

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260
Attention: Housing Division

WITH A COPY TO:

PD Millenium Partners LP
100 Pacifica, Suite 203
Irvine, CA 92618
Attention: President

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

PHASE I AND PHASE II ACCESS EASEMENT

This PHASE II ACCESS EASEMENT II ACCESS EASEMENT (this "Agreement") is made as of _____ 2025, by and between, PD MILLENIUM PARTNERS LP, a California limited partnership, (the "Partnership"), and the CITY OF PALM DESERT, a municipal corporation (the "City"), individually a "Party" and collectively referred to herein as the "Parties".

RECITALS

A. The Partnership owns an approximately 6.02-acre parcel of real property located on the north side of Gerald Ford Drive between Portola Road and Cook Street in Palm Desert, California, as more particularly described in Exhibit A attached hereto ("Phase I Parcel"), on which the Partnership intends to construct and own one hundred twenty (120) units of affordable rental housing commonly known as Palm Villas I ("Phase I Project").

B. The City owns an approximately 4.47-acre parcel of real property located on the north side of Gerald Ford Drive between Portola Road and Cook Street in Palm Desert, California, as more particularly described in Exhibit B attached hereto (the "Phase II Parcel"). The Phase II Parcel is adjacent to the Phase I Parcel and is intended to be Phase II of the Palm Villa development with one hundred nineteen (119) units of affordable rental housing (the "Phase II Project").

C. The Partnership intends to construct a private street for ingress and egress through the Phase I Project (the "Phase I Street") and include a community building, picnic facilities, swimming pool, tot lot and retention basins as part of the Phase I Project (collectively the "Common Area Facilities").

D. Through this Agreement, the Partnership and the City desire to grant each other certain nonexclusive easements over Phase I and Phase II and to allocate certain rights and responsibilities in connection with the maintenance and repair of such easements.

E. The Partnership desires to construct a private street across the Phase II Parcel to gain access through the adjacent City-owned parcel, commonly known as “Parcel 9”, to access Dinah Shore Drive (the “Phase II Street Improvements”), which Phase II Street Improvements will be an extension of the Phase I Street Improvements.

F. In connection with the Phase I Project, the Partnership desires to secure a non-exclusive, appurtenant easement (subject to the terms and conditions of this Agreement) to allow for: (i) access, ingress and egress by and for the Partnership and its tenants, subtenants, licensees, invitee, customers, contractors, employees, and agents including both pedestrian and vehicular access from the Phase I Parcel across the Phase II Parcel to the adjoining City-owned parcel known as Parcel 9; (ii) construction of the Private Street Improvements; and (iii) maintenance, repair, and replacement of the Private Street Improvements in connection with such access.

G. In connection with the Phase II Project, the City, on behalf of the eventual owner of the Phase II Project desires to secure a non-exclusive, appurtenant easement (subject to the terms and conditions of this Agreement), to allow for: (i) access, ingress and egress by and for the Phase II owner and its tenants, subtenants, licensees, invitees, customers, contractors, employees, and agents including both pedestrian and vehicular access from the Phase II Parcel across the Phase I Parcel.

H. In connection with the Phase II Project, the City, on behalf of the eventual owner of the Phase II Project desires to secure a non-exclusive, appurtenant easement (subject to the terms and conditions of this Agreement), to allow for access and use of the Common Area Facilities by the Phase II owner and its eligible tenants upon completion of construction of the Phase II Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

Section 1. Grant of Phase I Access Easement. The City hereby grants to the Partnership and its tenants, subtenants, licensees, invitees customers, contractors, employees, and agents, for the benefit of the Phase I Parcel the following easements: (i) a non-exclusive easement for pedestrian and vehicular access, ingress and egress by the Permitted Parties over and across the Phase II Parcel, as more particularly described in Exhibit C-1 attached hereto (the “Street Easement”); (ii) an exclusive temporary easement over the Street Easement in order to construct, alter, remodel, demolish, repair, restore and reconstruct the Private Street Improvement,; and (iii) a non-exclusive easement over, upon and across the Street Easement for the purpose of maintaining, operating and repairing the Private Street Improvements (collectively the “Phase I Access Easement”). The Partnership specifically acknowledges and agrees that the City is granting the Phase I Access Easement to the Partnership on an “as is with all faults” basis and subject to all title matters of record and all title matters visible upon inspection.

Section 2. Grant of Phase II Access Easement. The Partnership hereby grants to the City, on behalf of the eventual Phase II owner and its tenants, subtenants, licensees, invitees, customers, contractors, employees and agents, for the benefit of the Phase II Parcel, a non-exclusive easement for pedestrian and vehicular access, ingress and egress by the Permitted Parties

over and across the Phase I Parcel, as more particularly described in Exhibit C-2 attached hereto (the "Phase II Access Easement").

Section 3. Common Area Facility Access Easement. The Partnership hereby grants to the eventual owner of the Phase II Project a non-exclusive, appurtenant easement (subject to the terms and conditions of this Agreement), to allow for access and use of the Common Area Facilities by the Phase II owner and its eligible tenants upon completion of construction of the Phase II Project.

Section 4. Term.

All deeds, leases or other real property conveyance contracts entered into by the Grantee on or after the date of this Grant Deed as to any portion of the Property shall contain the following language:

(a) The term of the Phase I Access Easement shall commence as of the Effective Date and will be perpetual unless sooner terminated as a result of the demolition of the housing developments on the Phase I Parcel, which is not replaced by another residential development.

(b) Subject to Section 9 below, the term of the Phase II Access Easement shall commence as of the close of escrow for the sale of the Phase II Parcel by the City to the prospective Phase II owner and will be perpetual unless sooner terminated as a result of the demolition of the housing developments on the Phase II Parcel, which is not replaced by another residential development.

(c) Subject to Section 9 below, the term of the Common Area Facilities Easement shall commence as issuance of a certificate of occupancy (or temporary certificate of occupancy) for the Phase II Project and will continue through the life of the Common Area Facilities on the Phase I Project.

Section 5. Nature of Easements. The Easements granted in this Agreement are appurtenant to and for the benefit of the Phase I Parcel and the Phase II Parcel. The Easements may not be transferred, assigned, or encumbered except as an appurtenance to the Phase I Parcel or the Phase II Parcel, respectively.

Section 6. Covenants Running with the Land. The City and the Partnership expressly intend that the covenants contained in this Agreement with respect to each easements described in this Agreement will be equitable servitudes and covenants running with and benefiting and burdening the Phase I Parcel and Phase II Parcel.

Section 7. Construction of the Street Improvements. The Partnership shall construct the Private Street Improvements in accordance with City-approved plans and specifications for the construction of the Private Street Improvements. The Partnership shall diligently prosecute such construction to completion at the Partnership's sole cost and expense. The Partnership agrees that the Private Street Improvements shall be constructed in a good and workmanlike manner and in accordance with all applicable laws, rules, ordinances and regulations.

Section 8. Maintenance and Repair of Access Easement. The Partnership shall provide for the appropriate upkeep and maintenance of the portion of the Street Easement, unless otherwise agreed upon by the Parties, to ensure that the Street Easement is maintained in good condition and repair and clean and free of rubbish, debris and other hazards to users. The Partnerships shall maintain the surface of the Street Easement so that the surface is level and evenly covered with the type of surfacing material originally installed or a substitute material that is equal in quality, appearance, and durability.

Section 9. Use and Maintenance Agreement. As a condition of the commencement of the Phase II Access Easement and the Common Area Facilities Easement, the Partnership and the Phase II Parcel owner shall negotiate in good faith a cost sharing agreement for the reasonable allocation of maintenance costs of the Phase I Access Easement, the Phase II Access Easement and the Common Area Facilities Easement. The Parties shall also include the costs for any other easements benefiting or burdening one or both Parties. In addition to the cost sharing, the Parties shall agree on reasonable rules and regulations governing the use of the Common Area Facilities by the tenants of the Phase I Project and the Phase I Project. The City acknowledges that the Phase I Project is using Low-Income Housing Tax Credits ("LIHTCs") as a funding mechanism and as a result the rules and regulations governing the use of the Common Area Facilities may contain restrictions imposed by the use of LIHTCs.

Section 10. Amendment of Agreement. The Parties anticipate that this Agreement may need to be amended prior to the recordation of the Parcel Map and/or the conveyance of the Phase II Parcel by the City to ensure that the Agreement clearly delineates mutual responsibilities and rights with respect to Common Area Facilities' maintenance, control and use in order to fully comply with the City's condition of approval for the Parcel Map.

Section 11. Insurance and Indemnification Requirements. The Partnership shall maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Easements.

(a) Required Coverage. The Partnership must maintain and keep in force, at the Partnership's sole cost and expense, the following insurance:

(1) Worker's 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.

(2) 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, Broadform Property Damage, Products and Completed Operations. Products and Completed Operations coverage must be obtained no later than completion of construction of the Development. The Partnership shall cause the Partnership's general contractor to maintain Commercial General Liability insurance 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, Broadform Property Damage, Products and Completed Operations.

(b) General Requirements.

(1) 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) Commercial General Liability insurance must be endorsed to name as additional insureds the City and its 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 the Partnership including materials, parts, or equipment furnished in connection with such work or operations. 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) The Partnership's insurance must be primary to any other insurance (including self-insurance) available to the City (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 shall be in excess of the Partnership'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 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 City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

Section 12. Indemnification.

(a) The Partnership hereby agrees to release, indemnify and defend the City, its councilmembers, its officers, its employees from and against any and all claims, liabilities, losses, damages, costs and expenses arising from or as the result of the death of, or any accident, injury, loss or damage to, any person or property that occurs within the Phase I Access Easement. Notwithstanding the foregoing, the City will not be entitled to such indemnification for any damage to the extent caused by its own negligence or by its willful misconduct.

(b) The City, in its capacity as the Phase II Parcel owner, hereby agrees to release, indemnify and defend the Partnership, its officers, its employees from and against any and all claims, liabilities, losses, damages, costs and expenses arising from or as the result of the death of, or any accident, injury, loss or damage to, any person or property that occurs within the Phase II Access Easement or as a result of the use of the Common Act Facilities Easement.

Notwithstanding the foregoing, the Partnership will not be entitled to such indemnification for any damage to the extent caused by its own negligence or by its willful misconduct. Upon the sale of the Phase II Parcel to a third party, the City shall be released from this indemnity obligation for

events occurring after the close of escrow for the Phase II Parcel and the new Phase II Parcel owner shall be bound by the obligation hereunder.

Section 13. Remedies. If there is a material breach of any provision of this Agreement, a non-breaching Party may serve written notice of the breach of the breaching Party. If the breach is not cured within thirty (30) days following receipt of the notice of breach (or such longer period as is reasonably necessary to remedy such breach, provided that the breaching Party shall continuously and diligently pursue such remedy at all times until such breach is cured), the non-breaching Party may take any and all action as permitted by law.

Section 14. Rights of Mortgagees and Investor.

(a) Right to Encumber. Each owner of the Phase I Parcel and Phase II Parcel shall have the right to encumber its interest by any Mortgage, provided such Mortgage is subject to and subordinate to this Agreement. Each owner of the Phase I Parcel and Phase II Parcel, upon written request by either the Partnership or the Phase II Parcel owner, shall obtain written recordable agreements from its lenders and other holders of such Mortgages, if any, whereby such lienors agree to subordinate their interests under such liens to the rights and interests of the Parties created by this Agreement. As used herein, the term "Mortgagee" shall mean any mortgagee, beneficiary under any deed of trust or governmental agency which is a grantor of funds. The term "Mortgagor" shall mean the mortgagor or trustor under a "Mortgage." The term "Mortgage" shall mean any mortgage or deed of trust, bonds, grant of taxable or tax-exempt funds from a governmental agency.

(b) Breach Won't Defeat Lien. The breach of any of the provisions of this Agreement shall not defeat or render invalid the lien of any Mortgage encumbering the parcel or any portion thereof which is/are made in good faith and for value, provided that all provisions of this Agreement shall be binding and effective against any Party whose acquired the parcel by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

(c) Notice to Mortgagee. Any default notices provided for in this Agreement shall also be provided to the holder of any Mortgage requesting a copy of such notices.

(d) Right to Cure. If any notice of default shall be given and the defaulting Party fails to cure or commence to cure such default within thirty (30) days of receipt of notice of such default, then in that event the Mortgagee under any Mortgage affecting the property of the defaulting Party shall be given an additional notice that the defaulting Party has failed to cure or commence to cure such default and such Mortgagee shall have an additional thirty (30) days to diligently commence curing within such time and diligently prosecute to completion within a reasonable time.

(e) No Obligation to Cure. Nothing contained in this Agreement shall require any Mortgagee to cure any default of a Party prior to its acquisition of title to a property pursuant to foreclosure, trustee's sale or deed in lieu of foreclosure. Upon acquisition of title to a Property pursuant to a foreclosure, trustee's sale or deed in lieu of foreclosure, such Mortgagee, the purchaser or grantee, as applicable, shall only be liable and responsible for defaults accruing after the date of such acquisition and neither any Mortgagee nor successor thereof shall be liable for any

damages, costs, liabilities or expenses, and such Party's property shall not be subject to any lien under this Agreement for any amounts due hereunder, based upon the actions, defaults or violations taken or suffered by any Party hereunder prior to the date of such foreclosure, trustee sale or deed in lieu of foreclosure.

Section 15. No Public Dedication. Nothing herein shall be deemed to be a gift or dedication of any portion of the Easements to the general public or for any public purposes whatsoever. It is the intention of the Parties that this Agreement is strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of any easement hereunder or any portion thereof is by permission and subject to the mutual agreement of the Parties. Notwithstanding anything to the contrary herein, the Parties may, by mutual agreement, periodically restrict ingress and egress to and from any or all of an easement in order to prevent any type of prescriptive easement from arising by reason of continued public use.

Section 16. Notices. Formal notices, demands and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, return receipt requested, or express delivery service with a delivery receipt, to the principal offices of the Party as follows:

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

Partnership: PD Millenium Partners LP
100 Pacifica, Suite 203
Irvine, CA 92618
Attn: President

Notices shall be deemed received as of the date delivered or delivery was refused as shown on the return receipt. The foregoing address may be changed by notice given as provided in this Agreement. Each Party shall promptly notify each of the other Party of any change in its address as last disclosed.

Section 17. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together constitute this Agreement.

Section 18. Effective Date. The Effective Date of this Agreement shall be the date that this Agreement has been fully executed and acknowledged by all Parties and recorded in the Official Records of Riverside County, California.

Section 19. Legal Action. If any legal action is brought to interpret or enforce the terms of this Agreement, the prevailing Party shall be entitled to recover against the Party not prevailing, all reasonable costs, including attorneys' fees, incurred in the action.

Section 20. Entire Agreement. This Agreement contains the entire agreement between the Owners relating to the rights granted and the obligation hereunder assumed. Any oral representations or modification concerning this Agreement shall be of no force and effect excepting a subsequent modification in writing signed by the Parties.

Section 21. Exhibits. Any and all Exhibits referred to in this Agreement are incorporated in this Agreement by this reference.

Section 22. Successors an Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their permitted successors and assigns.

Section 23. Amendments. This Agreement may be amended or modified only by a written instrument executed by the Parties.

Section 24 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

WHEREFORE, the Parties have executed this Agreement as of the date first written above.

CITY:

CITY OF PALM DESERT,
a municipal corporation

By: _____
Jan C. Harnik
Mayor

PARTNERSHIP:

PD MILLENNIUM PARTNERS LP,
a California limited partnership

By: PC Gerald Ford Developers LLC,
a California limited liability company,
Its administrative general partner

By: Palm Companies LLC,
a California limited liability company,
Its managing member

By: Danavon L. Horn, President

EXHIBIT A

LEGAL DESCRIPTION OF PHASE I

THE LAND IN THE CITY OF PALM DESERT, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

DRAFT

EXHIBIT B

LEGAL DESCRIPTION OF PHASE II

THE LAND IN THE CITY OF PALM DESERT, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

DRAFT

EXHIBIT C-1

DESCRIPTION OF PHASE I ACCESS EASEMENT

DRAFT

EXHIBIT C-2

DESCRIPTION OF PHASE II ACCESS EASEMENT

DRAFT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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

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

WITNESS my hand and official seal.

_____ Place Notary Seal Above

Signature of Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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

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

WITNESS my hand and official seal.

_____ Place Notary Seal Above

Signature of Notary Public