stephen J. Byers Date: 7-15-2024

Stephen J. Byers, Attorney for HCD

CITY:

CITY OF MORENO VALLEY,
a municipal corporation

By: _____ Date: _____

Brian Mohan
Assistant City Manager

APPROVED AS TO FORM:

By: _____ Date: _____

Colin Kirkpatrick, Attorney for the City

HCD:

CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY DEVELOPMENT,
a public agency of the State of California

By: _____ Date: _____

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

APPROVED AS TO FORM:

By: _____ Date: _____

Stephen J. Byers, Attorney for HCD

CITY:

CITY OF MORENO VALLEY,
a municipal corporation

By:  Date: 7/12/24

Brian Mohan
Assistant City Manager

APPROVED AS TO FORM:

By:  Date: 7/12/2024

Colin Kirkpatrick, Attorney for the City