THIRD AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

AMONG

CITY OF PALM DESERT

PALM DESERT HOUSING AUTHORITY

AND

PALM COMMUNITIES

(PALM VILLAS AT MILLENNIUM)

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

THIRD AMENDED AND RESTATED DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT

(Palm Villas at Millennium)

This THIRD AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (the "Agreement") is dated as of October 10, 2024, and is entered into by and among the CITY OF PALM DESERT, a municipal corporation (the "City"), the PALM DESERT HOUSING AUTHORITY, a public body corporate and politic (the "Authority") and PALM COMMUNITIES, a California corporation (the "Developer"), each individually a "Party" and collectively the "Parties," with reference to the following facts, understandings and intentions of the Parties:

RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. The City owns that approximately ten and one-half (10.49) acre site located in the City of Palm Desert as more particularly described in Exhibit A (the "Property"). The City intends to process a Parcel Map to divide the Property into the Phase I Parcel (consisting of approximately 6.02 acres) and Parcel II Parcel (consisting of approximately 4.47 acres); the Phase I Parcel and Phase II Parcel are described on Exhibits A-1 and A-2.

C. The Property has been declared exempt surplus land by the City Council of the City under Government Code Section 54221(f)(1)(A) and has concluded based on the Developer's site plan and proposed affordability that proposed Development meets the affordability and design requirements of Government Code Section 37364. The California Department of Housing and Community Development has confirmed such exemption in writing.

D. The City, the Authority and the Developer previously entered into that certain Disposition, Development and Loan Agreement dated November 23, 2022, as amended by that certain Amended and Restated Disposition, Development and Loan Agreement dated June 22, 2023, as amended by that certain Second Amended and Restated Disposition, Development and Loan Agreement dated April 11, 2024 (the "Existing DDLA"); this Agreement replaces the Existing DDLA.

E. The Developer intends to construct in two phases at least two hundred forty-one (241) units of housing, two hundred thirty-nine (239) of which shall be made available to and occupied by low-income households, very low-income households, and extremely low-income households, and two (2) of which shall be on-site manager's units.

F. The Developer intends to construct one hundred twenty-one (121) units on the Phase I Parcel, with one hundred twenty (120) of the units restricted to Extremely-Low Households, Very-Low Income Households and Low Income Households, at affordable rents, and the other unit used as an on-site manager's unit. The Phase I Development will be composed of one, two and three bedroom units.

G. The Developer intends to construct one hundred twenty (120) units on the Phase II Parcel, with one hundred nineteen (119) of the units restricted to Extremely-Low Households, Very-Low Income Households and Low Income Households, at affordable rents, and the other unit used as an on-site manager's unit. The Phase II Development will also be composed of one, two and three bedroom units.

H. To effectuate this purpose, the City will convey the Property to the Developer in two phases, subject to the terms and conditions of this Agreement.

I. To assist the Developer in acquiring the Phase I Parcel from the City, the Authority intends to make a purchase money/acquisition loan to the Developer in the amount of $1,965,539.00, subject to the terms and conditions of this Agreement. To assist the Developer in acquiring the Phase II Parcel from the City and developing/construction the Phase II Development, the Authority intends to make a purchase money and construction loan to the Developer in the amount of $4,789,461, subject to the terms and conditions of this Agreement.

J. The Authority shall disburse the construction loan portion of the Phase II loan by Authority itself, but upon request of Developer, will consider entering into an agreement with the Developer's construction lender for the Phase II Development providing that the construction lender will disburse the remaining proceeds of the Authority's loan following the Close of Escrow to the construction lender for the payment of construction costs of the Phase II Development. The agreement will provide that the Authority Loan funds will be disbursed pari-passu with the construction lender's loan. The construction lender shall not have a security interest in such Authority funds.

K. Concurrently with the conveyance of the Phase I Parcel to the Developer, the Developer and City intend to grant to each other reciprocal easements over the Phase I and Phase II Parcel for ingress and egress. The Developer also intends to grant the Phase II Parcel owner reasonable rights to use the Phase I Development's common area facilities upon the completion of the Phase II Development (the "Phase I and Phase II Access Easement"). The Parties intend that the Phase I and Phase II Access Easement will include a provision that the Phase I and Phase II Access Easement may be amended by the Parties if the City intends to convey the Phase II Parcel to a party that is not affiliated with the Developer.

L. Concurrently with the conveyance of the Phase I Parcel to the Developer, the City intends to grant (i) an easement over the Parcel 9, an adjacent City-owned parcel, to allow ingress and egress to the Phase I Parcel through the Phase II Parcel (the "Parcel 9 Easement"); and (ii) an access easement over Parcel 9 to allow the Developer and the Phase II Parcel owner to clear any accumulated sand against the Phase I and the Phase II boundary wall (the "Maintenance Easement").

M. The City has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and that this Agreement is in the best interests of, and will materially contribute to the implementation of, the City's affordable housing goals through the development of the Property.

N. Developer has applied for and received a density bonus (including reduced parking and increased density) for both the Phase I Development and the Phase II Development.

In consideration of the foregoing, and the mutual terms and conditions herein, the Parties agree as follows:

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

ARTICLE 1
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions apply throughout this Agreement. "Affordable Units" means the Two Hundred Thirty-Nine (239) Units restricted by the Housing Agreements to be developed on the Property to be occupied by Extremely-Low, Very-Low and Low-Income Households and to be available at affordable rent as defined in accordance with Health & Safety Code Section 50053.

"**Annual Financial Statement**" means for any calendar year: (i) the financial statement of operating expenses and revenues for a Phase, prepared at the Developer's expense, by an independent certified accountant reasonably acceptable to the Authority, and showing the Residual Receipts for the applicable calendar year; (ii) sufficient back-up data to support the revenues and expenses claimed on the statement; and (iii) such additional information reasonably requested by the Authority, all of which shall form the basis for determining Residual Receipts.

"**Approved Financing**" means the loans, equity, and other financing obtained by the Developer for the purpose of financing the costs of the Development that are approved by the City and consistent with the Financing Proposal.

"**Approved Plans**" means all designs for the Development approved by the City in conjunction with the City Approvals prior to or concurrent with the Effective Date.

"**Authority**" is defined in the introductory paragraph of this Agreement.

"**Authority Loans**" or "**Authority Loan**", as applicable, mean loans by the Palm Desert Housing Authority to the Developer in the amount of: (i) $1,965,539 to pay the purchase price for the Phase I Parcel and (ii) $4,789,461 to pay the purchase price for the Phase II Parcel and construction costs for the Phase II Development.

"**Building Permit**" means the building permit and all other ministerial construction permits required from the City to construct the Development.

"**Certificate of Completion**" is defined in Section 4.11.

"**Certificate of Occupancy**" means a final certificate of occupancy issued by the City for the Development, or equivalent final inspection.

"**City**" is defined in the introductory paragraph of this Agreement.

"**City/Authority Documents**" means, collectively, this Agreement, the Promissory Notes, the Deed of Trusts, the Housing Agreements, the Notice of Restrictions for each phase of the Development and any other documents executed by the City and/or the Authority and Developer.

"**City Approvals**" means the permits and entitlements issued by the City to allow for the commencement of construction for the respective Phase.

"**City Event of Default**" is defined in Section 8.3.

"**Close of Escrow**" means the date on which a fee interest in each of the Phase I Parcel and the Phase II Parcel is conveyed to the Developer, as appropriate.

"**Construction Plans**" means the final construction plans for the construction of the Development as approved by the City in accordance with Section 2.5.

"**Control**" means the power to direct the day-to-day management responsibilities for the activities of Developer, and, with respect to a limited liability company, means the: (1) managing member or members; or (2) the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the limited liability company.

"**Declaration of Default**" is defined in Section 8.5.

"**Deeds of Trust**" shall mean the deeds of trust, assignment of rents, and security agreement placed on the Developer's interest in the Phase I Parcel and Phase II Parcel, as security for the Authority Loans by the Developer as trustor with the Authority as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trusts, in the forms attached hereto as Exhibit F.

"**Defaulting Party**" is defined in Section 8.5.

"**Density Bonus Agreement**" shall mean the Density Bonus Agreement for each Phase in the form attached hereto as Exhibits D-1 and D-2

"**Deposit**" is defined in Section 3.3.

"**Developer**" has the meaning in the introductory paragraph of this Agreement.

"**Developer Event of Default**" is defined in Section 8.4.

"**Development**" means the development of two hundred forty-one (241) apartment units to be developed on the Property.

"**Effective Date**" shall mean the later of: (i) the date the Developer has executed this Agreement; (ii) the date the Authority has executed this Agreement and (iii) the date the City has executed this Agreement.

"**Escrow**" means the escrow opened with the Title Company to accomplish the transfer of Phase I and Phase II, respectively, from the City to the Developer.

"**Extremely Low Income**" means a household with an income that does not exceed the qualifying limits for extremely low-income households, adjusted for actual household size, for Riverside County, as published and periodically updated by HCD under Section 50106 of the California Health and Safety Code, or successor provision.

"**Financing Proposal**" means the Developer's initial proposal for financing the acquisition of the Property and the construction of the Development, including an estimate of the sources and uses of funds, which is attached hereto as Exhibit K.

"**Grading Permit**" means the permit to commence grading on the Phase I Parcel and the permit for the Phase II Parcel.

"**Hazardous Materials**" means any substance, material, or waste which is: (1) defined as a "hazardous waste", "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) MTBE; or (7) determined by California, federal or local government authority to be capable of posing a risk of injury to health, safety or property. Without limiting the foregoing, Hazardous Materials means and includes any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any Hazardous Materials Laws including any federal, state or local environmental statute, regulation or ordinance presently in effect that may be promulgated in the future, as such statutes, regulations and ordinances may be amended from time to time.

The term "**Hazardous Materials**" does not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction or maintenance, of residential developments, or typically used in office or residential activities; or (2) certain substances which may contain chemicals listed by the State of California under California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Development, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws.

"**Hazardous Materials Laws**" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.

"**Housing Agreements**" or "**Housing Agreement**", as applicable, means the Housing Agreements between the Developer and the Authority in the form of Exhibit H that will be

recorded against the Developer's fee interest in the Phase I Parcel and Phase II Parcel and all improvements thereon, and will restrict the household income levels for occupancy of the Units thereon to Extremely Low, Very-Low and Low Income Households and will restrict the rent to affordable rent.

"**Initial Deposit**" is defined in Section 3.3.

"**Low Income Household**" means a household with an income that does not exceed the qualifying limits for lower income households, adjusted for actual household size, for Riverside County, as published and periodically updated by HCD under Section 50079.5 of the California Health and Safety Code, or successor provision.

"**Maintenance Easement**" means an easement over Parcel 9 prepared by the Developer and approved by the City granting the Developer and the Phase II Parcel owner the right of access to clear sand from the outside of the Phase I Wall and the Phase II Wall abutting the Maintenance Easement area, substantially in the form of Exhibit B-3.

"**Notices of Restrictions**" or "**Notice of Restrictions**", as applicable, shall mean the Notices of Affordability Restrictions in the form attached hereto as Exhibit G, which are to be recorded against the Phase I Parcel and the Phase II Parcel upon the closing of the sales thereof.

"**Notice of Default**" is defined in Section 8.5.

"**Official Records**" means the official land records of Riverside County.

"**Parcel**" means either the Phase I Parcel or the Phase II Parcel, as the context requires.

"**Parcel Map**" means the Parcel Map prepared by the Developer and approved by the City subdividing the Property into the two Phases and recorded in the Official Records of the County of Riverside with any recording costs paid by the Developer.

"**Parcel 9**" means the City-owned parcel abutting the Phase I Parcel and the Phase II Parcel described in Exhibit A-3.

"**Parcel 9 Easement**" means the easement for ingress and egress of over a portion of Parcel 9 prepared by the Developer and approved by the City benefiting Parcel I and granting the right to the Developer to improve the easement with street improvements, substantially in the form of Exhibit B-2.

"**Parties**" means collectively the City, the Authority and the Developer and the term Party refers to each of them individually.

"**Phase**" shall mean the Phase I Development or the Phase II Development, as the context requires.

"**Phase I Development**" means the development of at least one hundred twenty-one (121) units of housing, required offsite infrastructure improvements and parking constructed on the Phase I Parcel, all as more fully set forth in the Scope of Development.

"**Phase II Development**" means the development of at least one hundred twenty (120) units of housing, required offsite infrastructure improvements and parking constructed on the Phase II Parcel, all as more fully set forth in the Scope of Development.

"**Parcel I and Parcel II Access Easement**" means the reciprocal easement prepared by the Developer and approved by the City for ingress and egress of over Parcel I and Parcel II and granting the Phase II Parcel owner the right of reasonable access to the Phase I Development common facilities, substantially in the form of Exhibit B-1.

"**Phase I Parcel**" means the property generally described in Exhibit A-1.

"**Phase II Parcel**" means the property generally described in Exhibit A-2.

"**Promissory Notes**" or "**Promissory Note**", as applicable, shall mean the promissory notes that will evidence the Developer's obligation to repay the applicable Authority Loan for a Phase as set forth in this Agreement, and shall be in the form of Exhibit E. Each Phase of the Development will have its own Promissory Note and shall not be cross-collateralized.

"**Property**" means the property generally described in the legal description attached as Exhibit A, consisting of the Phase I Parcel and the Phase II Parcel.

"**Residual Receipts**" in a particular calendar year for a Phase shall mean the cash (without regard to the source) derived from the operation of such Phase of the Development minus the following for that Phase, determined on a cash basis: (i) all real estate and personal property taxes and assessments, insurance premiums and reasonable costs of maintenance, operation and management incurred by the Developer in connection with the operation and maintenance, (ii) property management fees not to exceed four and one-half percent (4.5%) of the gross revenue of the Phase, (iii) the costs of servicing the senior construction loan/financing (and any approved refinancing thereof) and other sources of permitted financing; (iv) amounts necessary to maintain a guaranty or other form of security or bond for an operation reserve account, (v) amounts deposited into a replacement initially capitalized reserve account in the minimum sum of Three Hundred Twenty-Five Dollars ($325.00) per unit per annum, (vi) the repayment of any amounts loaned by the Developer for material development costs which costs were not reasonably foreseeable, (vii) deferred developer fees (viii) a limited partner monitoring fee in the annual amount of Five Thousand Dollars ($5,000.00) per year unless fully paid a permanent loan conversion; (ix) a managing general partner fee in the annual amount of Fifteen Thousand Dollars ($15,000.00), increasing three percent (3%) annually; and (xi) an administrative general partner fee in the annual amount of Ten Thousand Dollars ($10,000.00), increasing three percent (3%) annually. In no event shall depreciation/amortization be deducted from cash revenues. Residual Receipts shall be determined by Developer and Authority on a cash basis without regard to any carry-over profit or loss from any prior calendar year, and shall be determined annually, on or before June 1st for the preceding calendar year. Any deferred developer fee, limited partner monitoring fee, managing general partner fee, and administrative general partner fee may not accrue interest.

"**Schedule of Performance**" means the schedule attached as Exhibit J setting forth the schedule for the Developer's acquisition and development of the Phase I Parcel and the acquisition

and development of the Phase II Parcel and the construction of the Phase I Development and the Phase II Development and other deadlines.

"**Scope of Development**" shall mean the description of the Development, including a basic site plan, which will serve as a basis for the Developer's application for the City Approvals. The Scope of Development is attached to this Agreement as Exhibit I.

"**Security Financing Interest**" means a mortgage, deed of trust, or other reasonable method of security encumbering the Developer's fee interest in the Phase I Parcel and the Phase II Parcel that: (i) meets the requirements of this Agreement; and (ii) secures any construction or permanent loan shown on the Financing Proposal, or any refinancing approved by the Authority.

"**TCAC**" means the California Tax Credit Allocation Committee.

"**TCAC Regulatory Agreement**" means the regulatory agreement entered into between the Developer and TCAC regulating the affordability of each Phase to be recorded as an encumbrance on the Property.

"**Title Company**" means First American Title Company, or such other title company as the Parties may mutually select.

"**Title Report**" is defined in Section 2.19.

"**Transfer**" has the meaning set forth in Section 7.1.

"**Unit**" means one of the residential units to be constructed on the Property.

"**Very Low Income Household**" means a household with an income that does not exceed the qualifying limits for very low income households, adjusted for actual household size, for Riverside County, as published and periodically updated by HCD under Section 50105 of the California Health and Safety Code, or successor provision.

Exhibits. The following exhibits are attached to and incorporated in this Agreement:

Exhibit A:	Legal Description of the Property
Exhibit A-1:	Legal Description of Phase I Parcel
Exhibit A-2:	Legal Description of Phase II Parcel
Exhibit A-3:	Depiction of Parcel 9
Exhibit B-1:	Phase I and Phase II Access Easement
Exhibit B-2:	Parcel 9 Easement
Exhibit B-3:	Maintenance Easement
Exhibit C:	Form of Grant Deed
Exhibit D-1:	Form of Phase I Density Bonus Agreement
Exhibit D-2:	Form of Phase II Density Bonus Agreement
Exhibit E:	Form of Promissory Note
Exhibit F:	Form of Deed of Trust
Exhibit G-1:	Form of Phase I Notice of Affordability Restrictions
Exhibit G-2:	Form of Phase II Notice of Affordability Restrictions

Exhibit H-1: Form of Phase I Housing Agreement
Exhibit H-2: Form of Phase II Housing Agreement
Exhibit I: Scope of Development (Phase I and Phase II)
Exhibit J: Schedule(s) of Performance (Phase I and Phase II)
Exhibit K-1: Financing Plan – Phase I
Exhibit K-2: Financing Plan – Phase II

ARTICLE 2

CONDITIONS FOR CONVEYANCE OF EACH PHASE

Section 2.1 City Right to Terminate for Failure to Timely Obtain Tax Credits; Other City Conditions Precedent to Conveyance. The City Manager may terminate this Agreement on behalf of the City in his or her sole and absolute discretion if Developer fails to obtain by December 31, 2024 an award of tax credits that is materially consistent with the Financing Proposal. The requirements set forth in this Article 2 are conditions precedent to the City's obligation to convey a Phase to the Developer. The City has no obligation to convey a Phase to the Developer unless the conditions precedent set forth in this Article 2 have been satisfied in the manner set forth below and within the timeframe set forth in the Schedule of Performance. The closing of the conveyance of the Phase I Parcel must occur on or before August 31, 2025 (or either party who is not in default may terminate this Agreement by written notice to the other). The closing of the conveyance of the Phase II Parcel must occur on or before August 31, 2028 (or either party who is not in default may terminate this Agreement by written notice to the other).

Section 2.2 City Approvals. Prior to or concurrently with the conveyance of a Phase, the Developer must have obtained the City Approvals for the Phase and the Developer must have paid the required fees to the City and must have provided letters from the applicable bonding company(s) agreeing to issue the required improvement bonds upon the Close of Escrow.

Section 2.3 Parcel Map. The Parcel Map subdividing the Property into the Phase I Parcel and the Phase II Parcel must be approved by the City, in its sole and absolute discretion, and the Developer; the Parcel Map must be been recorded prior to the Close of Escrow for the conveyance of Phase I; and the Developer must have paid the costs related to recording the Parcel Map. All applicable subdivision improvement agreements and "CC&Rs" and the like that are conditions of approval of the Parcel Map must be executed and delivered/recorded prior to or concurrently with the applicable Close of Escrow.

Section 2.4 Financing Proposal Update; Budget. The Developer shall have submitted a revised Financing Proposal and a comprehensive project budget for the appropriate Phase.

Section 2.5 Permits. The City must have issued a "Ready to Issue" letter regarding the Building Permit, and the Developer must have paid the Building Permit fees prior to or concurrently with the applicable Close of Escrow, and must have executed and delivered all agreements and other documents required in connection with the Building Permit (such as a grading agreement).

Section 2.6 Tax Credits. The tax credits necessary to help finance the applicable development must have been awarded, and Developer shall have provided evidence thereof to City, together with reasonable evidence that tax credit investors shall have legally committed to provide equity funds sufficient to pay all development costs not being paid with loans/debt.

Section 2.7 Loan Closings. All loans necessary to finance costs in the City-approved revised Financing Proposal and pay the costs in the updated project budget not being paid with equity funds shall have closed (or shall close concurrently with the applicable Close of Escrow) such that the lenders are conditionally obligated to disburse their loan funds (so that the applicable development can be completed), and copies of the applicable loan documents (or drafts that are final in all material respects) shall have been provided to City.

Section 2.8 Construction Plans. The Developer shall prepare construction plans for the construction of the development of each Phase. The final construction plans for the development of each submitted by the Developer for City approval shall consist of all construction documentation upon which the Developer and its contractors shall rely in building the Phase I Development and the Phase II Development. Such construction plans shall include (without limitation) final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings"). The construction plans shall be based upon the Approved Plans and shall not materially deviate from them without the written consent of the City. As set forth in Section 10.14, the Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits and in no way limits the discretion of the City in the permit approval process.

As part of the Developer's application for a Building Permit, the City shall also have the right to review and approve the proposed construction plans for conformance with the Approved Plans and the other commitments made by the Developer to the City. The Developer acknowledges that the City's right to review and approve the proposed construction plans as allowed by this paragraph is in addition to, and shall not be limited by, the City's obligation to review the Developer's proposed construction plans for consistency with applicable building and construction code requirements.

As approved, these construction plans for the applicable component of the Development shall be referred to as the "Construction Plans".

Section 2.9 Construction Contract. Developer shall have delivered to City a copy of an executed Guaranteed Maximum Price or Stipulated Sum construction contract for the applicable Phase, which shows a development cost consistent with the revised Financing Proposal/Plan and updated budget, and the equity and debt funds committed to the applicable development.

Section 2.10 Cost Estimate. The Developer's construction lender must have shared its construction cost estimate with the City or, in the alternative, if the construction lender is unwilling to share its cost estimate, the City has obtained an independent cost estimate at the Developer's cost to confirm the reasonableness of the construction costs.

Section 2.11 Construction Bonds. At least seven (7) days prior to Close of Escrow, the Developer shall deliver to the City forms of one (1) labor and material bond and one (1) performance bond for the Development issued by a reputable insurance company licensed to do business in California, and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and reasonably acceptable to the City, each in a penal sum of not less than

one hundred percent (100%) of the scheduled cost of construction of the Phase for the City's review and approval. The bonds shall name the City as co-obligee. Upon receipt by the City of the proposed payment and performance bonds, the City shall promptly review such bonds and approve them if they satisfy the criteria set forth above and include any other modification reasonably requested by the City. If the payment and performance bonds are not approved by the City, the City shall set forth in writing and notify the Developer of the City's reasons for withholding such approval. The Developer shall thereafter submit revised payment and performance bonds for City approval, which approval shall be granted or denied in five (5) business days in accordance with the criteria and procedures set forth above.

Section 2.12 Developer Organizational Documents. The Developer has provided the Developer organizational documents to the City for its review and the City has approved the documents.

Section 2.13 Authority Loans. The Authority must be ready to make the applicable Authority Loan in the amount necessary to acquire the Phase I Parcel or Phase II Parcel, as appropriate, and the Developer shall have delivered the applicable City/Authority Documents, duly executed, to the Authority.

Section 2.14 Tax Credit Equity. The City has approved the Developer's proposed uses of any tax credit equity paid as of the Close of Escrow to the Developer.

Section 2.15 City Easements. The Developer and City have agreed upon the final forms of the Phase I and Phase II Access Easement, the Parcel 9 Easement and the Maintenance Easement.

Section 2.16 Phase II Conveyance. As a condition to the Close of Escrow for the Phase II Parcel only, the Close of Escrow for the Phase I Parcel shall have occurred, and Developer shall not be in default under this DDLA or under the Authority loan relating to the Phase I Parcel.

Section 2.17 AHAP. The Developer and the Housing Authority of the County of Riverside have entered into an Agreement to Enter into a Housing Assistance Payments Contract.

Section 2.18 Title Report Approved. The Developer has approved the following preliminary report and the title exceptions therein (the "Title Report") from the Title Company: Amended Preliminary Report issued on August 22, 2022 under Order Number 997-30064151-A-TC1. City shall not further encumber the Property after the date hereof without the prior written consent of Developer.

ARTICLE 3
DISPOSITION OF PROPERTY

Section 3.1 Conveyances of Phase I Parcel and Phase II Parcel. Subject to the satisfaction of the conditions to closing set forth above (which apply to each Phase, except as noted in Section 2.15), the City will sell to the Developer, and the Developer will purchase from the City, the Property under the terms, covenants, and conditions of this Agreement.

Section 3.2 Purchase Prices. The Purchase Price for the Phase I Parcel shall be One Million Nine Hundred Sixty-Five Thousand Five Hundred Thirty-Nine Dollars ($1,965,539.00). The Purchase Price for the Phase II Parcel shall be One Million Four Hundred Fifty-Nine Thousand Four Hundred Sixty-One Dollars ($1,459,461.00).

Section 3.3 Deposits.

The parties acknowledge and agree that the City will expend, and has expended, considerable resources in the negotiation and review of the proposed development of the Phase I Parcel and Phase II Parcel. To offset a portion of the staff, legal and other consulting costs that the City has incurred with respect to this Agreement and/or will incur under or in connection with this Agreement and the projects described herein until completion of the Phase II Development, and in consideration of this Agreement, the Developer has previously deposited with City the sum of Twelve Thousand Dollars ($12,000.00) (the "Initial Deposit"). No interest shall be payable on the Initial Deposit. The Initial Deposit shall be used by the City solely for the purpose of reimbursing the City for reasonable costs it incurs during the course of negotiating this Agreement and administering this Agreement, including attorneys' fees and consultant costs. The City may from time to time withdraw monies from the Initial Deposit to reimburse it for such costs and expenses incurred and paid by the City. Prior to the date of such withdrawal, the City shall notify the Developer in writing no less than five (5) business days prior to each such withdrawal/application and include with such notice a copy of invoices and if applicable, statement of staff time/charges to be paid with the proceeds of each such withdrawal/application. The Developer further agrees and acknowledges that if the amount of the Initial Deposit shall be reduced to an amount less than Two Thousand Five Hundred Dollars ($2,500.00) as a result of such periodic reimbursement withdrawals, the Developer shall within five (5) business days of delivery of written notice from the City deposit such additional monies with the City as shall replenish the amount of the Initial Deposit being held by the City to Twelve Thousand Dollars ($12,000.00). In the event of termination of this Agreement for any reason other than uncured default of the Developer, or completion of the Phase II Development (or if the Phase II Parcel is not sold to Developer, then the completion of the Phase I Development), the City shall promptly return to Developer the remainder of the Initial Deposit not needed for theretofore-accrued City costs and expenses.

Additionally, within thirty (30) days following the Effective Date, Developer shall deposit $58,966.00 into Escrow as a good faith deposit for the acquisition of the Phase I Parcel (the "Phase I Deposit"). Upon the Close of Escrow for Phase I, the Phase I Deposit shall not be applied to the purchase price for the Phase II Parcel, but shall be returned to Developer, as the Purchase Price is being paid by the loan from the Authority. If this Agreement is terminated prior to the Close of Escrow for the Phase I Parcel for any reason other than a default by the Developer, the Phase I Deposit and any portion of the Initial Deposit not needed to pay accrued City costs shall be immediately refunded to the Developer upon the date the Agreement is terminated, and City shall have no obligations with respect to the Phase II Parcel.

Additionally, within thirty days after the Close of Escrow for Phase I Parcel, the Developer shall deposit $43,784 into a Phase II Escrow as a good faith deposit for the acquisition of the Phase II Parcel (the "Phase II Deposit"). Upon the Close of Escrow for Phase II, the Phase I Deposit shall not be applied to the purchase price for the Phase II Parcel, but shall be returned to Developer, as the Purchase Price is being paid by the loan from the Authority. If this Agreement is terminated

as to Phase II, and the termination is **not** due to a default by the Developer, the Phase II Deposit shall be immediately refunded to the Developer upon the date the Agreement is terminated. The Phase I Deposit and the Phase II Deposit shall each constitute liquidated damages to the City upon a termination of this Agreement as to the applicable Phase/parcel due to a default by Developer.

BUYER ACKNOWLEDGES THAT BY ENTERING INTO THIS AGREEMENT, SELLER MAY REMOVE THE PROPERTY FROM THE ACTIVE REAL ESTATE MARKET AND THUS SUSTAIN MISSED OPPORTUNITIES AND EXTENDED CARRYING COSTS, AS WELL AS OTHER DAMAGES. IN THE EVENT THAT THE ESCROW AND THIS TRANSACTION FAIL TO CLOSE AS A RESULT OF THE DEFAULT OF BUYER IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, BUYER AND SELLER AGREE THAT SELLER WILL SUSTAIN THESE AND OTHER DAMAGES, AND THAT SELLER'S ACTUAL DAMAGES WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO DETERMINE. THE PARTIES THEREFORE AGREE THAT IN THE EVENT THAT ESCROW AND THIS TRANSACTION FAIL TO CLOSE AS A RESULT OF A MATERIAL DEFAULT OF BUYER, AND SELLER IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER, SELLER, AS SELLER'S SOLE AND EXCLUSIVE REMEDY, IS ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF THE INITIAL DEPOSIT THERETOFORE MADE. IN THE EVENT ESCROW FAILS TO CLOSE SOLELY AS A RESULT OF BUYER'S DEFAULT AND SELLER IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER, THEN (A) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF BUYER AND SELLER HEREUNDER AND THE ESCROW CREATED HEREBY SHALL TERMINATE, AND (B) ESCROW AGENT SHALL, AND IS HEREBY AUTHORIZED AND INSTRUCTED TO, RETURN PROMPTLY TO BUYER AND SELLER ALL DOCUMENTS AND INSTRUMENTS TO THE PARTIES WHO DEPOSITED THE SAME. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369 BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION 3.3(b), AND BY THEIR INITIALS IMMEDIATELY BELOW, AGREE TO BE BOUND BY ITS TERMS.

SELLERS' INITIALS:	BUYER'S INITIALS
_____	_____

Section 3.4 Opening Escrow. To accomplish the transfer of the Phase I Parcel and the Phase II Parcel from the City to the Developer, the Parties will promptly establish an escrow for each transfer with the Title Company after the Effective Date. The Parties will execute and deliver reasonable written instructions to the Title Company to accomplish the terms hereof, which instructions must be consistent with this Agreement.

Section 3.5 Close of Escrow. The Close of Escrow shall occur within thirty (30) days after the Developer has met all of the closing conditions as set forth in Article 2 above for a

particular Parcel, but in no event shall the Close of Escrow occur later than August 31, 2025 for the Phase I Parcel, and in no event shall the Close of Escrow occur later than August 31, 2028 for the Phase II Parcel. At the applicable Close of Escrow, the City shall convey a fee interest in the applicable Parcel to the Developer by the delivery of a Grant Deed to Escrow in the form set forth in the attached Exhibit C for recording at the Close of Escrow.

At the Close of Escrow for Phase I, the Developer shall execute and deliver to Escrow for recording at the Close of Escrow, the Phase I and Phase II Access Easement, the Parcel 9 Easement and the Maintenance Easement.

Developer's obligation to proceed with the acquisition of the Property from the City pursuant to the terms of this Agreement is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("Developer Conditions Precedent"). The Developer Conditions Precedent are solely for the benefit of the Developer and shall be fulfilled or waived within the time periods provided for herein, and in any event, no later than the date specified in the Schedule of Performance.

There exists no condition, event or act which would constitute a breach or default under this Agreement, the City Documents, the Development Approvals, or under any other project financing agreements or contracts related to the Development, or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default by the City.

Subject to payment of the applicable fees, City shall be ready to issue the building permit(s) necessary for the Developer to Commence Construction of the Development.

The Title Company shall, upon payment of Title Company's regularly scheduled premium, be irrevocably committed to issue an owner's title policy upon recordation of the applicable Grant Deed insuring Developer's interest in the Property, subject only to the exceptions in Section 3.7 below.

The Parcel Map has been approved by the City and the Developer and has been recorded or is ready to be recorded currently with the Close of Escrow in the Official Records of Riverside County.

There shall be an absence of any condemnation, environmental or other pending governmental or any type of administrative or legal proceedings with respect to the Property which would materially and adversely affect Developer's intended uses of the Property or the value of the Property.

The City has executed and delivered to Escrow (x) the Phase I and Phase II Access Easement, (y) the Parcel 9 Easement and (z) the Maintenance Easement.

The City has executed and delivered to Escrow applicable Housing Agreement and Notice of Affordability Restrictions, duly executed and acknowledged.

There shall not have occurred between the Effective Date and the Closing a material adverse change to the physical condition of the Property.

There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Developer or the Property that would, if adversely determined, materially adversely affect the Development or the Developer's or the City's ability to perform their obligations under this Agreement or the Developers' ability to develop and operate the Development.

Section 3.6 Costs of Escrow and Closing. The Developer must pay all of the City's and Authority's legal fees and costs, the cost of title insurance, transfer tax, Title Company document preparation, recordation fees, and the escrow fees of the Title Company, if any, and any additional costs to close the applicable escrow. The costs borne by the Developer are in addition to the Purchase Prices of the Parcels.

Section 3.7 Condition of Title. Upon the Close of Escrow for each Phase, the Developer will take title subject to all title exceptions in the Title Report and all other liens, encumbrances, clouds and conditions, rights of occupancy or possession, except, applicable building and zoning laws and regulations;

(a) The conditions and easements on the Parcel Map;

(b) the Phase I and Phase II Access Easement;

(c) the applicable Housing Agreement;

(d) the applicable Density Bonus Agreement;

(e) the applicable Deed of Trust and Notice of Restrictions;

(f) any lien for current taxes and assessments or taxes and assessments accruing subsequent to Close of Escrow;

(g) the liens of any Approved Financing (approved by the City);

(h) any other matters created by or with the consent of Developer.

Section 3.8 Condition of Property; City Information. In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), to the City's Current Actual Knowledge, no release of Hazardous Materials has come to be located on or beneath the Property except as previously disclosed by the City to the Developer. The Developer has completed all due diligence activities, including but not limited to a physical adequacy determination of the Property, and may not terminate this Agreement as a result of the purported physical unsuitability of the Property. As used in this Agreement, the phrase "to the City's Current Actual Knowledge" and words of similar import shall mean the actual knowledge of the City Manager (the "City Representative"), on behalf of the City, as of the Effective Date, without any duty of separate inquiry and investigation. The City represents and warrants that the City Representative is that person affiliated with the City most knowledgeable regarding the ownership and operation of the Property. Developer hereby agrees that the foregoing person shall not have or incur any personal liability for the breach of any representation or warranty in this Agreement, and that Developer's sole remedy for any such breach shall be against the City.

Section 3.9 "As is" Conveyance. Prior to the effective date, the Developer was provided the opportunity to investigate the Property and has approved the physical condition of the Property. The Developer specifically acknowledges and agrees that the City is selling each Phase of the Property to the Developer and the Developer is buying each Phase of the Property from the City (and all thereon) on an "as is with all faults" basis and that the Developer is not relying on any representations or warranties of any kind whatsoever, express (except as expressly set forth in this agreement) or implied, from the City as to any matters concerning the Property, including without limitation: (1) the quality, nature, adequacy and physical condition of the Property (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions); (2) the quality, nature, adequacy, and physical condition of soils, geology, and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities serving the Property; (4) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (5) public or private restrictions on the use of the Property; (6) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (7) the presence or absence of hazardous materials on, under or about the Property or the adjoining or neighboring property; and (8) the condition of title to the Property. The Developer affirms that the Developer has not relied on the skill or judgment of the City or any of its agents, employees or contractors to select or furnish the Property for any particular purpose, and that the City makes no warranty that the Property is fit for any particular purpose. The Developer acknowledges that it shall use its independent judgment and make its own determination as to the scope and breadth of its due diligence investigation which it shall make relative to the Property and shall rely upon its own investigation of the physical, environmental, economic, and legal condition of the Property (including, without limitation, whether the Property is located in any area which is designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local agency). The Developer undertakes and assumes all risks associated with all matters pertaining to the Property's location in any area designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area by any federal, state or local agency.

Section 3.10 Survival. The terms and conditions of this Section expressly survive the Close of Escrow. The City is not liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Property furnished by any contractor, agent, employee, servant, or other person. The Developer acknowledges that the lease price will reflect the "as is" nature of this sale and any faults, liabilities, defects, or other adverse matters that may be associated with the Property. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

Section 3.11 Acknowledgment. The Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (2) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the lease price will be adjusted to reflect the same and that the City would not

have agreed to lease the Property to the Developer without the disclaimers and other agreements set forth in this Section.

Section 3.12 Developer's Release. The Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City and the Authority, and City Council members, Authority board members and the officers, directors, representatives, consultants, employees and agents of City and/or Authority (the "Released Parties") from any and all claims, responsibility, and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (1) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (2) any presence of Hazardous Materials; and (3) any information furnished by the Released Parties under or in connection with this Agreement.

Section 3.13 Scope of Release. The release set forth in Section 3.7(e) above includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

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

Developer's Initials: _____

Notwithstanding the foregoing, this release does not apply to, nor will the City be released from, the City's actual fraud or misrepresentation.

ARTICLE 4

CONSTRUCTION OF DEVELOPMENT

Section 4.1 Construction and Operation Consistent with Agreements. Unless modified by operation of Section 4.2, the Development must be constructed in accordance with the Scope of Development, the Construction Plans and the terms and conditions of the Approved Plans and the City Approvals. The Developer shall comply with all standards and requirements for construction, use, operation, maintenance, management and encumbrance of the Development which are set forth in this Agreement and the City Approvals. As between the City and the Developer, the Developer shall be solely responsible for all costs necessary for the construction and operation of the Development, including, but not limited to, any construction cost overruns. Developer shall defend, indemnify and hold City harmless from and against any and all claims, liabilities, damages, losses, costs and expenses arising directly or indirectly from or relating to any allegations that City is liable for failure by Developer to pay prevailing wages and/or comply with California Labor Code Sections 1720 et seq. (The foregoing is not an admission by Developer or City that prevailing wages are required in connection with any development on either Phase.)

Section 4.2 Commencement of Developments; Interim Deadlines. The Developer must commence construction of the Phase I Development no later than ninety (90) days after closing of the conveyance of the Phase I Parcel]. The Developer must commence construction of the Phase II Development no later than ninety (90) days after closing of the conveyance of the Phase II Parcel. For purposes of this Section 4.2, commencement of construction means the material commencement of grading of the Phase.

Section 4.3 Completion of the Developments. Subject to Section 10.3 below, the Developer must diligently prosecute to completion the construction of each Phase, and the Phase I Development must be completed no later than February 29, 2028, and the Phase II Development must be completed no later than February 28, 2031.

Section 4.4 Equal Opportunity. During the construction of the Development, the Developer, and its successors, assigns, and subcontractors must not discriminate against any employee or applicant for employment in connection with the construction of the Development on any basis listed in Section 12940 of the Government Code. Each of the following activities must be conducted in a non-discriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rate of pay and other forms of compensation; and selection for training including apprenticeship.

Section 4.5 Construction Under Laws.

(a) Compliance with Project Documents. Developer shall construct the Development in conformance with the Approved Plans, Approved Financing, and Financing Proposal and consistent with the City Approvals. Developer shall notify the City in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the plans and specifications approved by the City.

(b) Compliance with Laws. Developer shall cause all construction work to be performed in compliance with, without limitation: (1) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, including without limitation state prevailing wages pursuant to Labor Code Sections 1770 et seq., and the regulations pursuant thereto; (2) all applicable federal and state accessibility requirements; and (3) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required of Developer and all entities engaged in work on the construction.

(c) Prevailing Wage Laws. The Project is a work of public improvement such that Developer shall pay prevailing wages under California Labor Code Sections 1770 et seq. and shall comply with the other requirements of such statutes. Developer shall defend, indemnify and hold City and Authority harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from or relating to any failure by Developer to do so.

Section 4.6 Progress Reports. Until such time as the Developer has completed construction of the Development, as evidenced by the Certificate of Completion, the Developer must provide the City with quarterly progress reports regarding the status of the construction of the Development.

Section 4.7 Construction Responsibilities. The Developer shall comply with the Schedule of Performance.

(a) The Developer is solely responsible for all aspects of the Developer's conduct in connection with the Development, including but not limited to the quality and suitability of the Construction Plans, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Development is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

Section 4.8 Mechanics Liens, Stop Notices, and Notices of Completion. If any claim of lien is filed against the Property or the Development or a stop notice is served on any lender or other third party in connection with the Development, then the Developer must, within twenty (20) days after such filing or service, either pay and fully discharge or cause the Developer's contractor to pay and fully discharge, the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond from a surety reasonably acceptable to the City in sufficient form and amount, or provide the City with other assurance reasonably satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

(a) If the Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, the City may (but is under no obligation to) discharge such lien,

encumbrance, charge, or claim at the Developer's expense. Alternatively, the City may require the Developer to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against the Developer.

(b) The Developer must file a valid notice of cessation or notice of completion upon cessation of construction of the Development for a continuous period of thirty (30) days or more and take all other reasonable steps to forestall the assertion of claims of lien against the Property or the Development. The Developer authorizes the City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Development and Property.

Section 4.9 Inspections. The Developer must permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the Development by the City and the Authority during business hours with reasonable notice.

Section 4.10 Records. The Developer must maintain complete, accurate, and current records pertaining to the Development for a period of seven (7) years after the creation of such records, and permit any duly authorized representative of the City to inspect and copy records during regular business days/hours. Records must be kept accurate and current, and shall be kept at Developer's corporate office at 100 Pacifica, Suite 203, Irvine, California. Upon reasonable written notice from the City requesting to review specified Developer records, the Developer shall deliver the records to the City's offices within fifteen (15) days following the City's request.

(a) The City will notify the Developer of any records it deems insufficient. The Developer will have thirty (30) days after delivery of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then the Developer must begin to correct the deficiency within thirty (30) days and complete the correction of the deficiency as soon as reasonably possible.

Section 4.11 Certificate of Completion. Promptly after completing the Development on a Parcel (Phase I or II) in accordance with those provisions of this Agreement that relate solely to the obligations of Developer to construct the Development (including the dates for beginning and completion thereof), the City will provide a Certificate of Completion so certifying (the "Certificate of Completion"). The Certificate of Completion will be the conclusive determination that certain covenants in this Agreement with respect to the obligations of the Developer to construct the Development (excluding the Developer's compliance with Section 4.6) and the dates for the beginning and completion thereof have been met. The Certificate of Completion shall be in such form as will enable such certificate to be recorded in the Official Records. The Certificate of Completion will not constitute evidence of compliance with or satisfaction of any obligation of the Developer to: (a) any holder of a Security Financing Interest. The Certificate of Completion may not be deemed a notice of completion under the California Civil Code.

ARTICLE 5
AUTHORITY LOAN PROVISIONS

Section 5.1 Authority Loans. Subject to the terms and conditions set forth in this Agreement, the Authority shall make a loan to the Developer for the Phase I Development in the original principal amount of $1,965,539 and a loan for the Phase II Development in the original principal amount of not less than $4,789,461. The Authority Loan shall be evidenced by two promissory notes: (a) a Promissory Note for the Phase I Development executed by Developer in favor of City in the amount of $1,965,539 secured by the Deed of Trust executed by the Developer as trustor in favor of the City as beneficiary and recorded against the Developer's fee interest in the Phase I Parcel. and (b) a Promissory Note for the Phase II Development executed by Developer in favor of City in the amount not less than $4,789,461 secured by the Deed of Trust executed by the Developer as trustor in favor of the City as beneficiary and recorded against the Developer's fee interest in the Phase II Parcel.

Section 5.2 Use of Authority Loan. The proceeds of the Authority Loans shall be used to fund the acquisition (pay the purchase prices) of the Parcels, and the remainder of the Authority Loan for the Phase II Development shall be used for construction costs of the Phase II Development.

Section 5.3 Delivery of Promissory Notes; Recording of Housing Agreements; Deeds of Trust; Notices of Restrictions. Prior to the Close of Escrow and in accordance with the Schedule of Performance, the City shall cause escrow holder to first record the Subdivision Map. Upon and as a condition to the Close of Escrow for a Parcel, the escrow holder shall first record the applicable grant deed, and then the applicable Housing Agreement and Density Bonus Agreement for that Phase, the applicable Notice of Restrictions and then the applicable Deed of Trust for the applicable Agency Loan (with no intervening recordings). The Housing Agreement and Notice of Restrictions shall remain in full force and effect for fifty-five (55) years after the issuance of the final Certificate of Occupancy for the Development on the applicable Phase, regardless of any repayment of the applicable Authority Loan following a Developer Event of Default or otherwise. The Executive Director of the Authority shall have the authority to execute reasonable subordination agreements subordinating the Authority Deed of Trust for a Phase to the deeds of trust securing other construction and permanent financing, provided copies of the senior loan documents shall have been provided for the City's reasonable review.

Section 5.4 Term of the Authority Loan. Unless sooner due under the terms of the applicable Note, all principal and interest on the applicable Authority Loan shall be due upon the earliest of: a Transfer of any portion of the applicable collateral Property or the Developer's interest in such Property other than a Transfer permitted or approved by the Authority as provided in Section 10.6;

(a) the occurrence of a Developer Event of Default for which the Authority exercises its right to cause the Authority Loan indebtedness to become immediately due and payable, or

(b) a default under the Housing Agreement which has not been cured within the time periods specified therein.

(c) Fifty-five (55) years from the date of the applicable final Certificate of Occupancy.

Section 5.5 Interest; Payments. Simple interest at three percent (3%) per annum shall accrue on the outstanding principal amount of the applicable Authority Loan except in a Developer Event of Default, whereupon interest shall accrue from and after the date of the applicable Promissory Note until paid at the rate of ten percent (10%) or the highest rate permitted by law. Payments shall be structured as residual receipts payments over the course of the applicable Authority Loan and shall first be applied to interest then to principal.

Section 5.6 Disbursement of Authority Loans; Disbursement of Authority Loan for Phase I. The Authority shall deposit into Escrow the Phase I loan. The Phase I funds shall be disbursed by escrow holder to pay the Phase I Purchase Price.

Section 5.7 Disbursement of Authority Loan for Phase II. The Authority shall deposit into Escrow the Phase II loan in the amount of the Phase II Parcel purchase price. The Authority shall also deposit into Escrow the remainder of such loan together with a counterpart of the agreement with the primary construction lender governing that lender's holding and disbursement of the City's construction loan funds, with instructions to deliver such funds to such lender provided Escrow has an executed counterpart of such agreement from such lender that is to be delivered to the Authority. If no such agreement is reached or executed and delivered, then Authority shall disburse the construction loan portion of its Phase II loan, not more often that once every thirty (30) days, pursuant to normal and reasonable construction loan disbursement conditions, including that Developer not be in default under the applicable loan documents, that Developer shall have submitted a draw request certifying that the Authority loan is "in balance" (enough undisbursed funds from committed loans exist to pay all Project construction costs) and specifying the costs to be paid (by line item in the budget) with reasonable evidence of such costs, conditional partial mechanics lien releases from payees of the current draw and unconditional partial mechanics lien releases for the costs/work paid with the previous draw of construction loan funds.

Section 5.8 Repayment Schedule. The Authority Loans shall be repaid as follows:

(a) Payments. Commencing on the first June 1st following the completion of the Phase, and on each June 1st thereafter until the applicable Promissory Note is paid in full, the Developer shall make repayments of the applicable Authority Loan from fifty percent (50%) of Residual Receipts. The Authority will share the fifty percent (50%) of Residual Receipts payment with the other public entities providing loans to the Developer for the respective Phase. The Authority's percentage share of fifty percent (50%) of Residual Receipts shall be equal to the percentage derived by dividing the Authority loan amount by the combined total of the Authority Loan and the other public entity loans committed to the Developer. The Developer shall provide the Authority, within one hundred eighty (180) days following the end of each calendar year, an Annual Financial Statement showing the actual income and expenditures with respect to the Development for the immediately preceding calendar year. Payments made shall be credited first against accrued interest and then against outstanding principal.

(b) Payment in Full. All principal and interest, if any, on the applicable Authority Loan shall, at the option of the Authority, be due and payable upon the earliest of: (1) a Transfer other than a Transfer permitted or approved by the Authority as provided in Article 7 below; (2) the occurrence of an Event of Default for which the Authority exercises its right to cause the applicable Authority Loan indebtedness to become immediately due and payable; or (3) the maturity date of the applicable Promissory Note.

(c) Prepayment. The Developer shall have the right to prepay the Authority Loans at any time.

Section 5.9 Reports and Accounting of Residual Receipts; Audited Financial Statement. In connection with the annual repayment of the Authority Loans, the Developer shall furnish to the Authority an Annual Financial Statement.

Section 5.10 Books and Records. The Developer shall keep and maintain full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail the Developer's calculation of the applicable Residual Receipts, at the Developer's corporate office currently at 100 Pacifica, Suite 203 in the City of Irvine. Books, records and accounts relating to the Developer's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied and shall be consistent with requirements of this Agreement which provide for the calculation of Residual Receipts on a cash basis. All such books, records, and accounts shall be open to and available for inspection by the Authority, its auditors or other authorized representatives at reasonable intervals during normal business hours on reasonable prior notice to the Developer. Copies of all tax returns and other reports that the Developer may be required to furnish any governmental agency shall at all reasonable times be open for inspection by the Authority at the place that the books, records and accounts of the Developer are kept. The Developer shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered.

Section 5.11 Non-Recourse. Following recordation of the applicable Deed of Trust, and except as provided below, the Developer shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the applicable Authority Loan or the performance of the covenants of the Developer under the applicable Deed of Trust. The sole recourse of the Authority with respect to the principal of, or interest on, the applicable Promissory Note and defaults by the Developer in the performance of its covenants under the applicable Deed of Trust shall be to the property described in such Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall: (a) limit or impair the enforcement against all such security for the applicable Promissory Note of all the rights and remedies of the Authority thereunder; or (b) be deemed in any way to impair the right of the Authority to assert the unpaid principal amount of the applicable Promissory Note as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the applicable Promissory Note, except

as hereafter set forth; nothing contained herein is intended to relieve the Developer of personal liability for (1) fraud or willful misrepresentation; (2) the failure to pay taxes, assessments or other charges (which are not contested by Developer in good faith) which may create liens on the Property or Phase that are payable or applicable prior to any foreclosure under the applicable Deed of Trust (to the full extent of such taxes, assessments or other charges); (3) the Developer's indemnification obligations under this Agreement; (4) misappropriation of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security and (5) payment to the Authority of any rental income or other income arising with respect to the Property received by the Developer after the Authority has given notice to the Developer of the occurrence of an Event of Default, subject to the rights of any lender providing a loan secured by the Property to which Authority has subordinated the Deed of Trust.

ARTICLE 6

ONGOING DEVELOPER OBLIGATIONS

Section 6.1 Applicability. The conditions and obligations set forth in this Article 6 apply throughout the term of the Regulatory Agreement, unless a different period of applicability is specified for a particular condition or obligation.

Section 6.2 Use of Development. The Developer hereby agrees that, for the entire Term, the Development will be used and continuously operated only as affordable housing in accordance with all applicable requirements of the California Community Redevelopment Law (the "Law"), including, but not limited to, the requirement that such housing be provided to households described in Section 50079.5 of the Law, at rents not exceeding the amounts set forth in Section 50053(b)(3). In the event of any conflict between the terms of this Agreement and the Regulatory Agreement, the Developer shall comply with the stricter requirement. In addition, the Developer shall comply with the TCAC Regulatory Agreement (each while they are in effect) all other applicable laws, statutes, and regulations governing the Development, including, but not limited to affordability restrictions of all other public entities encumbering the Phase and the applicable requirements of Code Section 42, and all TCAC regulations, for such time that the Development is subject to such regulations.

Section 6.3 Maintenance. The Developer agrees to maintain all interior and exterior portions of the Development, including landscaping, of the Development in first-class condition and repair and in a sanitary condition (and, as to landscaping, in a healthy condition, subject to any restrictions on water use) and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

(a) The Developer acknowledges the great emphasis the City places on quality maintenance to protect its investment and to provide quality affordable and market-rate housing for area residents. In addition, the Developer must keep the Development free from all graffiti, and any accumulation of shopping carts, debris or waste material. The Developer must promptly make all repairs and replacements necessary to keep the Development in first-class condition and repair and promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials.

(b) In the event that the Developer breaches any of the covenants contained in this Section and such default continues for a period of seven (7) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building maintenance, then the City, in addition to whatever other remedy it may have at law or in equity, will have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Under such right of entry, the City will be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the Development and landscaped areas on the Property, and Developer shall reimburse City for the costs thereof and a ten percent (10%) administrative charge within ten (10) days after written demand with evidence of the costs.

Section 6.4 Taxes and Assessments. The Developer must pay all real and personal property taxes, assessments and charges and all franchise, income, employment, social security benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that the Developer has the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, the Developer, on final determination of the proceeding or contest, must immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 6.5 Mandatory Language in All Subsequent Deeds, Leases and Contracts; Basic Requirement. The Developer may not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Development on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code. Developer or any person claiming under or through the Developer may not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Development. The foregoing covenant runs with the land.

Section 6.6 Provisions in Conveyance Documents. All deeds, leases or contracts made or entered into by Developer, and its successor and assigns permitted under this Agreement, as to any portion of the Property must contain therein the following language:

(1) **In Deeds:**

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, 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 property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) 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 paragraph (1) 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 paragraph (1)."

(2) **In Leases:**

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) 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 paragraph (1) 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 paragraph (1)."

(3) **In Contracts:**

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) 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 paragraph (1) 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 paragraph (1)."

Section 6.7 Management Agent. The Developer shall manage or cause the Development to be managed in a prudent and business-like manner, consistent with good property management standards for other comparable high quality, well-managed affordable rental housing projects in the City of Palm Desert. The Developer shall be responsible for all repair and maintenance functions of the Development, including ordinary maintenance and replacement of capital items. The Developer shall ensure maintenance of units and common areas in accordance with local health, building and housing codes. Developer may contract with an experienced property management company or property manager, to operate and maintain the Development ("Property Manager"). The Property Management contract shall be subject to prior written approval by the City and shall contain a provision allowing the Developer, with the approval of the lenders and the California Tax Allocation Committee, to terminate the contract without penalty upon no more than thirty (30) days' notice.

(a) The Developer will develop a management plan and deliver a copy thereof to City as a condition to the closing of each Phase (a "Property Management Plan"). The Property Management Plan shall include the following:

(1) The role and responsibility of the Developer and its delegation of authority, if any, to the Property Manager;

(2) Personnel policy and staffing arrangements, including ongoing training of staff in best practices for serving the Project tenants;

(3) Plans and procedures for publicizing and achieving early and continued occupancy;

(4) Procedures for determining tenant eligibility, and selecting tenants, and for certifying and annually recertifying household status, income and size;

(5) Plans for carrying out an effective maintenance and repair program;

(6) Rent collection policies and procedures;

(7) Plans for enhancing tenant-management relations;

(8) Appeal and grievance procedures;

(9) Description of how service staff and property management staff will work together to prevent evictions and to facilitate the implementation of reasonable accommodation policies.

(b) Upon a determination by the City that the Property Manager has failed to operate the Development in accordance with the Management Plan, the City shall provide

written notice to the Developer specifying the Property Manager's breach of the Management Plan and providing the Developer at least thirty (30) days to cure the specified breach. Within thirty (30) days the Developer must either use good faith efforts to cure the breach or, if such cure is of the nature to take longer than thirty (30) days, the Developer shall commence the cure during the thirty (30) day period and complete the cure by the conclusion of one hundred eighty (180) days the Developer's receipt of the City's notice, or in such other time period as the parties may mutually agree. If the Developer has failed to cure the breach of the Management Plan by the expiration of the relevant cure period, the City may immediately provide a written notice to the Developer requiring that the Developer promptly terminate the existing Property Manager and contract with an alternative qualified management agent to operate the Project, each with the approval of the lenders and the California Tax Allocation Committee, or to make such other arrangements as the City deems reasonably necessary to ensure performance of the functions and obligations set forth in the applicable Property Management Plan.

Section 6.8 Insurance Requirements; Required Coverage. The Developer must maintain and keep in force, at the Developer's sole cost and expense, the following insurance applicable to the Development:

(a) Workers' Compensation insurance, as required by the State of California and consistent with statutory limits, and Employers' Liability coverage, with limits not less than One Million Dollars ($1,000,000) each accident for bodily injury or disease.

(b) Commercial General Liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence and Five Million Dollars ($5,000,000) aggregate combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broad form Property Damage, Products and Completed Operations. Products and Completed Operations coverage must be obtained no later than completion of construction of the Development. The Developer shall cause the Developer's general contractor to maintain Commercial General Liability insurance with limits not less than Two Million Dollars ($2,000,000) each occurrence and Four Million Dollars ($4,000,000) aggregate combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broad form Property Damage, Products and Completed Operations.

(c) Commercial Automobile Liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Developer does not own or lease vehicles, or operate any non-owned vehicles for purposes of this Agreement, then no automobile liability insurance will be required and both Parties to this Agreement must initial this provision signifying same.

(d) Professional liability insurance in an amount not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) aggregate policy limit. Developer may meet this requirement by requiring any design professional retained by the Developer or general contractor to maintain professional liability insurance in the minimum amounts specified in this subsection.

(e) Builders' risk insurance during the course of construction (and upon completion of construction, property insurance) covering the Development and covering all risks of loss, excluding earthquake and including flood (if required), for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City.

Section 6.9 Subcontractor's Insurance. Developer must require and verify that all subcontractors and agents working on the Development maintain Workers' Compensation insurance meeting all the requirements stated in this Section, and Developer must ensure that City and the Authority are both additional insureds on insurance required from subcontractors as described in subsection (c)(2) of this Section.

(a) General Requirements.

(1) Except for professional liability, the required insurance must be provided under an occurrence form, and the Developer must maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit must be three (3) times the occurrence limits specified above.

(2) All Commercial General Liability, Commercial Automobile Liability and Property insurance policies (including builders' risk) must be endorsed to name as additional insureds the City, the Authority and their elected officials, officers, directors, representatives, consultants, employees, and agents. The endorsement must include liability arising out of work or operations performed by or on behalf of Developer including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed by or on behalf of Developer. For commercial general liability, the policy must be endorsed with a form at least as broad as ISO form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used.

(3) Developer's insurance must be primary to any other insurance (including self-insurance) available to the City or the Authority (including elected officials, officers, directors, representatives, consultants, employees, and agents) with respect to any claim arising out of this Agreement. Any insurance maintained by the City or Authority shall be excess of the Developer's insurance and shall not contribute with it.

(4) No policy shall be canceled, limited, or allowed to expire without renewal until after thirty (30) days written notice has been given to the City and Authority by first class mail.

(5) Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

(b) Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either:

(1) Developer must reduce or eliminate such deductibles or self-insured retentions as respects the City and its elected officials, officers, directors, representatives, consultants, employees, and agents; or,

(2) Developer must provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(c) Subrogation Waiver. Developer hereby grants to City and the Authority a waiver of any right to subrogation which any insurer of Developer may acquire against the City by virtue of the payment of any loss under such insurance. Developer agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of City for all work performed by Developer, its employees, agents, and subcontractors. This provision applies regardless of whether or not the City or Authority has requested or received a waiver of subrogation endorsement from the insurer.

Section 6.10 Certificates of Insurance. As a condition to the Close of Escrow for each Phase, the Developer must provide certificates of insurance, in form and with insurers reasonably acceptable to the City, evidencing compliance with the requirements of this Section, and must provide complete copies of such insurance policies, including endorsements as required by this Section. However, failure to obtain the required documents before the work beginning shall not waive Developer's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Section 6.11 Additional Coverage. Developer may carry, at its own expense, any additional insurance it deems necessary or prudent. If Developer maintains higher levels than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Developer. Any available insurance proceeds in excess of the specified minimum levels of insurance and coverage shall be available to the City.

Section 6.12 Audits. The Developer must make available for examination at reasonable intervals and during normal business hours to the Authority and the City all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and permit the Authority and the City to audit, examine, and make excerpts or transcripts from such records, and such records shall be kept at 100 Pacifica, Suite 203 in the City of Irvine. The Authority and the City may make audits of such records.

ARTICLE 7
ASSIGNMENTS AND TRANSFERS

Section 7.1 Definitions. As used in this Article 7, the term "Transfer" means: Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Development or any part thereof or any interest therein or any contract or agreement to do any of the same;

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer or any contract or agreement to do any of the same;

(b) Any merger, consolidation, sale or lease of all or substantially all of the assets of the Developer; or

(c) The leasing of part or all of the Development thereon; provided, however, that leasing of the Units included within the Development to tenant occupants in accordance with the Regulatory Agreement or the leasing of the Commercial Space in the Development in accordance with this Agreement shall not be deemed a Transfer for purposes of this Article 7.

Section 7.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of the development and operation of the Development and its subsequent use in accordance with the terms hereof. The Developer recognizes that the qualifications and identity of Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment of the Property to the general welfare of the community;

(b) The land acquisition assistance and other public aids that have been made available by law and by the government for the purpose of making such redevelopment possible;

(c) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property;

(d) The fact that a change in ownership or Control of the Developer, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in Control of the Developer is for practical purposes a transfer or disposition of the Property;

(e) The fact that the Property is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with this Agreement and the Regulatory Agreement; and

(f) The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 7.3 Prohibited Transfers. Any Transfer made in contravention of this Section and is void and are deemed to be a Developer Event of Default under this Agreement whether or not the Developer knew of or participated in such Transfer. Except for permitted Transfers described in Section 7.4, no Transfer shall be permitted in the absence of specific written agreement by the City, and, unless approved by the City in writing, no Transfer or assignment will be deemed to relieve the Developer or any other party from any obligations under this Agreement.

Section 7.4 Permitted Transfers. Notwithstanding the provisions of Section 7.3, the following Transfers are permitted and are hereby approved by the City without further review. Any consent by the City under this Section 7.4 shall constitute the consent of the Authority:

(a) Notwithstanding the provisions of Section 7.3, the following Transfers shall be permitted and are hereby approved by the City:

(1) Any Transfer creating a Security Financing Interest permitted pursuant to the approved Financing Proposal;

(2) Any Transfer of an entire Phase to a limited partnership in which the Developer or an entity Controlled by the Developer is the administrative general partner of such limited partnership (provided City shall have been given a copy of the limited partnership, and copies of the organizational documents of the general partner).

(3) The Transfer of an entire Phase to a nonprofit managing general partner pursuant to a right of first refusal agreement given by a limited partnership owner of the Phase.

(4) The Transfer of an entire Phase to the administrative general partner pursuant to an option agreement given by a limited partnership owner of the Phase.

(5) The admission of a tax credit investor limited partner to Developer, and any subsequent transfer of investor limited partner interest thereafter.

(6) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under Article;

(7) The leasing of residential units within the Development in accordance with the applicable Housing Agreement;

(8) The granting of reasonable easements or permits to facilitate the Development of the Property.

Section 7.5 Other Transfers with City Consent. Any Transfers not permitted under Section 7.4 shall require the prior written approval of the City Manager.

(a) No Transfer of this Agreement permitted under this Section will be effective unless, at the time of the Transfer, the transferor and transferee enter into and records an assignment and assumption agreement in a form reasonably approved by the City Manager.

Section 7.6 Termination of Limitations on Transfers. The limitations on Transfers set forth in this Article 7 shall apply with respect to the Property or a Phase until issuance by the City of a Certificate of Completion for the Phase.

ARTICLE 8
DEFAULT AND REMEDIES

Section 8.1 General Applicability. The provisions of this Article 8 govern the Parties' remedies for breach or failure of this Agreement. If a closing condition does not occur, then either Party shall not be obligated to convey or accept the applicable parcel, may terminate the obligation to convey/accept and the Deposit shall be returned to the Developer; however, the foregoing does not relieve a party from the implied covenant of good faith and fair dealing (with the understanding that such implied covenant does not apply to the City acting in its governmental capacity).

Section 8.2 Fault of City. Each of the following events, if uncured after expiration of the applicable cure period in constitutes a "City Event of Default". The City, without good cause, fails to sell the Property to the Developer in the manner set forth in Article 3 and the Developer is otherwise entitled by this Agreement to such conveyance; or

(a) The City breaches any other material provision of this Agreement which is materially adverse to Developer.

Section 8.3 Fault of Authority. Each of the following events, if uncured after expiration of the applicable cure period, constitutes an "Authority Event of Default":

(a) The Authority, without good cause, fails to disburse the Authority Loan to the Developer in the manner set forth in Article 5 and the Developer is otherwise entitled by this Agreement to the disbursement; or

(b) The Authority breaches any other material provision of this Agreement which is materially adverse to Developer.

Section 8.4 Fault of Developer. Each of the following events, if uncured after expiration of the applicable cure period, constitutes a "Developer Event of Default":

(a) The Developer fails to exercise good faith and diligent efforts to satisfy, within the time and in the manner set forth in Article 3, one or more of the conditions precedent to the City's obligation to convey the Property to the Developer;

(b) The Developer refuses to accept conveyance from the City of the Property within the time periods and under the terms set forth in Article 3 and fails to cure the default within thirty (30) days after notice of default from City or Authority;

(c) The Developer fails to construct the Development in violation of Article 4 cure the default within thirty (30) days after notice of default from City or Authority;

(d) The Developer fails to comply with any construction deadlines in the Schedule of Performance.

(e) Any default by the Developer under the Housing Agreement shall also be a Developer Event of Default under this Agreement and the Authority Loan Documents, subject to any required notice and cure period under the Housing Agreement;

(f) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 7;

(g) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate, or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made;

(h) A court having jurisdiction makes or enters any decree or order: (1) adjudging the Developer to be bankrupt or insolvent; (2) approving as properly filed a petition seeking reorganization of the Developer, or seeking any arrangement for the Developer, under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (3) appointing a receiver, trustee, liquidator, or assignee of the Developer, in bankruptcy or insolvency or for any of their properties; or (4) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (1) to (4), inclusive, continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (i) as well; or the Developer, admits in writing its inability to pay its debts as they fall due or voluntarily submits to or files a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive;

(i) The Developer assigns its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection as well) or prior to sooner sale under such sequestration, attachment, or execution;

(j) The Developer voluntarily suspends its business or, the Developer is dissolved or terminated;

(k) There occurs any default declared by any entity under any loan document to which City or Authority is not a party/beneficiary, and which is related to any loans secured by a deed of trust on the Development or any such deed of trust or any regulatory agreement recorded against the Property (other than the Housing Agreement), after the expiration of applicable cure periods in the applicable documents; or

(l) The Developer breaches any other provision of this Agreement and fails to cure the default within thirty (30) days after notice of default from City or Authority, or

the Developer breaches any other provision of any Authority Loan Documents and fails to cure the same within: (a) the cure period in the Authority Loan Documents, if any applicable to the default; or (b) if no cure period applies, and the default is not included/described in the preceding subsections, then Developer fails to cure the default within thirty (30) days after written notice from Authority.

Section 8.5 Notice and Cure Period Regarding City/Authority Defaults. Before initiating any action for relief against City or Authority for an alleged breach of this Agreement, Developer must deliver to City or Authority, as applicable, a written notice of breach specifying all of the reasons for the allegation of default with reasonable particularity. Within thirty (30) days, City or Authority (as applicable) must either: (1) use good faith efforts to cure the breach or, if such cure is of the nature to take longer than thirty (30) days, to follow the procedures specified in subsection (b) below; or (2) if in the determination of the City or Authority, the event does not constitute a breach of this Agreement, the City or Authority, as applicable, within thirty (30) days of receipt of the Notice of Default, must deliver to Developer a notice which sets forth with reasonable particularity the reasons that a default has not occurred. Failure to respond within the thirty (30) day period may not be deemed an admission of the default.

(a) If the City or Authority, as applicable, believes that the Default cannot practically be cured within the thirty (30)-day period, it shall not be in Default provided that: (1) the cure is commenced during the thirty (30) day period after receipt of the Notice of Default; (2) within the thirty (30) day period, the Defaulting Party provides a schedule to Developer for cure, ; and (3) the cure is thereafter diligently prosecuted to completion, and City or Authority as applicable uses good faith efforts to comply with the schedule.

Section 8.6 Remedies; City Remedies. With respect to an uncured Developer Event of Default, the City shall be entitled to take any or all of the following remedies:

(a) Terminating this Agreement by giving written notice to the Developer; provided, however, that the City's remedies under this Article 8 and the indemnification provisions of this Agreement survive such termination. If the City elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

(b) Prosecuting an action for damages (excluding specific performance, punitive damages and indirect consequential damages); or seeking any other remedy available at law or in equity (excluding punitive damages and indirect consequential damages).

Section 8.7 Developer Remedies. With respect to an uncured City Event of Default or Authority Event of Default, the Developer shall be entitled to take any or all of the following remedies:

(a) Terminating this Agreement by giving written notice to the Developer; provided, however, that the Developer's remedies under this Article 8 and the indemnification provisions of this Agreement survive such termination. If the Developer elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

(b) Prosecuting an action for damages (excluding specific performance, punitive damages, lost profits and indirect consequential damages); or seeking any other remedy available at law or in equity (excluding punitive damages and indirect consequential damages).

Section 8.8 Authority Remedies. With respect to an uncured Developer Event of Default as to a Phase, the Authority shall be entitled to exercise any or all remedies permitted at law or in equity, and any remedies under the Promissory Note and Deed of Trust for that Phase (including acceleration of the applicable loan).

Section 8.9 Rights of Mortgagees. Any rights of the City or Authority under this Article 8 will not defeat, limit or render invalid any Security Financing Interest permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of Security Financing Interests.

Section 8.10 Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy will be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 9

SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 9.1 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Developer's fee interest in the Property, but only for the purpose of securing loans approved by the City under the approved Financing Proposal. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the City under the approved Financing Proposal are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 9.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any Development or to guarantee such construction or completion; nor will any covenant or any other provision in conveyances from the City to the Developer evidencing the realty comprising the Property or any part thereof be construed so to obligate such holder. However, no such holder shall devote the Property or any portion thereof to any uses, or to construct any Development thereon, other than the Development provided for or authorized by this Agreement and the Housing Agreement.

Section 9.3 Notice of Default and Right to Cure. Whenever the City under its rights set forth in Article 8 of this Agreement delivers any notice or demand to the Developer with

respect to the commencement, completion, or cessation of the construction of the Development, the City will at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer's fee interest in the Property or any portion thereof, and the Investor, a copy of such notice or demand provided City shall have been given written notice of its address for notice by the Developer. Each such holder (insofar as the rights of the City are concerned) has the right, but not the obligation, at its option, within ninety (90) days after the delivery of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement is deemed to permit or authorize such holder to undertake or continue the construction or completion of the Development (beyond the extent necessary to conserve or protect such Development or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to such Development under this Agreement under an assignment and assumption agreement prepared by the City and recordable among the Official Records (the "Security Financing Interest Assignment"). The holder in that event must agree to complete, in the manner provided in this Agreement (or as may be amended by the Security Financing Interest Assignment; provided, however, the City is under no obligation to extend the dates for performance set forth in this Agreement), the Development to which the lien or title of such holder relates. Any such holder properly completing such Development under this paragraph must assume all rights and obligations of Developer under this Agreement and will be entitled, upon completion and written request made to the City, to a Certificate of Completion from the City.

Section 9.4 Failure of Holder to Complete Development. In any case where six (6) months after default by the Developer in completion of construction of the Development under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct under the Security Financing Interest Assignment, has not proceeded diligently with construction (as reasonably determined by the City), the City and Authority must be afforded those rights against such holder it would otherwise have against Developer under this Agreement.

Section 9.5 Right of Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of the Development, and the holder has not exercised its option to complete the Development on the Property, the City or Authority may cure the default, prior to the completion of any foreclosure. In such event the City or Authority as applicable will be entitled to reimbursement from the Developer of all costs and expenses incurred bin curing the default. The City will also be entitled to a lien upon the Property or any portion thereof to the extent of such costs and disbursements, or in the case of the Authority, the Developer's obligation to reimburse for costs and disbursements shall be included in the obligations secured by the applicable Deed of Trust. The City agrees that such lien will be subordinate to any Security Financing Interest, and the City will execute from time to time any and all documentation reasonably requested by Developer to effect such subordination.

Section 9.6 Right of City to Satisfy Other Liens. After the conveyance of title to the Property or any portion thereof and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property or any portion thereof, the City will have the right to satisfy any such lien or encumbrances; provided, however, that nothing in this Agreement will require the Developer to pay or make provision for the payment of any tax,

assessment, lien or charge so long as the Developer in good faith may contest the validity or amount therein and so long as such delay in payment is not subject the Property or any portion thereof to forfeiture or sale.

Section 9.7 Holder to be Notified. The Developer will insert each term contained in this Article 9 into each Security Financing Interest or will procure acknowledgement of such terms by each prospective holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

Section 9.8 Estoppel Certificates. Any Party may at any time, and from time to time, deliver written notice to another Party requesting such other party to certify in writing that, to the knowledge of the certifying Party: (a) this Agreement is in full force and effect and a binding obligation of the Parties; (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (c) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, the notice shall describe the nature and amount of any such default. A Party receiving a request shall execute and return such certificate within fifteen (15) days following receipt of the request. The City Manager is authorized to execute any estoppel certificate requested by the Developer on behalf of the City. The Authority's Executive Director is authorized to execute any estoppel certificate requested by the Developer on behalf of the Authority.

ARTICLE 10
GENERAL PROVISIONS

Section 10.1 Notices, Demands and Communications. Formal notices, demands, and communications between the City and the Developer will be sufficiently given if, and not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by reputable overnight delivery service, to the principal office of the City and the Developer as follows:

City and Authority:
City of Palm Desert/Palm Desert Housing Authority
73-510 Fred Waring Drive
Palm Desert, CA 92260
Attn: Housing Division

Developer:
Palm Communities
100 Pacifica, Suite 203
Irvine, CA 92618
Attn: President

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by notice as provided in this Section.

Section 10.2 Non-Liability of Officials, Employees and Agents. No City Council members, or Authority board members, or any of the officers, directors, representatives,

consultants, employees and agents of the City or Authority may be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or Authority or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement. Absent fraud or willful misconduct by the responsible party, no members, officers, directors, representatives, consultants, employees and agents of the Developer may be personally liable to the City or Authority, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City or Authority or successor or on any obligation under the terms of this Agreement.

Section 10.3 Forced Delay. In addition to specific provisions of this Agreement, any Party hereunder shall not be deemed to be in default with respect to a construction obligation/deadline where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority (except for restrictions or priorities established by the Party required to perform the action required under this Agreement); unusually severe weather; inability to secure necessary labor, materials or tools; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of a Party shall not excuse performance by such Party, including without limitation the Developer's inability to obtain financing for the Development or the economic infeasibility of the Development) ("Force Majeure"). An extension of time for Force Majeure shall only be for the period of the enforced delay, which period shall commence to run from the time of the notification of the delay by the Party requesting the extension to the other Party. The Party requesting an extension of time under this Section 10.3 shall give notice promptly following knowledge of the delay to the other Party. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after knowledge of the commencement of the delay, the period shall commence to run upon the earlier of (i) thirty (30) days prior to the giving of such notice or (ii) the date that the other Party received knowledge of the events giving rise to the delay.

Section 10.4 Inspection of Books and Records. Upon request, the Developer must permit the City and Authority to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement. Title of Parts and Sections. Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and should be disregarded in construing or interpreting any part of its provision.

Section 10.5 No Third-Party Beneficiaries. There are no third party beneficiaries to this Agreement.

Section 10.6 Applicable Law. This Agreement must be interpreted under and under the laws of the State of California. Venue shall be Riverside County.

Section 10.7 No Brokers. Each Party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or

finder's fee based upon a contact, dealings, or communications, the Party through whom the broker or finder makes this claim must indemnify, defend with counsel of the indemnified Party's choice, and hold the indemnified Party harmless from all expense, loss, damage and claims, including the indemnified Party's reasonable attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this Section survive expiration of the Term or other termination of this Agreement and will remain in full force and effect.

Section 10.8 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, each Party shall bear their own attorneys' fees and no attorneys' fees may be awarded to the Party prevailing in the action.

Section 10.9 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 10.10 Binding Upon Successors. This Agreement is binding upon and inures to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto, except that there may be no Transfer of any interest by any of the Parties hereto except under the terms of this Agreement. Any reference in this Agreement to a specifically named Party is deemed to apply to any successor, heir, administrator, executor or assignee of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 10.11 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 10.12 Discretion Retained by City. The City's execution of this Agreement does not constitute approval by the City and in no way limits the discretion or any governmental rights or powers of the City in the permit and approval process in connection with construction of the Development.

Section 10.13 Time of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

Section 10.14 Representation and Warranties of Developer. The Developer hereby represents and warrants to the City and Authority as follows:

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

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement and to perform and observe the terms and provisions of all of the above.

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

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

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, under this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, City Council, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party.

Section 10.15 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties. All prior discussions, understandings and written agreements are superseded by this Agreement.

Section 10.16 Amendments. The Parties can amend this Agreement only by means of a writing executed by the Developer, the Authority and the City.

Section 10.17 Approvals. Whenever this Agreement permits City approval, consent, or waiver, to be authorized by the City Manager, the City Manager's signature shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council unless required by law or the terms of this Agreement. Whenever this Agreement permits Authority approval, consent, or waiver, to be authorized by the Authority's Executive Director, the Authority's Executive Director signature shall constitute the approval, consent, or waiver of the Authority, without further authorization required from the Authority's governing board unless required by law or the terms of this Agreement.

Section 10.18 Counterparts; Multiple Originals. This Agreement may be executed in counterparts, each of which is deemed to be an original.

The City, the Authority and the Developer are signing this Agreement as of the Effective Date.

CITY:

CITY OF PALM DESERT,
a municipal corporation

By: _____
L. Todd Hileman
City Manager

APPROVED AS TO FORM:

Richard, Watson & Gerson

By: _____
Special Counsel

DEVELOPER:

PALM COMMUNITIES,
a California corporation

By: _____
Danavon L. Horn
President

AUTHORITY:

PALM DESERT HOUSING AUTHORITY

By: _____
L. Todd Hileman
Executive Director

APPROVED AS TO FORM:

Richard, Watson & Gerson

By: _____
Special Counsel