

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260-2578
Attn: _____

with a copy to:

Bravo Garden Apartments LLC
72877 Dinah Shore Dr., Ste. 103
Rancho Mirage, CA 92270
Attn: Claudio Bravo

Space Above This Line for Recorder's Use Only

This document is recorded for the benefit of the City of Palm Desert and is exempt from the payment of a recording fees pursuant to California Government Code Sections 27383, 27881, and 6103.

AFFORDABILITY RESTRICTIONS AND
REGULATORY AGREEMENT
(Density Bonus)

By and Between

THE CITY OF PALM DESERT

And

BRAVO GARDEN APARTMENTS LLC

DATED AS OF JUNE 13, 2024

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**AFFORDABILITY RESTRICTIONS AND
REGULATORY AGREEMENT
(Density Bonus)**

THIS AFFORDABILITY RESTRICTIONS AND REGULATORY AGREEMENT (Density Bonus) (this “**Agreement**”) is dated as of September 26, 2024, and is by and between the CITY OF PALM DESERT, a municipal corporation (the “**City**”), and BRAVO GARDEN APARTMENTS LLC, a California limited liability company (the “**Owner**”). City and Owner are sometimes referred to herein individually as a “Party” and collectively as “Parties”.

RECITALS

This Agreement is predicated upon the following facts:

A. The Owner is the owner of certain real property located within the City of Palm Desert, California, which property is described in “Exhibit A” attached hereto and made a part hereof (the “**Property**”).

B. The City Council adopted Resolution No. 2018-18, approving a density bonus, precise plan, conditional use permit, and mitigated negative declaration (the “**Approvals**”) for the construction of a three hundred eighty-eight (388)-unit apartment development on the Property consisting of a mix of thirteen (13) two-story buildings and three (3) three-story buildings together with a clubhouse, recreational amenities, and roadway improvements (collectively, the “**Project**”). Owner is the successor in interest to the Property and the Project from the original applicant, New Cities Investment Partners, LLC, a California limited liability company.

C. The Owner has agreed to reserve seventy-eight (78) Affordable Units in the Project for Very Low Income Households at an Affordable Rent (each as defined herein), making the Project eligible for a density bonus and other concessions pursuant to California Government Code Section 65915 *et seq.* and the City’s Zoning Ordinance (Palm Desert Municipal Code Section 25.34.040). Accordingly, the Approvals entitle the Owner to a density bonus of one hundred eleven (111) units, for a total of four hundred twenty-six (426) units, which is more than the three hundred eighty-eight (388) units proposed for the Project, contingent upon the Owner, prior to the issuance of a building permit for the Project, entering into an agreement with the City to set forth the affordability restrictions for the Project as specified in the Approvals and the recordation of such agreement in the real property records of Riverside County.

D. In addition to providing the Affordable Units, the Owner has agreed to reserve five (5) of the Affordable Units for Very Low Income Employee Households at an Affordable Rent (each as defined herein) in consideration for the City’s agreement to offset development fees imposed in connection with the development of the Affordable Units, in an amount not to exceed One Hundred Eighty Thousand Dollars (\$180,000), on the terms and conditions set forth in the Development Fee Agreement, which is attached

hereto as Exhibit D and incorporated herein as part of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Owner hereby agree as follows:

ARTICLE 1. DEFINITIONS AND INTERPRETATION.

1.1 Definitions.

Capitalized terms used herein shall have the following meanings unless the context in which they are used clearly requires otherwise.

“Affordable Units” shall mean seventy-eight (78) of the three hundred eighty-eight (388) units in the Project available to and occupied by, or held vacant for occupancy only by, Very Low Income Households and Very Low Income Employee Households, and rented at an Affordable Rent. The Affordable Units shall comply with the criteria set forth in Section 2 of this Agreement.

“Affordable Rent” shall mean rent for an Affordable Unit, including a Reasonable Utility Allowance, determined pursuant to California Health and Safety Code Section 50053(b) and the state regulations adopted by the California Department of Housing and Community Development pursuant thereto, as amended from time to time, based upon the AMI adjusted for a Household Size Appropriate to the Affordable Unit. More specifically, for each of the seventy-eight (78) Affordable Units reserved for Very Low Income Households and Very Low Income Employee Households, the maximum monthly Affordable Rent, including a Reasonable Utility Allowance, may not exceed thirty percent (30%) of fifty percent (50%) of the AMI, adjusted for a Household Size Appropriate to the Affordable Unit, divided by twelve (12).

“AMI” shall mean the area median income for Riverside County as published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50052.5, or successor statute, as adjusted for family size in accordance with the state regulations adopted pursuant to California Health and Safety Code Section 50052.5.

“Household Size Appropriate to the Affordable Unit” in the absence of pertinent federal statutes applicable to the Project, shall have the meaning set forth in California Health and Safety Code Section 50052.5(h), as amended from time to time.

“Reasonable Utility Allowance” shall mean a utility allowance for utilities paid by a tenant (not including telephone, internet or cable service), as described in Title 25 of the California Code of Regulations, Section 6918, and utilizing the utility allowance schedule published annually by the Housing Authority of the County of Riverside.

“Required Covenant Period” shall mean the period commencing on the date all units in the Project have been completed as evidenced by the City’s issuance of a final

Certificate of Occupancy for the Project, and ending as of the fifty-fifth (55th) anniversary thereof.

“Very Low Income Employee Household” shall mean persons and families who meet the fifty percent (50%) or less of AMI income qualification limits set forth in California Health and Safety Code Section 50105 and Title 25 of the California Code of Regulations, Section 6926, as such statute and regulation may be amended from time to time, and who have at least one household member over the age of eighteen (18) that works in the City of Palm Desert.

“Very Low Income Household” shall mean persons and families who meet the fifty percent (50%) or less of AMI income qualification limits set forth in California Health and Safety Code Section 50105 and Title 25 of the California Code of Regulations, Section 6926, as such statute and regulation may be amended from time to time.

1.2 Rules of Construction.

1.2.1 The singular form of any word used herein, including the terms defined herein shall include the plural and vice versa. The use herein of a word of any gender shall include correlative words of all genders.

1.2.2 Unless otherwise specified, references to articles, sections, and other subdivisions of this Agreement are to the designated articles, sections, and other subdivisions of this Agreement as originally executed. The words “hereof,” “herein,” “hereunder,” and words of similar import shall refer to this Agreement as a whole.

1.2.3 All of the terms and provisions hereof shall be construed to effectuate the purposes set forth in this Agreement and to sustain the validity hereof.

1.2.4 Headings or titles of the several articles and sections hereof and the table of contents appended to copies hereof shall be solely for convenience of reference and shall not affect the meaning, construction, or effect of the provisions hereof.

ARTICLE 2. ONGOING PROJECT OBLIGATIONS.

Pursuant to the requirements of California Government Code Section 65915 et seq., and based upon the recitals set forth above, which are incorporated herein as part of this Agreement, the Owner agrees to the following:

2.1 The Project and Affordable Units.

A. The Owner shall develop and construct the Project on the Property in substantial conformity with the Approvals and shall commence construction in substantial accordance with the Approvals. Thereafter, during the Required Covenant Period, the Owner agrees that not less than seventy-eight (78) units in the Project shall be Affordable Units, meaning that such units shall be continually occupied by, or held vacant for occupancy only by, Very Low Income Households and Very Low Income Employee Households. The Affordable Units shall comply with the specifications set forth in the

Affordable Housing Development Plan attached hereto as Exhibit “E” and incorporated herein by reference, which may be amended from time to time by written consent of the Parties.

B. The Owner agrees that not less than five (5) of the Affordable Units shall be continually occupied by, or held vacant for occupancy only by, Very Low Income Employee Households.

C. All of the units in the Project shall be similarly constructed and all of the Affordable Units shall be generally constructed at the same time as those units which are available to other tenants, and reasonably disbursed in terms of location throughout the Project, as further set forth in the Affordable Housing Development Plan. Prior to issuance of any building permit for the Project, the Owner shall inform the City of the Affordable Units to be constructed under the requested permit and the status of pending construction, if any, for other Affordable Units. The Owner shall obtain the City’s written consent for any proposed change to the Affordable Housing Development Plan, and the City shall have the right to approve or disapprove the same within thirty (30) days’ of receipt of notice. The Affordable Units shall contain, on average, the same number of bedrooms as the unrestricted units, and shall be compatible with the design or use of the unrestricted units in terms of appearance, materials, and quality. The Owner agrees that, to the extent commercially possible, Affordable Units will not be underutilized. No persons shall be permitted to occupy any Affordable Unit in excess of applicable limit of maximum occupancy set by the City Code and the laws of the State of California. As further set forth in the Affordable Housing Development Plan, the Project shall provide Affordable Units as follows:

(i) Thirty-six (36) of the Affordable Units shall be one (1) bedroom/one (1) bathroom units, with two (2) of these Affordable Units for Very Low Income Employee Households;

(ii) Thirty-seven (37) of the Affordable Units shall be two (2) bedroom/two (2) bathroom units, with two (2) of these Affordable Units for Very Low Income Employee Households; and

(iii) Five (5) of the Affordable Units shall be three (3) bedroom/two (2) bathroom units, with one (1) of these Affordable Units for Very Low Income Employee Households.

E. Concessions. Pursuant to Government Code Section 65915, the City agreed to the concessions set forth in this sub-paragraph E. The Owner agrees and acknowledges that no other concessions, incentives, or waivers are requested and that this Agreement fully satisfies the City’s obligations under California law.

(i) Parking Concession. The Project shall have reduced parking, in accordance with Resolution 2018-18, which allows for a reduction in parking standards from two (2) spaces per unit to 1.77 spaces per unit.

(ii) Development Fee Agreement. The City agrees to reimburse the Owner for development fees attributable to the Affordable Units, pursuant to the Development Fee Agreement, which is attached hereto as Exhibit “D” and incorporated herein by reference. The Owner agrees to pay all Development Fees, as defined, for the Project, prior to issuance of a building permit for the Project. The City agrees to reimburse Development Fees attributable to the Affordable Units, in an amount not to exceed One Hundred Eighty Thousand Dollars (\$180,000) from available funds from Low Income Housing Mitigation Fees, on the terms and conditions set forth in the Development Fee Agreement.

2.2 Residential Rental Property.

The Owner represents, warrants, and covenants to operate the Project as residential rental property. During the Required Covenant Period, the Affordable Units will be held and used for the purpose of providing residential living, and the Owner shall own, manage and operate, or cause the management and operation of, the Project to provide such affordable rental housing. All of the units except for one (1) manager’s unit in the Project will be available for rental on a continuous basis to members of the general public and the Owner will not give preference to any particular class or group in renting the units in the Project, except as required under this Agreement or any applicable agreement encumbering the Project and imposing affordability restrictions. The Owner shall not convert any Affordable Unit to condominiums or cooperative ownership or sell condominium or cooperative conversion rights to any Affordable Unit during the term of this Agreement.

2.3 Very Low Income Households and Very Low Income Employee Households.

2.3.1 Income and Employment Qualification; Initial Certification. Subject to the applicable provisions hereof, throughout the Required Covenant Period, Affordable Units will be exclusively occupied by, or available for occupancy only by, Very Low Income Households and Very Low Income Employee Households on a continuous basis. Prior to the rental or lease of an Affordable Unit, the Owner will obtain and maintain on file a Household Income Certification (“**Income Certification**”) substantially in the form attached hereto as Exhibit “B” and incorporated herein by reference for each Very Low Income Household and Very Low Income Employee Household, and shall provide copies of same to the City at such times as the City may, from time to time, reasonably require. With respect to Very Low Income Employee Households, the Owner will also obtain and maintain on file an employment verification from a current employer showing that at least one household member over the age of eighteen (18) works in the City. In addition, the Owner will provide such further information as may reasonably be required in the future by the City. The Income Certification shall be dated no more than thirty (30) days prior to the household’s initial occupancy of an Affordable Unit. The Owner shall make a good faith effort to verify that the income provided by an applicant in an Income Certification is accurate by taking any one or more of the following steps as part of the verification process for all household members over the age of eighteen (18) as appropriate:

- (i) Obtain two (2) pay stubs for the two (2) most recent pay periods;

(ii) Obtain a true copy of an income tax return for the most recent tax year in which a return was filed;

(iii) Obtain an income verification form from the applicant's current employer;

(iv) Obtain an income verification form from the Social Security Administration and/or the State Department of Social Services, or its equivalent, if the applicant receives assistance from either of those agencies;

(v) If the applicant is unemployed and has no tax return, obtain another form of independent verification; or

(vi) Obtain such other documentation as may be reasonably acceptable pursuant to Title 25 to verify income.

2.3.2 Certificate of Continuing Program Compliance; Annual Report. Throughout the Required Covenant Period, the Owner will prepare and submit to the City, at such periodic frequency as it might reasonably require, but not less than once annually, a Certificate of Continuing Compliance in substantially the form attached hereto as Exhibit "C" and incorporated herein by reference, executed by the Owner.

The Owner will also prepare and submit to the City on or before each anniversary date of the commencement of the Required Covenant Period, with respect to the preceding calendar year (or portion thereof for the first year) a report in form and substance reasonably satisfactory to the City, summarizing the vacancy rate of the Project, including the number of Affordable Units held vacant for occupancy by Very Low Income Households and Very Low Income Employee Households for such calendar year. The report shall notify the City of any requested change in the designation of the Affordable Units as listed in the Affordable Housing Development Plan.

2.4 Affordable Rent. Throughout the Required Covenant Period, an Affordable Rent shall be charged to the Very Low Income Household and Very Low Income Employee Household occupants of Affordable Units.

2.5 Rent Increases. Rents for Affordable Units may be increased only once per year and not earlier than twelve (12) months since the date of the tenant's initial occupancy or the last rent increase, as applicable. The rents charged following such an increase, or upon a vacancy and new occupancy by a Very Low Income Household or Very Low Income Employee Household, shall not exceed an Affordable Rent. The Owner shall consistent with applicable law give proper written notice to tenants of all rent increases, and upon written request, provide the City with reasonable detail concerning the amount of and rationale for such rent increases.

2.6 Income and Employment Recertification of Affordable Units. Annually, on the anniversary date of occupancy of an Affordable Unit by a Very Low Income Household or a Very Low Income Employee Household, the Owner shall obtain and maintain on file an annual income certification from each household occupying an Affordable Unit in a form

satisfactory to the City, based upon the current income of each occupant of the unit over the age of eighteen (18). The Owner shall make a good faith effort to verify that the income provided by the household is accurate in accordance with Section 2.3.1. In addition, with respect to a Very Low Income Employee Household, the Owner shall annually obtain and maintain on file an employment verification from a current employer showing that at least one household member over the age of eighteen (18) works in the City.

2.6.1 A unit occupied by a household that qualifies as a Very Low Income Household or Very Low Income Employee Household at the time the household first occupies an Affordable Unit shall be deemed to continue to be so occupied until: (i) a recertification of such household's income or verification of employment status, as applicable, demonstrates that such household no longer qualifies as a Very Low Income Household or Very Low Income Employee Household, and (ii) thereafter an available unit with the same number of bedrooms in the Project is occupied by a new household other Very Low Income Household or Very Low Income Employee Household, as applicable. At such time as a household ceases to qualify as a Very Low Income Household or Very Low Income Employee Household based on income or employment recertification, as applicable, the Owner shall designate the next available unit (one that is not occupied by a tenant) with the same number of bedrooms as the Affordable Unit occupied by such household so that the number of Affordable Units occupied by or reserved for occupancy by Very Low Income Households or Very Low Income Employee Households, as applicable, will remain constant. For purposes of this Agreement, such designated unit will be considered an Affordable Unit if it is held vacant and available solely for occupancy by a Very Low Income Household or Very Low Income Employee Household, as applicable, and, upon occupancy, the income eligibility of the household as a Very Low Income Household, and, if applicable, the employment status of the Very Low Income Household, is verified and the unit is rented at Affordable Rent.

2.6.2. Owner shall exercise reasonable efforts to designate Affordable Units pursuant to Section 2.6.1 in such a manner that the Affordable Units remain reasonably disbursed throughout the entire Project.

2.7 Lease or Occupancy Agreement. Prior to the rental or lease of an Affordable Unit to a Very Low Income Household or Very Low Income Employee Household, the Owner shall require the tenant to execute a written lease or occupancy agreement. The Owner shall maintain on file throughout the Required Covenant Period and for a four (4) year period thereafter, the executed lease or occupancy agreement of each tenant occupying an Affordable Unit. The form of lease or rental agreement used by the Owner for the lease or rental of Affordable Units shall be that which is reasonable and customary in residential leasing. Each lease or rental agreement for an Affordable Unit shall provide that the tenants of such Affordable Unit shall also be subject to annual recertification of income and employment status, if applicable, and subject to rental increases in accordance with Sections 2.5 and 2.6 of this Agreement. In addition, each lease or rental agreement shall contain a provision to the effect that the Owner has relied on the income certification and supporting information supplied by the Very Low Income Household or Very Low Income Employee Household, including, as applicable, employment

verification, in determining qualification for occupancy of the Affordable Unit, and that any material misstatement in such certification (whether or not intentional) may be cause for immediate termination of such lease or rental agreement.

2.7.1 The Owner shall refrain from restricting the rental or lease of Affordable Units on the basis of race, color, religion, sex, marital status, disability, ancestry or national origin of any person. All leases or occupancy agreements shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

“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, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of the Agreement, 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 immediately preceding paragraph, with respect to familial status, the immediately preceding 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 immediately preceding 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 immediately preceding paragraph.”

2.7.2 The covenants established herein shall, without regard to technical classification and designation, be binding for the benefit and in favor of City, and its successors and assigns and shall burden and run with the Property.

2.7.3 The City is deemed to be the beneficiary of the terms and provisions of the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit these covenants running with the land have been provided.

2.8 Security Deposits. The Owner may require security deposits on Affordable Units in amounts which are consistent with applicable law.

2.9 Additional Information; Books and Records. The Owner shall provide any additional information concerning the Affordable Units reasonably requested by the City. The Owner will maintain complete and accurate records pertaining to the Affordable Units throughout the Required Covenant Period and for a four (4) year period thereafter. The City shall have the right upon written notice of no less than forty-eight (48) hours to the Owner, at any time during normal business hours of 9:00 a.m. to 5:00 p.m., to examine and make copies of all books, records or other documents maintained by the Owner or by any of the Owner's agents which pertain to any Affordable Unit, including all executed leases or rental agreements and all Income Certifications and to obtain copies of any requested executed leases, occupancy agreements and Income Certifications. Owner shall provide executed copies of any leases, occupancy agreements and Income Certifications as may be requested by City within ten (10) business days from the City's written request.

2.10 Specific Enforcement of Affordability Restrictions. The Owner hereby agrees that specific enforcement of the Owner's agreement to comply with the allowable rent and occupancy restrictions and covenants contained herein is one of the reasons and consideration for the issuance of the Approvals and that, in the event of the Owner's breach of such requirements, potential monetary damages to the City, as well as to existing and prospective Very Low Income Households and Very Low Income Employee Households, would be difficult, if not impossible, to evaluate and quantify. Therefore, in addition to any other relief to which the City may be entitled as a consequence of the breach hereof, the Owner agrees to the imposition of the remedy of specific performance against it in the case of any event of default by the Owner in complying with any provision of this Agreement beyond any applicable notice and cure period.

2.11 Audit. The City shall have the right to perform an audit of the Project to determine compliance with the provisions of this Agreement. Such audit shall not be undertaken more often than once each calendar year. All costs and expenses associated with the audit shall be paid by the Owner.

2.12 Management. The Owner and/or the management agent (if not the Owner) shall operate the Project in a manner that will provide decent, safe and sanitary residential facilities to the occupants thereof, and will comply with provisions of this Agreement. Upon the written request of the City, the Owner shall cooperate with the City in the periodic review of the management practices, location, and financial status of the Affordable Units. The purpose of each periodic review will be to enable the City to determine if the Affordable Units are being operated and managed in accordance with the requirements and standards of this Agreement, as well as City and State law. Results of such City review shall be provided to the Owner, and the City shall have the authority to require the Owner to make reasonable modifications necessary to ensure the objectives of this Agreement and requirements of City and State law are met.

2.13 Binding for Term. It is intended by the Parties that except as otherwise expressly provided herein the provisions of this Agreement shall apply to the Project throughout the entire term hereof, as established in Section 3.1 below.

ARTICLE 3. TERM AND RECORDATION.

3.1 Term of Agreement. This Agreement shall remain in full force and effect for the Required Covenant Period, unless the Owner and the City agree, in writing, to terminate this Agreement prior to the expiration of the Required Covenant Period. Unless terminated earlier pursuant to the prior sentence of this Section 3.1 or Section 3.3 below, the Parties intend that the provisions and effect of this Agreement, and specifically of Article 2 hereof, shall remain in full force and effect for the entire Required Covenant Period.

3.2 Agreement to Record. The Owner represents, warrants, and covenants that this Agreement will be recorded in the real property records of Riverside County, subject only to those matters of record to which the City agrees.

3.3 Early Termination of Restrictions. Notwithstanding the generality of the foregoing provisions of this Article 3 or any other provisions hereof, this Agreement and all of the terms and provisions hereof (except as otherwise herein expressly provided and those contained in Section 2.7.1) shall terminate and be of no further force and effect in the event of involuntary noncompliance as a result of unforeseen events such as fire or act of God which leaves the entire Project uninhabitable and the Owner elects not to reconstruct the Project, or a change in a federal or state law or an action by the federal government, the State or a court of competent jurisdiction, after the date of recordation hereof, that prevents the City from enforcing the provisions of this Agreement, or a condemnation or a similar event. Upon termination of this Agreement, the Parties or their successors, as applicable, agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to termination of this Agreement in accordance with its terms.

ARTICLE 4. DEFAULT; REMEDIES.

4.1 An Event of Default. Each of the following shall constitute an “**Event of Default**” by the Owner under this Agreement:

4.1.1 Failure by the Owner to duly perform, comply with and observe any of the conditions, terms, or covenants of any agreement with the City concerning the Project, or of this Agreement, if such failure remains uncured thirty (30) days after written notice of such failure from the City to the Owner in the manner provided herein or, with respect to a default that cannot be cured within thirty (30) days, if the Owner fails to commence such cure within such thirty (30) day period or thereafter fails to diligently and continuously proceed with such cure to completion. However, if a different period or notice requirement is specified under any other section of this Agreement, then the specific provision shall control.

4.1.2 Any representation or warranty contained in this Agreement or in any application, financial statement, certificate, or report submitted by the Owner to the City proves to have been incorrect in any material respect when made.

4.1.3 A court having jurisdiction shall have made or rendered a decree or order: (i) adjudging the Owner to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of the Owner or seeking any arrangement on behalf of the Owner under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or of any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of the Owner in bankruptcy or insolvency or for any of its properties; or (iv) directing the winding up or liquidation of the Owner, providing, however, that any such decree or order described in any of the foregoing subsections shall have continued unstayed or undischarged for a period of ninety (90) days.

4.1.4 The Owner shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment or execution on any substantial part of its property, unless the property so assigned, sequestered, attached, or executed upon shall have been returned or released within ninety (90) days after such event or prior to sale pursuant to such sequestration, attachment, or execution. If the Owner is diligently working to obtain a return or release of the Property and the City's interests hereunder are not imminently threatened in its reasonable business judgment, then the City shall not declare a default under this subsection.

4.1.5 The Owner shall have voluntarily suspended its business or dissolved.

4.1.6 The seizure, or appropriation of all or a substantial part of the Project, except for condemnation initiated by the City or any other governmental agency or authority.

4.1.7 There should occur any breach of the Development Fee Agreement or default declared by any lender under any loan document or deed of trust relating to any loan made in connection with the Project, which loan is secured by a deed of trust or other instrument affecting the Project, and senior to this Agreement, and such default remains uncured following the expiration of any applicable cure period.

4.2 City's Option to Lease. Upon the occurrence of an Event of Default that relates solely to Owner's failure to comply with the provisions of Article 2 of this Agreement, and to cause the Project to meet the requirements of this Agreement, the Owner hereby grants to the City the option to lease up to that number of units as necessary to achieve compliance with the provisions of Article 2 of this Agreement, and for the purpose of subleasing such units in accordance with the requirements of this Agreement. The amount of rent to be paid by the City to Owner for such units following the exercise of the City's option shall be equal to the applicable Affordable Rent. Any rent paid to the City under any such sublease by the subtenant under such sublease shall be paid to the City without obligation to pay any such rent to the Owner during the pendency of the Owner's default.

4.3 City's Remedies.

A. The City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Owner to perform its obligations and

covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions hereof, provided that in any such case the City has first provided the required notice of any alleged default and the Owner has had the requisite opportunity to cure pursuant to Section 4.1.1, above. The City's remedies under this Agreement include, but are not limited to, remedies available under the City's Municipal Code regarding enforcement or revocation of the Approvals for the Project.

B. Action at Law; No Remedy Exclusive. The City may take whatever action at law or in equity as may be necessary to enforce performance and observance of any obligation, agreement or covenant of the Owner under this Agreement. No remedy herein conferred upon or reserved by the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as the City may deem expedient. In order to entitle the City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein otherwise expressly required or required by law to be given. The City's remedies under this Agreement include, but are not be limited to, recovery of any amounts paid to Owner under the Development Fee Agreement.

C. Liquidated Damages. Owner acknowledges that the City is entering into this Agreement, in part, to implement the goals, objectives and policies of the City's General Plan Housing Element, and that City has granted an incentive and/or concession to Owner in recognition of Owner's agreement to provide the Affordable Units as set forth in this Agreement. Owner also acknowledges that the Development Fee Agreement involves the use of certain City revenues that must be used for affordable housing. If Owner does not rent the units as Affordable Units in accordance with the provisions of this Agreement, Owner shall be in default of this Agreement and the City will suffer damages; provided, however, the City shall provide Owner at least thirty (30) days to cure the default by renting the Affordable Units, and the City may, but is not required to, allow Owner up to sixty (60) days to rent the Affordable Units, if Owner exercises reasonable diligence to rent the Affordable Units in accordance with this Agreement. The Parties agree it is extremely difficult and impractical to ascertain the extent of the damages to City, therefore, in addition to any other legal or equitable remedies, the City may have, Owner and the City agree that if the Affordable Units in the Project are not rented with Affordable Rents, or to Very Low Income Households or Very Low Income Employee Households, in accordance with the provisions of this Agreement, as liquidated damages, the City shall be entitled to recover from Owner liquidated damages in the amount of five hundred dollars (\$500) for each day the Affordable Units are not rented in accordance with this Agreement ("Per Day Liquidated Damages"). The Per Day Liquidated Damages represent the damages incurred from breach of the obligations arising from the Development Fee Agreement. The total amount of Per Day Liquidated Damages shall not exceed the payments from the City to Owner under the Development Fee Agreement. If, and only if, Owner exceeds the total amount of liability for Per Day Liquidated Damages,

thereafter, the liquidated damages shall be equal to the amount of any rents received by Owner from any units in excess of the limits of Affordable Rent.

ARTICLE 5. GENERAL PROVISIONS.

5.1 Limitations on Recourse. Notwithstanding anything to the contrary contained in this Agreement, except in the event of fraud, waste, or illegal acts, or with regard to any indemnity obligations imposed upon the Owner under the terms of this Agreement, (i) no partner, member, manager, shareholder, officer or director, as applicable, of the Owner (each, an “**Owner Affiliate**”) shall have any direct, indirect or derivative personal liability for the obligations of the Owner under this Agreement, and (ii) the City shall not exercise any rights or institute any action against any Owner Affiliate directly, indirectly or derivatively for the payment of any sum of money that is or may become payable hereunder.

5.2 Maintenance, Repair, Alterations. The Owner shall maintain and preserve the Project in good condition and repair and in a prudent and businesslike manner. The Owner shall comply with all laws, ordinances, rules, regulations, covenants, conditions, restrictions, and orders of any governmental authority now or hereafter affecting the conduct or operation of the Project and of the Owner’s business on the Project or any part thereof or requiring any alteration or improvement to be made thereon. The Owner shall not commit, suffer, or permit any act to be done in, upon, or to the Project or any part thereof in violation of any such laws, ordinances, rules, regulations, or orders. The Owner hereby agrees that the City may conduct from time to time through representatives, upon reasonable notice of no less than forty-eight (48) hours, on-site inspections and observation of: (i) the maintenance and repair of the Project, including a review of all maintenance and repair programs and practices and all reports and records pertaining thereto, including records of expenditures relating thereto; and (ii) such other facilities, practices, and records of the Owner relating to the Affordable Units as may be reasonably necessary or appropriate in order to monitor the Owner’s compliance with the provisions of this Agreement.

5.3 Notice. All notices (other than telephone notices), certificates or other communications (other than telephone communications) required or permitted hereunder shall be sufficiently given and should be deemed given when personally delivered, when sent by telegram, or when sent by email (if confirmed by sending a copy of such transmission by mail the same calendar day), or forty-eight (48) hours following mailing by registered or certified mail, postage prepaid, or twenty-four (24) hours following transmission of such notice by express mail, Federal Express or similar commercial carrier, addressed as follows:

If to the City:

City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260-2578
Attn: Jessica Gonzales

Phone: (760) 346-0611
Email: jgonzales@palmdesert.gov

If to the Owner:

Bravo Garden Apartments LLC
72877 Dinah Shore Drive, Suite 103
Rancho Mirage, CA 92270
Attn: Claudio Bravo
Phone:760-902-7549
Email claudiobravoerazo@gmail.com

5.4 Relationship of Parties. Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and the Owner or the Owner's agents, employees or contractors, and the Owner shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement for the operation of the Project. The Owner has and hereby retains the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance of services hereunder. In regards to the on-site operation of the Project, the Owner shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding and all other laws and regulations governing such matters. The Owner agrees to be solely responsible for its own acts and those of its agents and employees.

5.5 No Claims. Nothing contained in this Agreement shall create or justify any claim against the City by any person the Owner may have employed or with whom the Owner may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the operation of the Project.

5.6 Conflict of Interests. No member, official or employee of the City shall make any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No officer or employee of the Owner shall acquire any interest in conflict with or inimical to the interests of the City.

5.7 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to the Owner, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Owner or successor or on any obligation under the terms of this Agreement.

5.8 Unavoidable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed

to be in default where it is due to an “Unavoidable Delay.” “**Unavoidable Delay**” means a delay due to the elements (including unseasonable weather), fire, earthquakes or other acts of God, strikes, labor disputes, lockouts, shortages of construction materials experienced generally in the construction industry in the local area, acts of the public enemy, riots, insurrections or governmental regulation of the sale or transportation of materials, supply or labor; provided, however, that to the extent a delay is caused by any other reason that the Owner reasonably believes is beyond its control, the Owner may request, on a case-by-case basis, that the City excuse any such delay as an Unavoidable Delay and the City shall make its determination as to whether such delay constitutes an Unavoidable Delay using its reasonable judgment.

5.9 Indemnity.

5.9.1 The Owner shall indemnify, defend and hold harmless the City and all officials, employees and agents of City (with counsel reasonably satisfactory to the City) against any costs, liabilities, damages or judgments arising from claims or litigation of any nature whatsoever brought by third parties and directly or indirectly arising from the Owner’s ownership or operation of the Project, or the Owner’s performance of its obligations under this Agreement, and in the event of settlement, compromise or judgment hold the City free and harmless therefrom. Notwithstanding the foregoing, the indemnity provisions contained in this Section 5.9 shall not apply with respect to any costs, liabilities, damages or judgments arising directly or indirectly from (i) the City’s rental of units within the Project as described in Section 4.2 hereof, or (ii) the gross negligence or willful misconduct of the City. The provisions of this Section 5.9 shall survive the term of this Agreement.

5.9.2 The Owner is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. The Owner represents and warrants that the work or maintenance on the Project is not a public work. City has not made any representations or warranties to the Owner regarding the applicability of prevailing wages. If any work on the Project is part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars (\$1,000) or more, the Owner agrees to fully comply with such Prevailing Wage Laws, including but not limited to payment of prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) debarment of contractors and subcontractors (Labor Code Section 1777.1), and maintaining bonds for the payment of workers (Labor Code Section 1781). The Owner shall defend, indemnify and hold the City, its elected officials, officers, employees, volunteers and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

5.10 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other Party. No waiver of any default or breach by the Owner hereunder shall be implied from any omission by the City to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the City to or of any act by the Owner requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement, nor shall it invalidate any act done pursuant to notice of default, or prejudice the City in the exercise of any right, power, or remedy hereunder or under any agreements ancillary or related hereto.

5.11 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

5.12 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

5.13 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action (including all legal fees incurred in any appeal or in any action to enforce any resulting judgment).

5.14 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the permitted heirs, administrators, executors, successors in interest and assigns of each of the Parties. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms hereof or under law.

5.15 Time of the Essence. In all matters under this Agreement, time is of the essence.

5.16 Approval by the City. Any approvals required under this Agreement shall be made by the City Manager or his or her designee, and shall not be unreasonably withheld, conditioned, delayed or made, except where it is specifically provided that another standard applies, in which case the specified standard shall apply.

5.17 Complete Understanding of the Parties. This Agreement and the attached Exhibits constitute the entire understanding and agreement of the Parties with respect to the matters described herein.

5.18 Covenants to Run With the Land. The Owner hereby subjects the Project to the covenants, reservations, and restrictions set forth in this Agreement. The City and the Owner hereby declare their express intent that the covenants, reservations, and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Project; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall expire, except for the covenants set forth in Section 2.7.1, which shall run in perpetuity. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. No breach of any of the provisions of this Agreement shall defeat or render invalid the lien of a mortgage or deed of trust made in good faith and for value encumbering the Property or any interest of the Owner therein.

5.19 Burden and Benefit. The City and the Owner hereby declare their understanding and intent that: (i) the burden of the covenants, reservations, restrictions, and agreements set forth herein touch and concern the Property and the Project, in that Owner's legal interest in the Project is rendered less valuable thereby, (ii) the covenants, reservations, restrictions, and agreements set forth herein directly benefit the Property and the Project (a) by enhancing and increasing the enjoyment and use of the Project by certain Very Low Income Households and Very Low Income Employee Households, the intended beneficiaries of such covenants, reservations, restrictions, and agreements, (b) by making possible the obtaining of advantageous financing for the Property and the Project, and (c) by furthering the public purposes advanced by the City, and (iii) the covenants, reservations, restrictions and agreements set forth herein shall run with the Property and shall be binding for the benefit of and enforceable by the City and its successors and assigns for the entire term of this Agreement.

5.20 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

5.21 Amendments. This Agreement may be amended only by the written agreement of the City and the Owner.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

WHEREFORE, the undersigned has executed this Agreement as of the date first-above written.

CITY OF PALM DESERT,
A Municipal Corporation

By: _____

Name: _____

Title: _____

BRAVO GARDEN APARTMENTS
LLC, a California limited liability
company

By: _____

Its: Manager

ATTEST:

Anthony J. Mejia,
City Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP,
Limited Liability Partnership

By: _____
City Attorney

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

State of California)
County of _____)

On _____, 20____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

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

State of California)
County of _____)

On _____, 20__, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

DRAFT

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

DRAFT

EXHIBIT B
HOUSEHOLD INCOME

**AFFORDABLE HOUSING
HOUSEHOLD INCOME CERTIFICATION**

Applicant (s) Name: _____

Address: _____ Unit No. _____ # Bedrooms: _____

Program Eligibility and Affordability verifications for Low Income Households shall be performed as required by Title 25 subject to eligibility verification procedures and requirements described therein, and as amended from time to time. The following outlines how annual income is calculated to determine household income eligibility, which is required in order to determine a person, family or Household to be a "Qualified Household" as established by the Program and Redevelopment Law.

The following questions will assist you in completing the HOUSEHOLD INCOME CERTIFICATION. When answering the questions answer "Yes" if any of the information requested or income source pertains to any person, co-applicant, or adult individual member of the household (individuals 18 years and older) during the 12 months following the date of the certification.

HOUSEHOLD COMPOSITION (List all members of the household including yourself that will occupy the unit applied for.)			
Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (M/D/YYYY)
		Self	
TOTAL HOUSEHOLD MEMBERS:			#

PART I. HOUSEHOLD INCOME INFORMATION

YES	NO	All sources are to be disclosed below for all household members unless otherwise excluded by Title 25 Section	MONTHLY AMOUNT
<input type="checkbox"/>	<input type="checkbox"/>	1 EMPLOYMENT (wages, overtime, etc.) <i>List name of employer: _____</i>	(use <u>gross</u> income; amount before any pay deductions) \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	2 SELF EMPLOYED <i>List nature of self employment: _____</i>	(use <u>net</u> income from business) \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	3 OTHER EMPLOYMENT RELATED COMPENSATION (i.e.; tips, bonuses)	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	4 SOCIAL SECURITY INCOME	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	5 SUPPLEMENTAL SECURITY INCOME (SSI)	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	6 CASH CONTRIBUTIONS <i>(i.e.; From third parties including gifts for rent or utility payments)</i>	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	7 PUBLIC ASSISTANCE INCOME <i>(Welfare, food stamps, foster care assistance)</i>	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	8 UNEMPLOYMENT BENEFITS	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	9 VETERAN'S BENEFIT/INCOME	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	10 DISABILITY OR DEATH BENEFITS OTHER THAN SSI	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	11 CHILD SUPPORT/ALIMONY/SPOUSAL SUPPORT PAYMENTS <i>(Received by any and all household members. Note for how many children did you receive support: _____)</i>	\$ _____

Rev 3/12/10

HOUSEHOLD INCOME CERTIFICATION
PAGE 2 OF 3

FILE NO. _____
EFFECTIVE DATE _____

YES	NO	INCOME INFORMATION (CONTINUED)		MONTHLY AMOUNT
		All sources are to be disclosed below for all household members unless otherwise excluded by Title 25 Section		
<input type="checkbox"/>	<input type="checkbox"/>	12	TRUSTS PAYMENTS, ANNUITY PAYMENTS, RETIREMENT PAYMENTS, WORKERS COMPENSATION PAYMENTS, SEVERANCE PAYMENTS, LOTTERY WINNINGS OR OTHER INCOME. <i>List sources:</i> _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	13	RENTAL, REAL OR PERSONAL PROPERTY INCOME	\$ _____
TOTAL MONTHLY INCOME (BOX A)				\$ _____

PART II. HOUSEHOLD ASSET INFORMATION

YES	NO	All sources are to be disclosed below for all household members unless otherwise excluded by Title 25 Section		CASH VALUE
<input type="checkbox"/>	<input type="checkbox"/>	1	CHECKING ACCOUNT(S): <i>List bank(s):</i> _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	2	SAVINGS ACCOUNT(S): <i>List bank(s):</i> _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	3	TRUST ACCOUNT(S): <i>List bank(s):</i> _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	4	REAL ESTATE: <i>Provide description:</i> _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	5	STOCKS, BONDS, OR TREASURY BILLS: <i>List sources/bank names:</i> _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	6	CERTIFICATES OF DEPOSIT (CD) OR MONEY MARKET ACCOUNT(S): <i>List Sources/bank names:</i> _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	7	IRA/LUMP SUM PENSION/KEOGH ACCOUNT/401 K: <i>List bank(s):</i> _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	8	LIFE INSURANCE POLICY CASH VALUE: <i>How many policies:</i> _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	9	DISPOSED OF ASSETS (i.e. gave away money/assets for less than the fair market value in the past 2 years) <i>List items and date disposed:</i> _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	10	OTHER ASSETS OR CAPITAL INVESTMENTS <i>Describe source:</i> _____	\$ _____
TOTAL ASSET VALUE (BOX B)				\$ _____

HOUSEHOLD INCOME CERTIFICATION
PAGE 3 OF 3

FILE NO. _____
EFFECTIVE DATE _____

PART III. HOUSEHOLD STUDENT STATUS

YES	NO		All sources are to be disclosed below for all household members who are STUDENTS unless otherwise excluded by Title 25 Section	AMOUNT
<input type="checkbox"/>	<input type="checkbox"/>	1	IS ANY HOUSEHOLD MEMBER A FULL-TIME STUDENT <i>(i.e.; College/University, trade school, etc.)</i>	
IF QUESTION NO. 1 IS NO, SKIP TO PART IV				
<input type="checkbox"/>	<input type="checkbox"/>	2	DOES STUDENT FILE A JOINT TAX RETURN WITH OTHER HOUSEHOLD MEMBERS	
<input type="checkbox"/>	<input type="checkbox"/>	3	IS STUDENT A DEPENDENT OF ANOTHER INDIVIDUAL <i>Explain: _____</i>	
<input type="checkbox"/>	<input type="checkbox"/>	4	DOES STUDENT RECEIVE FINANCIAL AID. IF YES ENTER AMOUNT <i>(i.e.; Public or private, not including student loans).</i>	\$ _____
IF QUESTION NO. 4 IS NO, SKIP TO PART IV				
<input type="checkbox"/>	<input type="checkbox"/>	5	DOES STUDENT RECEIVE FINANCIAL AID THAT INCLUDES HOUSING/SHELTER ALLOWANCE. IF YES ENTER AMOUNT.	\$ _____
TOTAL FINANCIAL AID ASSISTANCE (BOX C)				\$ _____

PART IV. HOUSEHOLD UNUSUAL EXPENSES

YES	NO		All sources are to be disclosed below for all household members unless otherwise excluded by Title 25 Section	AMOUNT
<input type="checkbox"/>	<input type="checkbox"/>	1	MEDICAL EXPENSES NOT COVERED BY INSURANCE EXCEEDING 25% OF THE GROSS HOUSEHOLD ANNUAL INCOME INCLUDING INSURANCE MONTHLY PREMIUM <i>Describe: _____</i>	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	2	UNUSUAL EXPENSES PAID BY HEAD OF HOUSEHOLD UNUSUAL FOR THE CARE OF MINORS UNDER 13 YEARS OF AGE, DISABLED, OR HANDICAPPED HOUSEHOLD MEMBERS NECESSARY FOR GAINFUL EMPLOYMENT <i>Describe: _____</i>	\$ _____
TOTAL ANNUAL UNUSUAL EXPENSES (BOX D)				\$ _____
<i>(Explanation of Benefits must be provided as proof and all receipts for the non-covered medical expenses.)</i>				

TOTAL NET ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES
(Box (A + B + C) - (D) = total)

\$ _____

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum household income eligibility. I/we have provided each person(s) set forth in Part I acceptable verification of current anticipated annual income. I/we agree to notify immediately upon any changes in income, household size or composition, or any other information.

Under penalty of perjury of the laws of the State of California, I/we certify that the information presented in the Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

_____ Signature	_____ Date	_____ Signature	_____ Date
_____ Signature	_____ Date	_____ Signature	_____ Date

DRAFT

EXHIBIT C

CERTIFICATE OF CONTINUING COMPLIANCE

CITY OF PALM DESERT
OWNER'S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

To: City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260
ATTN: HOUSING DIVISION

Report Date: _____

Certification Dates: From: _____

To: _____

Project Name: _____

Project No.: _____

Project Address: _____

City: _____ Zip: _____

Tax ID # of Ownership Entity: _____

The undersigned _____ on behalf of _____ (the "Owner"), hereby certifies that:

- No buildings have been placed in service.
- At least one building has been placed in service, but owner elects to begin credit period in the following year.

If either of the above applies, please check the appropriate box, and proceed to page 3 to sign and date this form.

All buildings ARE in service.

1. The Project meets the minimum requirements of (as outlined in the Agreement):

- _____
- _____

2. Has there been a change in any building in the Project?

- No Change
- Change

If "Change", list the applicable change in the project for the certification year on page 4.

3. The Owner has received an annual Household Income Certification from each low-income resident and documentation to support that certification, at their initial occupancy and annually.

- Yes
- No

4. Each low-income unit in the Project has been rent-restricted pursuant to Section _____ of the Agreement:

- Yes
- No

5. Has there been a finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, for this Project? A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court:

No Finding Finding

If "Finding", state the nature of the finding on page 4.

6. Each building in the Project is and has been suitable for occupancy, taking into account local health, safety and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project:

Yes No

If "No," state the nature of violation on page 4 and attach a copy of the violation report and any documentation of correction.

7. Has there been a change in the eligible basis (as defined in _____ of the Agreement) of any building in the project since last certification submission?

No Change Change

If "Change," state nature of change on page 4 (e.g., a common area has become commercial space, a fee is now charged for a tenant facility formerly provided without charge, or the project owner has received federal subsidies with respect to the project which had not been disclosed).

8. All tenant facilities included, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups and appliances were provided on a comparable basis without charge to all tenants in the buildings:

Yes No

9. If a low-income unit in the Project has been vacant during the year, reasonable attempts were, or are being, made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income:

Yes No

10. If the income of tenants of a low-income unit in any building increased above the limit, the next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income:

Yes No

11. An extended low-income housing commitment, wherein an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher:

Yes No N/A

12. The owner has complied with and not evicted or terminated the tenancy of an existing tenant of any low-income unit other than for good cause:

Yes No

13. Has there been a change in the ownership or management of the Project?

- No Change Change

If "Change," complete page 4 detailing the changes in ownership or management of the project.



NOTE: Failure to complete this form in its entirety will result in noncompliance with the program requirements. In addition, any individual other than an owner or general partner of the project is not permitted to sign this form.

The project is otherwise in compliance with Affordable Housing Agreement No. _____ and all other applicable laws, rules, and regulations. This Certification and any attachments are made **UNDER PENALTY OF PERJURY** of the Laws of the State of California.

Signature: _____

Name: _____

Title: _____

Date: _____

PLEASE EXPLAIN ANY ITEMS THAT WERE ANSWERED "NO," "CHANGE" OR "FINDING ON QUESTIONS 1-15.

Question #	Explanation (if applicable)
2	
5	
6	
7	
13	

CHANGES IN OWNERSHIP OR MANAGEMENT
 (To be completed **ONLY** if "CHANGE" marked for Question 15 above)

TRANSFER OF OWNERSHIP:

Date of Change:	
Taxpayer ID Number:	
Legal Owner Name:	
General Partnership:	
Status of Partnership (LLC, etc.):	

CHANGE IN OWNER CONTACT:

Date of Change:	
Owner Contact:	
Owner Contact Phone:	
Owner Contact Email:	

CHANGE IN MANAGEMENT CONTACT

Date of Change:	
Management Co. Name:	
Management Address:	
Management city, state, zip:	
Management Contact:	
Management Contact Phone:	
Management Contact Email:	

7. Each building and low-income unit in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project:

YES NO

If "No" state nature of violation: _____
Attach a copy of the violation report as required by 26 CFR 1.42- and any documentation of correction.

8. All tenant facilities, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis, without charge, to all tenants in the buildings:

YES NO

9. If any of the low-income units in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable size to households having a qualifying income before any units were or will be rented to tenants not having a qualifying income:

YES NO

10. If the income of a household of a low-income unit in any building increased above the qualifying limit allowed by the Agreement NO. _____, the next available unit of comparable size in that building was or will be rented to tenants having a qualifying income:

YES NO

11. There has been change / no change in the ownership or management of the project:

NO CHANGE CHANGE

If "Change," attach a copy detailing information of the changes in ownership or management of the project.

Note: Failure to complete this form in its entirety will result in non-compliance with program requirements. In addition, any individual other than an owner or general partner of project is not permitted to sign this form.

The project is otherwise in compliance with Agreement No. _____ and all other applicable laws, rules and regulations. This Certification and any attachments are made UNDER PENALTY OF PERJURY of the Laws of the State of California.

(Ownership Entry)

By: _____

Title: _____

Date: _____

Place: _____

EXHIBIT D

DEVELOPMENT FEE AGREEMENT

Development Fee Agreement

This Development Fee Agreement (“DFA”), effective _____, 2024, (“Effective Date”), is between the City of Palm Desert, a California municipal corporation (“City”), and BRAVO GARDEN APARTMENTS LLC (“Developer”), collectively, the “Parties.”

RECITALS

- A. The Parties enter into this DFA as part of a Affordability Restrictions and Regulatory Agreement (Density Bonus) (“Density Bonus Agreement”), to which this DFA is made part of and incorporated therein. All terms and exhibits referenced herein shall have the same meaning as set forth in the Density Bonus Agreement.
- B. Developer owns or controls that real property located at and more specifically described in Exhibit A of the Density Bonus Agreement (the “Property”).
- C. Developer desires to develop the Property with a 388-unit affordable-housing project with a mix of thirteen (13) two-story and three-story buildings, pursuant to the approvals from the City on or about April 12, 2018 (“City Approvals”) and further described in the Density Bonus Agreement (the “Project”).
- D. The Density Bonus Agreement includes an agreement by the City to use the City’s Low Income Housing Mitigation Fees to offset certain development fees for the Project. In exchange, the Density Bonus Agreement provides that, of the seventy eight (78) Affordable Units in the Project, five (5) shall be restricted for occupancy by Very Low Income Employee Households that have a member of the household that works within the City.
- E. The City’s Low Income Housing Mitigation Fees are imposed upon commercial and industrial projects, in accordance with Resolution No. 90-130 adopted by the City Council, and thereafter renewed from time to time. As part of the City Approvals, and in exchange for the restriction of five units to Very Low Income Employee Households, pursuant to Resolution No. 2018-18, the City authorized the use of up to One Hundred Eighty Thousand (\$180,000.00) from the Low Income Housing Mitigation Fees to offset development fees attributable to the Affordable Units in the Project.
- F. In accordance with the foregoing, this Agreement establishes the terms and conditions under which the City will reimburse Developer to offset the Development Fees for the Project using the City’s Low Income Housing Mitigation Fees.

NOW, THEREFORE, the Parties agree as follows:

1. **Payment of Development Fees.** Prior to issuance of a building permit for the Project, Developer shall pay all development fees the City imposes on the Project (collectively, the “**Development Fees**”). To the extent the City allows Developer to pay a portion of the Development Fees for a permit to construct a phase of the Project, the Developer agrees the phasing must comply with the schedule of construction approved by the City in accordance with the Density Bonus Agreement.
2. **Determination of Development Fees Attributable to Affordable Units.** Within sixty (60) days of completion of the entire Project, Developer shall submit a request to the City, supported by written documentation stating an amount of Development Fees that Developer believes are attributable to the Affordable Units (the “**Affordable Unit Development Fees**”). The Affordable Unit Development Fees shall be based on the proportion of the square footage of the Affordable Units (78) as compared to the total number of units in the Project (388), provided that the Affordable Unit Development Fees shall not exceed twenty percent (20%) of the Development Fees. The City shall review the written documentation and, within sixty (60) days, shall approve or disapprove the amount determined for the Affordable Unit Development Fees. In the event the City disapproves the amount, the parties shall meet and confer regarding the difference, and the City shall, in the exercise of reasonable discretion, make a final determination of the amount of the Affordable Unit Development Fees.
3. **Certificate of Occupancy.** Developer agrees and acknowledges that the Affordable Units must be completed and ready for occupancy by Very Low Income Households and Very Low Income Employee Households, as required herein and by the Density Bonus Agreement, prior to the City issuing a Certificate of Occupancy for the building within the Project where the Affordable Units are located.
4. **City Reimbursement for Development Fees Attributable to Affordable Units.** The City shall reimburse Developer for the Affordable Unit Development Fees, in an amount not to exceed One Hundred Eighty Thousand (\$180,000.00), upon satisfaction of all of the following conditions:
 - a. The Density Bonus Agreement is duly recorded against the Property in the Official Records of the County of Riverside, subject only to those matters of record to which the City agrees.
 - b. Developer has received a Certificate of Occupancy for all the buildings for the entire Project, inclusive of all of the Affordable Units required under the Density Bonus Agreement.
 - c. Developer has submitted a written request for reimbursement for the Affordable Unit Development Fees.
 - d. Developer is not in default of this Agreement or the Density Bonus Agreement.
 - e. The City has funding available from the Low Income Housing Mitigation Fees to pay for the requested reimbursement.

- f. Developer provided written evidence that the five Affordable Units restricted for occupancy to Very Low Income Employee Households have been leased to qualifying households, or Developer has demonstrated to the reasonable satisfaction of the City that it has made diligent progress to lease such Affordable Units to qualifying households.
 - g. The City has reviewed and approved the request for reimbursement. The review shall be completed within sixty (60) days of the request from Developer.
5. **Default; Remedies.**
- a. If any party breaches this Agreement or the Density Bonus Agreement, the non-breaching party shall give notice and demand the breaching party cure the breach within thirty (30) days. The breaching party shall have thirty (30) days to cure, except that if a longer time to cure is reasonably necessary, then the breaching party shall have up to ninety (90) days to cure, provided that the breaching party commences to cure and diligently pursues curing the breach during such time.
 - b. The failure to cure a breach as set forth in sub-paragraph (a) within the applicable cure period constitutes a default of this Agreement (“**Event of Default**”).
 - c. **City’s Rights Upon Event of Default.** For an Event of Default by Developer, the City shall have all remedies available at law or equity, including but not limited to:
 - i. The City may withhold any payments for reimbursement of the Affordable Unit Development Fees;
 - ii. The City may withhold a Certificate of Occupancy or any further permits required for construction on the Property or the Project;
 - iii. Any amounts paid by the City as reimbursement for the Affordable Unit Development Fees may be recovered as a lien against the Property; or
 - iv. The City may pursue any other administrative, civil or criminal enforcement action that is available to the City at law or in equity.
 - d. **Developer’s Rights Upon Event of Default.** For an Event of Default by the City, the Developer’s sole and exclusive remedy shall be limited to any amounts owed under this DFA. Developer agrees and acknowledges that this limitation of liability is a release and specifically waives the provisions of Civil Code Section 1542, which states:

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.

Developer's Initials: _____

6. Hold Harmless.

6.1 Developer shall indemnify, defend and hold harmless the City and all officials, employees and agents of City (with counsel reasonably satisfactory to the City) against any costs, liabilities, damages or judgments arising from claims or litigation of any nature whatsoever brought by third parties and directly or indirectly arising from the Developer's ownership or operation of the Project, or the Developers performance of its obligations under this DFA, and in the event of settlement, compromise or judgment hold the City free and harmless therefrom. Notwithstanding the foregoing, to the extent required by law, the indemnity provisions contained in this Section 6 shall not apply with respect to any costs, liabilities, damages or judgments arising directly or indirectly from (i) the City's rental of units within the Project, or (ii) the sole or active negligence or willful misconduct of the City. The provisions of this Section 6 shall survive the term of this Agreement.

6.2 Developer is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Developer represents and warrants that the work or maintenance on the Project is not a public work. City has not made any representations or warranties to the Owner regarding the applicability of prevailing wages. If any work on the Project is part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars (\$1,000) or more, Developer agrees to fully comply with such Prevailing Wage Laws, including but not limited to payment of prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) debarment of contractors and subcontractors (Labor Code Section 1777.1), and maintaining bonds for the payment of workers (Labor Code Section 1781). Developer shall defend, indemnify and hold the City, its elected officials, officers, employees, volunteers and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

7. General.

7.1 *Successors.* This DFA binds the Parties' successors.

7.2 *Assignment.* This DFA shall not be assigned without the prior, written consent of the City, which assignment may be approved, or not, by the City's reasonable discretion.

- 7.3 *Recording.* This DFA must be recorded with the Density Bonus Agreement by Developer on the Property within five business days after full execution by the Parties.
- 7.4 *Severability.* If any part of this DFA is held by a court to be invalid, all other parts of the Agreement remain in effect.
- 7.5 *Choice of Law and Venue.* This DFA, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of California without regard to its conflict-of-law principles. Venue lies exclusively in state and federal courts in Riverside County, California.
- 7.6 *Modification.* No modification, amendment, or waiver of any provision of this DFA is effective unless made in writing and signed by both Parties.
- 7.7 *Merger and Integration.* This DFA contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior negotiations, agreements, and understandings with respect thereto.
- 7.8 *Counterparts.* This DFA may be executed in any number of counterparts, each of which is deemed an original, and all of which, when taken together, constitute one and the same instrument. The DFA becomes effective as of the Effective Date when each Party signs a counterpart and delivers it to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of electronic signatures in connection with the execution of this DFA and further agree that electronic signatures to this DFA are legally binding with the same force and effect as manually executed signatures.
- 7.9 *Relationship of the Parties.* The Parties are entering into an arm's-length transaction and do not have any relationship, employment or otherwise. This DFA does not create nor is it intended to create, a partnership, franchise, joint venture, agency, or employment relationship between the Parties. There are no third-party beneficiaries to this DFA.
- 7.10 *Waiver and Cumulative Remedies.* No failure or delay by either Party in exercising any right under this DFA may be deemed to waive that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedy that a Party might have at law or in equity.
- 7.11 *Force Majeure.* Neither Party is liable for any failure or delay in performance under this DFA due to causes beyond that Party's reasonable control and that occurs without that Party's fault or negligence, including, but not limited to, any act of God, act of government, flood, fire, civil unrest, acts of terror, strike or other labor problem (other than those involving Developer employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance

obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(Signatures on following page)

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as set forth below.

CITY OF PALM DESERT,
A Municipal Corporation

By: _____

Name: _____

Title: _____

**BRAVO GARDEN APARTMENTS
LLC, a California limited liability
company**

By: _____

Its: Manager

ATTEST:

Anthony J. Mejia,
City Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP,
Limited Liability Partnership

By: _____
City Attorney

DRAFT

EXHIBIT E

AFFORDABLE HOUSING DEVELOPMENT PLAN

“Pending City Approval”