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Page 1 of 37

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County of Riverside

Peter Aldana

Assessor-County Clerk-Recorder

**RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:**

**City Clerk's Office
City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260-2578**

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**FOR THE BENEFIT OF THE
CITY OF PALM DESERT
- NO FEE -
6103 OF THE GOVT. CODE**

63-002
Millennium, The
(original)

(This Space for Recorder's Use Only)

NCS-718841

Development Agreement
Between
City of Palm Desert, California
and
Palm Desert University Gateway, LLC
a Nebraska Limited Liability Company

ORDINANCE NO. 1281

Approved: March 26, 2015

(Case No. DA/SP/EA 14-332 - The Millennium)

Dated: July 8, 2015

(Title of Document)

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PALM DESERT, CA

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First American Title Company
National Commercial Services

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**DEVELOPMENT AGREEMENT
CASE NO. DA/SP/EA 14-332**

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ORDINANCE NO. 1281

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, APPROVING THE MILLENNIUM PALM DESERT SPECIFIC PLAN, DEVELOPMENT AGREEMENT 14-332, AND ADOPTING A MITIGATED NEGATIVE DECLARATION FOR THE DEVELOPMENT OF A MULTI-USE PROJECT ON 152 ACRES LOCATED NORTH OF GERALD FORD DRIVE, EAST OF TECHNOLOGY DRIVE, WEST OF PORTOLA AVENUE, AND SOUTH OF UNION PACIFIC RAILROAD
CASE NO: SP/DA/EA 14-332**

WHEREAS, the Planning Commission of the City of Palm Desert, California, did on the 17th day of February, 2015, hold a duly noticed public hearing to consider the request by PD 80 T & S, LLC and Palm Desert University Gateway, LLC, for approval of the above noted and adopted Planning Commission Resolution 2645 recommending approval of The Millennium Palm Desert Specific Plan and supporting applications, to the City Council; and

WHEREAS, the City Council of the City of Palm Desert, California, did on the 12th day of March, 2015, hold a duly noticed public hearing to consider the request by PD 80 T & S, LLC and Palm Desert University Gateway, LLC, for approval of The Millennium Palm Desert Specific Plan, Development Agreement 14-332, and adopted a Mitigated Negative Declaration for the above noted project; and

WHEREAS, said applications have complied with the requirements of the "City of Palm Desert Procedure for Implementation of the California Environmental Quality Act," Resolution No. 2014-41, the Director of Community Development has determined that the project will not have a negative impact on the environment and that a mitigated negative declaration can be adopted; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all interested persons desiring to be heard, the City Council did find the following facts and reasons to exist to justify the approval of said request:

1. The Millennium Palm Desert Specific Plan, Development Agreement, General Plan Amendment, Change of Zone, Tentative Parcel Map 36792, and Tentative Tract Map 36793, as proposed, are consistent with the goals and policies of the Palm Desert General Plan including that the project will provide alternate means of transportation, development of a segment of the Mid-Valley Bike Path, provide additional affordable housing units, provide local employment centers in close proximity to residential land uses, increase the City's sales tax base, and provide recreational open space.
2. The Millennium Palm Desert Specific Plan complies with provisions of the University Park Planning Area in that the plan provides a balance of land use intensities and open space, provides for efficient multi-modal interconnectivity, and complies with the "High-Density Overlay" provisions for the area.

ORDINANCE NO. 1281

3. The Millennium Palm Desert Specific Plan will provide land use compatibility within the boundaries of the planning area and with adjacent properties as the proposed uses and development standards are similar to existing uses to the south, west and east.
4. The Millennium Palm Desert Specific Plan is suitable and appropriate for the property in that the property has been designated for commercial, industrial, residential and open space uses and that development will comply with applicable City standards and standards approved as part of the Specific Plan.
5. That the proposed Tentative Parcel Map and Tentative Tract Map are not detrimental to the public health, safety or general welfare, or be materially injurious to the surrounding properties or improvements in the City of Palm Desert.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, AS FOLLOWS:

1. That the above recitations are true and correct and constitute the findings of the City Council in this case.
2. That the City Council does hereby approve the Millennium Palm Desert Specific Plan and Development Agreement, and adopt the Mitigated Negative Declaration, as proposed.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Palm Desert, California, at its regular meeting held on the 26th day of March, 2015, by the following vote, to wit:

AYES: HARNIK, JONATHAN, TANNER, and WEBER

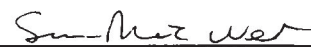
NOES: NONE

ABSENT: SPIEGEL

ABSTAIN: NONE

ATTEST:


RACHELLE D. KLASSEN, CITY CLERK
CITY OF PALM DESERT, CALIFORNIA


Susan Marie Weber, Mayor
EACH DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED. IS CERTIFIED TO BE A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND ON RECORD IN MY OFFICE.

Dated: July 8, 2015

RACHELLE D. KLASSEN, City Clerk
City of Palm Desert, California

By: 

DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF PALM DESERT, CALIFORNIA

And

Palm Desert University Gateway, LLC,
a Nebraska Limited Liability Company

Dated: July 8, 2015

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**DEVELOPMENT AGREEMENT
CASE NO. DA/SP/EA 14-332**

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RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

FOR RECORDER'S USE ONLY

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

Record for the Benefit of
the City of Palm Desert
Pursuant to Government Code Section 6103

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into as of this 8th day of July, 2015, by and between the City of Palm Desert, California, a municipal corporation organized and existing under the laws of the State of California (the "**City**"), and Palm Desert University Gateway, LLC, a Nebraska Limited Liability Company ("**PD Gateway** or "**Owner**"), pursuant to the authority of Sections 65864 – 65869.5 of the California Government Code and the applicable provisions of the municipal code of the City of Palm Desert. The City and the Owner are hereinafter, from time to time, individually referred to in this Agreement as a "**Party**" and collectively referred to as the "**Parties**."

RECITALS

- A. These Recitals refer to and utilize certain capitalized terms which are defined in this Agreement. The Parties intend to refer to those definitions in conjunction with the use thereof in these Recitals.
- B. California Government Code Sections 65864 through 65869.5, inclusive (the "**Development Agreement Legislation**"), authorize the City to enter into development agreements in connection with the development of real property within its jurisdiction. On August 22, 2013, the City enacted by Ordinance No. 1259, amending Municipal Code Section 25, and including Sections 25.78.060 (the "**Development Agreement Ordinance**"), which establishes procedures and requirements for the consideration of development agreements pursuant to the Development Agreement Legislation.
- C. City is currently the owner of two parcels of land, identified as Assessor's Parcel Nos. 694-120-012 and 694-120-013, collectively "**Current City Property**", which parcels are generally located north and south of Technology Drive, on the east side of Portola Avenue.
- D. Owner, is currently the owner of multiple parcels of land located within the City, identified as Assessor's Parcel Nos. 694-120-017-8, 694-190-064-7, 694-120-019-0, 694-190-076-8, 694-120-015-6, 694-120-016-7 and 694-190-059-3, collectively "**Current Owner Property**," which parcels are generally located on the north side of Gerald Ford Drive, between Portola Avenue and Technology Drive. Owner is entitled to have filed the

application for and to enter into this Agreement. The Project consists of the future development of the City Property and the Owner Property ("**Project Property**").

- E. Concurrent with entering into this Agreement, City and Owner will enter into an Agreement For Exchange of Real Property ("**Land Swap Agreement**"), by which City and Owner will exchange portions of Current City Property for portions of Current Owner Property ("**Exchange**"). Upon completion of the Exchange, City will own parcels 8, 9 and A-E as described on Tentative Parcel Map 36792 ("**City Property**"), a copy of which is attached hereto as Exhibit "C", and Owner will own parcels 1 through 7 on Tentative Parcel Map 36792 ("**Owner Property**").
- F. The City Property and Owner Property are located at an important entry point to the City and the coordinated development of the Project pursuant to this Agreement represents an important and mutually beneficial economic development and land usage planning opportunity for the City and Owner. Owner desires to move forward with the Project in accordance with the Project Approvals.
- G. The City has determined that the development of the Project as contemplated by this Agreement is consistent with and in furtherance of the development goals, policies, general land uses and development programs of the City as set forth in the City's General Plan and is consistent with the Planned Residential and Planned Commercial Zones adopted on March 26, 2015 by Ordinance No. 1281, affecting both the Owner Property and the City Property.
- H. City has further determined that entry into this Agreement will further the goals and objectives of the City's land use planning policies by, among other things, encouraging investment, providing precise and supplemental criteria for the uses, design, circulation and development of the City Property and Owner Property, including flexibility in land use options which may be altered in order to respond to future changes in the surrounding areas, eliminating uncertainty in planning for, and securing orderly processing and development of, the Project. The benefits conferred on the City by Owner herein will
 - (i) insure consistent, comprehensive planning which will result in aesthetically pleasing, environmentally harmonious, and economically viable development within the City;
 - (ii) provide for the creation of a high-quality, aesthetically pleasing entry statement for the City;
 - (iii) provide affordable housing opportunities within the project boundaries;
 - (iv) provide certain road and infrastructure improvements within the project boundaries;
 - (v) create a vibrant mixed use project that enhances the community; and
 - (vi) further the development objectives of the City in an orderly manner, all of which will significantly promote the health, safety and welfare of the residents of the City.

In exchange for these benefits to the City, Owner desires to receive the assurance that it may proceed with the Project in accordance with the Project Approvals and at a rate of development of its choosing, subject to the terms and conditions contained in this Agreement.

- I. By adopting this Agreement, the City Council has elected to exercise certain governmental powers at the present time rather than deferring such actions until an undetermined future

date and has done so intending to bind the City and the City Council and intending to limit the City's future exercise of certain governmental powers, to the extent permitted by law.

- J. This Agreement has undergone extensive review by the City's staff, the Planning Commission and the City Council.
- K. To ensure that the intentions of the City and Owner with respect to the Project Approvals are carried out, the Parties desire voluntarily to enter into this Agreement to facilitate development of the Project, subject to the conditions and requirements included in this Agreement.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Legislation, and in consideration of the mutual covenants and promises of the Parties herein contained, the Parties agree as follows:

AGREEMENT

1. Definitions.

- 1.1. Defined Terms. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.
- 1.2. Affordable Housing Cost. The term "**Affordable Housing Cost**" means a housing cost which does not exceed 30 percent of the Gross Income of the household, and the term "housing cost" shall have the meaning ascribed to such term in Title 25 of the California Code of Regulations Section 6920, as such regulations may be amended from time to time, and the term "**Gross Income**" shall have the meaning ascribed to such term in Title 25 of the California Code of Regulations Section 6914, as such regulations may be amended from time to time.
- 1.3. Agreement. This Development Agreement.
- 1.4. Building Ordinances. Those building standards, of general and uniform application throughout the City and not imposed solely with respect to the Owner's Property, in effect from time to time that govern building and construction standards within the City, including, without limitation, the City's building, plumbing, electrical, mechanical, grading, sign, and fire codes.
- 1.5. City Council. The legislative body of the City of Palm Desert.
- 1.6. City Property. Parcels 8, 9 and A-E as described on the final recorded form of Tentative Parcel Map 36792, as further described on Exhibit "A" attached to this Agreement.

- 1.7. Current City Property. The real property and any improvements thereon as described above.
- 1.8. Current Owner Property. The real property and any improvements thereon as described above.
- 1.9. Effective Date. The Effective Date of this Agreement shall be the date on which the Enacting Ordinance became effective, which shall be thirty (30) days from the date of the second reading of the Enacting Ordinance by the City Council.
- 1.10. Enacting Ordinance. Ordinance 1281, enacted by the City Council on March 26, 2015, approving this Agreement.
- 1.11. Existing Land Use Ordinances. The Land Use Ordinances in effect as of the Effective Date.
- 1.12. Land Use Ordinances. The ordinances, resolutions, codes, rules, regulations and official policies of the City, governing the development of the Project, including but not limited to, the permitted uses of land, the density and intensity of use of land, and the timing of development, all as applicable to the development of the City Property and Owner Property. Specifically, but without limiting the generality of the foregoing, Land Use Ordinances shall include City's General Plan, the City's zoning ordinance and the City's subdivision code, but shall exclude the Building Ordinances.
- 1.13. Mortgage. A mortgage, deed of trust, sale and leaseback arrangement in which all or a part of the Owner's Property, or an interest in it, is sold and leased back concurrently, or other transactions in which all or a part of the Owner's Property, or an interest in it, is pledged as security, contracted in good faith and for fair value.
- 1.14. Owner Property. Parcels 1 through 7 of the final recorded form of Tentative Parcel Map 36792 as further described on Exhibit "B" attached to this Agreement.
- 1.15. Person or Family of Very Low, Low, or Moderate Income, or Very-Low Income Household, a Low Income Household, or a Moderate-Income Household. Means a person, family or household meeting the income qualifications limits set forth in California Health and Safety Code Sections 50093, 50105, 50052.5, and 50053, and Title 25 of the California Code of Regulations Section 6910, et seq., as the case or context may require, as such statutes and regulations may be amended from time to time, and any successor statutes thereto.

1.16. Project. The development of residential, commercial, industrial and public buildings and facilities and associated amenities, and on-site and off-site improvements, as permitted under and described in the Project Approvals to be constructed on the City Property and Owner Property, as the same may hereafter be further refined, enhanced or modified pursuant to the provisions of this Agreement.

1.17. Project Approvals. Owner has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described below. “**Project Approvals**” shall mean all of the approvals, plans and agreements described in this section 1.14:

1.17.1 Mitigated Negative Declaration MND 14-332 approved on March 26, 2015.

1.17.2 Tentative Track Map 36793 approved on March 26, 2015.

1.17.3 Development Agreement DA 14-332 approved on March 26, 2015, by Ordinance No. 1281.

1.17.4 General Plan Amendment GPA 14-332 , approved on March 26, 2015.

1.17.5 Change of Zone CZ 14-332, approved on March 26, 2015

1.17.6 Tentative Parcel Map No.36792, approved on March 26, 2015.

1.17.7 Specific Plan No. SP 14-332 approved on March 26, 2015.

1.17.8 Subsequent Approvals. In order to develop the Project as contemplated in this Agreement, the Project may require land use approvals, entitlements, development permits, and use and/or construction approvals other than those listed in Sections 1.17.1 through 1.17.7, above, which may include, without limitation: development plans, amendments to applicable redevelopment plans, conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, site plans, certificates of occupancy, parcel maps, lot splits, landscaping plans, master sign programs, transportation demand management programs, encroachment permits, and amendments thereto and to the Project Approvals (collectively, “**Subsequent Approvals**”). At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be treated as a Project Approval under this Development Agreement.

1.18. Stipulated Judgment. Stipulated Judgment is the Judgment pursuant to the stipulation filed with the Superior Court on May 15, 1994, and as subsequently amended, by and between the City of Palm Desert and all persons interested in the matter of the Redevelopment Plan for the Palm Desert Redevelopment Project Area No. 2 et. al.

2. Term; Amendment.

2.1 Term.

The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on the twenty (20) year anniversary date of the Effective Date, unless sooner terminated or extended as hereinafter provided. This Agreement may be extended by mutual consent of the Parties.

2.2 Extension of Term Due to Litigation.

In the event that litigation is filed by a third party (defined to exclude City and Owner and any assignee or Transferee of Owner) which seeks to invalidate this Agreement or any of the Project Approvals, the Term shall be extended for a period equal to the length of time from the time a summons and complaint and/or petition are served on the defendant(s)/respondent(s) until the resolution of the matter is final and not subject to appeal.

2.3 Amendment.

The Parties to this Agreement at their sole discretion and by their mutual written consent may from time to time amend the provisions and terms of this Agreement and the Exhibits hereto. Any amendment to this Agreement or the Exhibits hereto as provided herein shall be effected only upon compliance with the procedures for amendment, if any, required by the Development Agreement Legislation and the Development Agreement Ordinance. The City shall, after any such amendment takes effect, cause an appropriate notice of such amendment to be recorded in the official records of the County of Riverside.

3. General Development of the Project.

3.1 Land Swap Agreement.

The City and Owner shall enter into a Land Swap Agreement concurrently with this Agreement resulting in the conveyance of the City Property totaling 36.4± acres, for 37± acres of the Owner Property identified as Parcel 8 and Parcel 9 of the recorded version of Tentative Parcel Map 36792.

Pursuant to the Land Swap Agreement, the City shall, prior to the completion of the Exchange and at its expense, cause up to 3.5 acres of a portion of City Property, Assessor's Parcel No.

694-120-012, to be dedicated to the City for public right of way (Parcel E of Tentative Parcel Map 36792). The right of way is necessary for the construction of the Portola Avenue interchange at Interstate 10. The construction of the interchange, and any construction on the 3.5 acres of right of way, shall be the City's responsibility. The Owner shall not be required to contribute to the construction of any part of the interchange, however, this shall not be deemed a waiver or relief from payment of standard City-imposed development fees which may, in whole or in part, contribute to the construction of the interchange, which fees may include, but not be limited to TUMF fees and traffic mitigation fees.

The Parties acknowledge that after the Exchange, a stockpile of dirt ("**Dirt**") will be located on Parcel E and Parcel 3. The City agrees that it shall dust seal the Dirt prior to the Exchange and that the Dirt located on Parcel 3 may be used by either the City or the Owner on a first come, first serve basis. The Parties agree that no Dirt may be exported from the Project Property without the prior written approval of both the City and Owner, except the City may export the Dirt for use on any portion of the future Portola Interstate 10 Interchange . After the Exchange, each Party shall be responsible for maintaining the seal on the portion of the Dirt on their Property.

3.2 Project.

(a) The Project is defined and described in the Project Approvals, which specifies for the purpose of this Agreement all of the following aspects of the Project:

- (i) proposed land uses of all of the Property, including 9 separate planning areas ("**Planning Areas**") with unique development characteristics;
- (ii) the maximum (and probable) density and intensity of development of the Property and/or Planning Areas;
- (iii) certain requirements relating to access and traffic circulation within the Owner Property and City Property and/or Planning Areas;
- (iv) certain design guidelines relating to the construction of on-site and off-site improvements;
- (v) procedures for development within the Planning Areas.

(b) Upon closing of the Land Swap Agreement, Owner shall have the vested right to develop Planning Areas 1 through 7, inclusive, of the Project in accordance with, and development of the Project during the Term shall be governed by, the Project Approvals and, to the extent not inconsistent with or modified by the Project Approvals, the Existing Land Use Ordinances. Except as provided in Section 4, Owner's right to develop Owner Property in accordance with this Section 3 shall be without regard to future ordinances, resolutions, rules, regulations and policies of the City or referenda of the voters of the City, including, without limitation, those with respect to moratoriums for utility service, other than ordinances, resolutions, rules, regulations and policies of the City which limit or condition the rate, timing or sequencing of development of the Property and which are required solely as a result of then existing shortages of utility service capacity or facilities.

(c) City shall have the right, but not the obligation, to develop Planning Area 8 and 9 as affordable housing and a regional park site, subject to any reconfiguration of the parcels and changes in densities as deemed necessary by the City, and generally as described in the Project Approvals. The City shall, however, provide a landscaping buffer of at least 75 feet in width on the east side of Dinah Shore Drive, from Gerald Ford Drive to the roundabout

(d) The Parties agree that the storm water drainage for all the Planning Areas must be coordinated. Upon closing of the Land Swap Agreement, the Owner and the City shall be responsible for the costs associated with the construction of drainage facilities on their properties, except as provided herein. The Parties further agree that a centralized storm water drainage system which utilizes the existing drainage ditch identified as Assessor's Parcel No. 694-120-017, and extends that drainage ditch along the northern property line of Assessor's Parcel No. 694-120-012 is the preferred alternative for centralized storm water drainage. The Owner has prepared, and the City has reviewed and approved, a comprehensive hydrology study dated March 3, 2015 for all the properties involved in this Agreement. The City shall allow drainage across or under Planning Areas 8 and/or 9, consistent with the approved hydrology plan and as indicated in the Tentative Parcel Map 36792, to implement the storm water drainage plan. The Owner shall cause to be constructed, at its expense, any facilities required to convey storm water from its property to the aforementioned drainage ditch or retention basins on City's property. The costs associated with improvements within the drainage ditch and the retention basins on Planning Area 9 shall also be borne by Owner. The Owner shall be responsible for construction and costs associated with the drainage of Planning Areas 1 through 7, including any and all facilities in the ditch and across Planning Area 9. The City shall be responsible for final drainage construction for Planning Areas 8 and 9, except for retention basins on Planning Area 9. Concurrent with the recording of the final version of Tentative Parcel Map 36792, Owner shall record Conditions Covenants and Restrictions, in a form approved by City, requiring Owner, its successors and assigns to maintain the its drainage facilities across City's property and in the ditch, and reimburse the City for maintenance of the retention basins on Planning Area 9. After completion of City's development of Planning Area 9, Owner shall reimburse City for 100% of maintenance of westerly retention basin but only for its fair share of on-going maintenance of the easterly retention basin on Planning Area 9.

(e) The Parties acknowledge that the City plans to construct a regional park on Planning Area 9. The City will consult with Owner in the development of the park master plan, and consider the Owner's comments in its design of park improvements.

The Parties further acknowledge that soccer, baseball or other sports fields may be part of the park plan. The City agrees that the placement of night-lighting for said sports fields could be detrimental to the enjoyment of private property used for residential purposes within the Specific Plan. The City therefore agrees that all lighting plans for Planning Area 9 shall be submitted to the Owner for review and that the City shall use reasonable efforts to minimize adverse impacts associated with lighting of the sports fields, consistent with providing appropriate lighting. All lighting plans shall be subject to the City's Outdoor Lighting Requirements. The City further agrees that it will maintain the Planning Area as native desert until the City is prepared to develop the park site.

Should the Coachella Valley Water District request that well site(s) be provided within the Project boundaries, the City at its sole expense shall provide no more than one (1) well site within Planning Area 9.

The Parties acknowledge that any and all fees paid by the Owner toward its Quimby Fees as set forth in California Government Code Section 66477 *et seq.*, may be applied to the purchase and/or construction of Planning Area 9 park facilities.

(f) The Parties acknowledge that street improvements relating to the extension of Technology Drive and Dinah Shore Drive (extended) will be necessary to implement the Project. Improvement of streets within the Project is expected to occur concurrent with development of adjacent parcels. The Parties agree that half-street improvements will be the responsibility of the Party whose property abuts said street. All street improvements shall be completed to the satisfaction of the Public Works Director. The Parties further agree that should the Owner complete these improvements to provide access to any portion of the Project in advance of the development of any portion of Planning Areas 8 or 9 by the City, the City shall reimburse the Owner for the City's fair share of the approved soft and hard cost of the improvements. Reimbursement shall be made to the Owner within 60 days of submittal of an invoice to the City. Should the City improve roadways within the Project to serve Planning Areas 8 and/or 9, the Owner shall reimburse the City, within 60 days of submittal of an invoice, the Owner's fair share of these improvements when the road improvement work is complete. Failure of either Party to timely pay the approved soft and hard cost of the improvements contemplated by this Section 3.1 (f) shall be an Event of Default under Section 7. The City agrees that Owner shall have no obligation to bond for any City Property to be improved by Owner.

(g) The Parties acknowledge that as of the Effective Date, the Housing Element of the Palm Desert General Plan identifies the need for affordable housing units on the Owner Property. These units are included in the Housing Element as a result of the City's previous Regional Housing Need Assessment and the provisions of the Stipulated Judgment. The Owner agrees to develop, at its sole discretion and expense, affordable rental housing in Planning Area 7. The Owner further agrees to construct 6.66% (approximately 22 units) of the total number of units in this Planning Area to be affordable to very low income households, 6.67% affordable to low income households (approximately 22 units), and 6.67% (approximately 22 units) of these units to be affordable to moderate income households. Such units shall be available at an Affordable Housing Cost relative to the income category. Owner agrees to enter into a housing agreement with City further defining the affordable component. Such agreement shall be entered into prior to the approval of a precise plan application for Planning Area 7. No affordable housing shall be required to be built within Planning Area 1. Should the Stipulated Judgment be reversed, terminated or otherwise eliminated as a City obligation, the City and Owner will negotiate in good faith regarding an affordable housing requirement for Owner's Property, consistent with any city-wide affordable housing requirement. Any requirement imposed on Planning Area 1 shall be in lieu fees only; no affordable housing shall be required to be built on Planning Area 1.

(h) The Parties acknowledge the City has adopted the Coachella Valley Association of Governments (CVAG) Non-Motorized Transportation Plan which includes plans

for a multi-use path to be constructed along the City's northern boundary. The path is referred to as the Mid-Valley Bike Path ("MVBP") which abuts and is within the Project boundaries of the Specific Plan. The Owner, at its sole discretion, shall either pay reasonable in lieu fee (\$772,504) for the construction of the MVBP along the full northern boundary of the Project from Technology Drive to Portola Avenue or construct the MVBP to City standards, which standards shall be consistent with the construction quality of the MVBP in its entirety, prior to the issuance of the eightieth (80) building permit for Planning Area 1, assuming that the MVBP has been fully designed and approved by the City. In the event the City has not fully designed and approved the MVBP at the time of the issuance of the one-hundredth (100) building permit, the Parties shall renegotiate the timing on the construction or payment of the in lieu fee. The Owner shall not be responsible for the construction of any other facilities or fees associated with the MVBP. If Owner elects to pay the in-lieu fee, City shall reimburse to Owner the amount, if any, that the in-lieu fee exceeds the cost of construction, when completed by the City.

(i) Owner shall install a traffic signal at Portola Avenue and Dinah Shore Drive prior to any access being granted to the extension of Dinah Shore Drive. The cost of the installation of the traffic signal shall be shared equally between the City and Owner. Owner shall not be required to pay any signal fees for the Project.

3.3 Project Timing; Construction Entitlement.

The Parties acknowledge that neither the City nor the Owner can at this time predict when or the rate at which or the order in which parts of the Project will be developed. Such decisions depend upon numerous factors which are not within the control of City or Owner, such as market orientation and demand, interest rates, competition and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that, unless otherwise provided for in this Agreement, Owner shall have the vested right to develop the Project in such order and at such rate and at such times as Owner deems appropriate in the exercise of its business judgment, provided that Owner is in compliance with the Project Approvals.

Therefore, the Parties hereto acknowledge and expressly agree that Owner is hereby granted by the City the vested and guaranteed right to develop the Project pursuant to the Project Approvals and at such rate and at such times as Owner deems appropriate within the exercise of its sole subjective business judgment. Furthermore, Owner acknowledges and expressly agrees that the City has the option to develop Planning Areas 8 and 9 at such rate and at such times as City deems appropriate within the exercise of its sole subjective judgment.

City expressly agrees that Owner shall be entitled to apply for precise plans, subdivision maps, building permits, occupancy certificates and other land use and development entitlements for its use at any time provided that such application is made in accordance with the Project Approvals and this Agreement.

Notwithstanding any provisions to the contrary in this Agreement or the Existing Land Use Ordinances, Owner shall have the right, but not the obligation, to obtain from the

City, all necessary approvals, consents, permits, or other entitlements for the construction of the maximum number of square feet of gross floor area or maximum number of dwelling units of any permitted use under the Specific Plan specified with respect to any designated Planning Area set forth in the Specific Plan.

3.4 Building Permits and Other Approvals and Permits.

Subject to (a) Owner's compliance with this Agreement, the Project Approvals , the Existing Land Use Ordinances and the Building Ordinances, and (b) payment of the usual and customary fees and charges of general application charged for the processing of such applications, permits and certificates and for any utility connection, or similar fees and charges of general application, the City shall process and issue to Owner promptly upon application therefor all necessary use permits, building permits, occupancy certificates, and other required permits for the construction, use and occupancy of the Project, or any portion thereof, as applied for, including connection to all utility systems under the City's jurisdiction and control (to the extent that such connections are physically feasible and that such utility systems are capable of adequately servicing the Project).

3.5 Procedures and Standards.

The standards for granting or withholding permits or approvals required hereunder in connection with the development of the Project shall be governed as provided herein by the standards, terms and conditions of this Agreement and the Development Plan, and to the extent not inconsistent therewith, the Existing Land Use Ordinances, but the procedures for processing applications for such permits or approvals (including the usual and customary fees of general application charged for such processing) shall be governed by such ordinances and regulations as may then be applicable and which are consistent with the Project Approvals.

3.6 Effect of Agreement.

This Agreement shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full. The Parties acknowledge that this Agreement grants Owner the right to develop the Project pursuant to specified and known criteria and rules as set forth in the Project Approvals and the Existing Land Use Ordinances, and to grant the City and the residents of the City certain benefits which they otherwise would not receive.

This Agreement shall be binding upon the City and its successors in accordance with and subject to its terms and conditions notwithstanding any subsequent action of the City, whether taken by ordinance or resolution of the City Council, by referenda, initiative, or otherwise. The Parties acknowledge and agree that by entering into this Agreement and relying thereupon, the Owner has obtained, subject to the terms and conditions of this Agreement, a vested right to proceed with its development of the Project in accordance with the proposed uses of both the Owner Property as well as the City Property, the density and intensity of development of both the Owner Property as well as the City the Property and the requirements and guidelines for the construction or provision of on-site and off-site improvements as set forth in the Project Approvals and the Existing Land Use Ordinances, and the timing provisions of Section 3.3, and the City has entered into this in order to secure the public benefits conferred

upon it hereunder which are essential to alleviate current and potential problems in the City and to protect the public health, safety and welfare of the City and its residents, and this Agreement is an essential element in the achievement of those goals.

If any City law, including ordinances, resolutions, rules, regulations, standards, policies, conditions and specifications (collectively "City Laws") are enacted or imposed by a citizen-sponsored initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with this Agreement, such City Law shall not apply to the Project Property or Project. The Parties, however, acknowledge that the City's approval of this Agreement and the City Approvals are legislative actions subject to referendum.

Without limiting the generality of the foregoing, no moratorium or other limitation whether relating to the rate, timing, phasing or sequencing of development affecting subdivision maps, building permits, or other Subsequent Approvals shall apply to the Project Property or Project. Owner agrees and understands that the City does not have authority or jurisdiction over another public agency's authority to grant a moratorium or to impose any other limitation that may affect the Project Property or Project.

3.7 Operating Memoranda.

Owner and City acknowledge that the provisions of this Agreement require a close degree of cooperation between Owner and City, and that refinements and further development of the Project may demonstrate that changes or additional provisions are appropriate with respect to the details of performance of the Parties under this Agreement in order to effectuate the purpose of this Agreement and the intent of the Parties with respect thereto. If and when, from time to time, the Parties find that such changes or additional provisions are necessary or appropriate, and subject to the provisions of the next succeeding sentence, they shall effectuate such changes or provide for such additional provisions through operating memoranda to be approved in good faith by the Parties, which, after execution, shall guide implementation of this Agreement and may be further changed or supplemented from time to time as necessary, with further good faith approval of Owner and City. Upon receipt by the City of an opinion of the City Attorney to the effect that the subject matter of such operating memoranda does not require the amendment of this Agreement in the manner provided in Section 65868 of the California Government Code, then no such operating memoranda shall require prior notice or hearing, or constitute an amendment to this Agreement; and in the case of the City, such operating memoranda may be approved and executed by its City Manager without further action of the City Council. Failure of the Parties to enter into any such operating memoranda shall not affect or abrogate any of the rights, duties or obligations of the Parties hereunder or the provisions of this Agreement.

4. Specific Criteria Applicable to Development of the Project.

4.1 Applicable Ordinances.

Except as set forth in the Project Approvals and subject to the provisions of Section 4.2 below, the Existing Land Use Ordinances shall govern the development of the Property hereunder and the granting or withholding of all permits or approvals required to

develop the Property; provided, however, that (a) Owner shall be subject to all changes in new and existing development impact fees, processing, inspection and plan-check fees and charges imposed by City in connection with the processing of applications for development and construction upon the Property so long as such fees and charges are of general application and are not imposed solely with respect to the Project Property; (b) Owner shall abide by the Building Ordinances in effect at the time of such applications; and (c) Development Impact Fees to be paid by Owner during the first two (2) years of this Agreement shall be those in effect at the Effective Date of this Agreement.

4.2 Amendment to Applicable Ordinances.

Any change to the Existing Land Use Ordinances that conflicts with the Project Approvals shall nonetheless apply to the Project Property if, and only if (i) it is consented to in writing by Owner in Owner's sole and absolute discretion; (ii) it is determined by City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety; (iii) it is required by changes in State or Federal law; (iv) it consists of changes in, or new fees permitted by, Section 4.1; or (v) it is otherwise expressly permitted by this Agreement.

In the event that the City zoning ordinance is amended by the City in a manner which provides more favorable site development standards for the Project Property or any part thereof than those in effect as of the Effective Date, Owner shall have the right to notify the City in writing of its desire to be subject to all or any such new standards for the remaining term of this Agreement. If City agrees, by resolution of the City Council, such new standards shall become applicable to the Project Property or portions thereof. Should City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall continue to apply to the Project Property as provided above, but Owner may notify City in writing of its desire to be subject to all or any such amended new standards and City shall agree in the manner above provided to apply such amended new standards to the Project Property.

4.3 Easements; Abandonments.

City shall cooperate with Owner in connection with any arrangements for abandoning existing utility or other easements and the relocation thereof or creation of any new easements within the Project Property necessary or appropriate in connection with the development of the Project; and if any such easement is owned by City, City shall, at the request of Owner and in the manner and to the extent permitted by law, take such action and execute such documents as may be necessary to abandon existing easements and relocate them, as necessary or appropriate in connection with the development of the Project, all at the cost and expense of the Owner. In addition, to the extent that temporary or permanent easements on property adjacent or in close proximity to the Project Property will be required in order for Owner to develop all or portions of the Project, the City shall cooperate with Owner in efforts to obtain or secure any such required easements.

5. Periodic Review of Compliance.

In accordance with Govt. Code Section 65865.1, the Director of Community Development shall review this Agreement at least each calendar year during the term of this Agreement. At such periodic reviews, Owner and City must demonstrate their good faith compliance with the terms of this Agreement. Owner and City agree to furnish such evidence of good faith compliance.

6. Permitted Delays; Supersedure by Subsequent Laws.

6.1 Permitted Delays.

In addition to any other provisions of this Agreement with respect to delay, Owner and City shall be excused from performance of their obligations hereunder during any period of delay caused by acts of mother nature, civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, any referendum elections held on the Enacting Ordinance, or the Land Use Ordinances, or any other ordinance effecting the Project or the approvals, permits or other entitlements related thereto, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder (collectively, "Laws"), orders of courts of competent jurisdiction, or any other cause similar or dissimilar to the foregoing beyond the reasonable control of City or Owner, as applicable. Each Party shall promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained. The time of performance of such obligations shall be extended by the period of any delay hereunder.

6.2 Supersedure of Subsequent Laws or Judicial Action.

The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new Law or decision issued by a court of competent jurisdiction (a "Decision"), enacted or made after the Effective Date which prevents or precludes compliance with one or more provisions of this Agreement. Promptly after enactment of any such new Law, or issuance of such Decision, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. In addition, Owner and City shall have the right to challenge the new Law or the Decision preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Term shall be extended, in accordance with Section 2.1 above, for a period of time equal to the length of time the challenge was pursued, to extent such challenge delayed the implementation of the project.

7. Events of Default; Remedies; Termination.

7.1 Events of Default.

Subject to any extensions of time by mutual consent in writing, and subject to the provisions of this Agreement regarding permitted delays, the failure of either Party to perform any material term or provision of this Agreement shall constitute an event of default hereunder

("Event of Default") if such defaulting Party does not cure such failure within one hundred and twenty (120) days following receipt of written notice of default from the other Party; provided, however, that if the nature of the default is such that it cannot be cured within such one hundred and twenty (120) day period, the commencement of the cure within such one hundred and twenty (120) day period and the diligent prosecution to completion of the cure shall be deemed to be a cure within such period. Any notice of default given hereunder shall specify in detail the nature of the alleged Event of Default and the manner, if any, in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of termination of this Agreement, institution of legal proceedings with respect thereto, or issuance of any permit, map, certificate of occupancy, approval or entitlement with respect to the Project.

7.2 Remedies.

Upon the occurrence of an Event of Default, the non-defaulting Party shall have such rights and remedies against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement or seek mandamus, specific performance, injunctive or declaratory relief, but not the right to damages, except to enforce payment obligations provided for under the terms of this Agreement. Notwithstanding the foregoing and except as otherwise provided in Section 8.4 hereof, if either Owner or City elects to terminate this Agreement as a result of the occurrence of an Event of Default, such proceeding of termination shall constitute such Party's exclusive and sole remedy, and with respect to such election.

7.3 Waiver; Remedies Cumulative.

Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party shall not constitute waiver of such Party's right to demand strict compliance by such other Party in the future. All waivers must be in writing to be effective or binding upon the waiving Party, and no waiver shall be implied from any omission by a Party to take any action with respect to such Event of Default. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time specified in such express waiver.

7.4 Effect of Termination.

Termination of this Agreement by one Party due to the other Party's default, or as a result of the exercise of the right of termination provided to the Owner under Section 7.2 hereof, shall not affect any right or duty emanating from any approvals, permits, certificates or other entitlements with respect to the Project Property or the Project which were issued, approved or provided by the City prior to the date of termination of this Agreement. If City terminates this Agreement because of Owner's default, then City shall retain any and all benefits, including money, land or improvements conveyed to or received by the City prior to the date of termination of this Agreement, subject to any reimbursement obligations of the City. If Owner terminates this Agreement because of City's default, or as a result of the exercise of the right of termination provided to the Owner under Section 7.2 hereof, then Owner shall be entitled to all of the benefits arising out of, or approvals, permits, certificates or other entitlements on account of, any Exactions paid, given or dedicated to, or received by, City prior to the date of termination of this Agreement. Except as otherwise provided in this Section 7.4, all of the rights, duties and obligations of the Parties hereunder shall otherwise cease as of the date of the termination of this Agreement.

If this Agreement is terminated pursuant to any provision hereof, then the City shall, after such action takes effect, cause an appropriate notice of such action to be recorded in the official records of the County of Riverside. The cost of such recordation, shall be borne by the Party causing such action.

7.5 Third Party Actions.

Any court action or proceeding brought by any third party to challenge this Agreement or any permit or approval required from City or any other governmental entity for development or construction of all or any portion of the Project, whether or not Owner is a party defendant to or real party defendant in interest in such action or proceeding, shall constitute a permitted delay under Section 7.1.

8. Encumbrances on Property.

8.1 Discretion to Encumber.

The Parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Project Property or any portion thereof or any improvements thereon with any Mortgage or other security device securing financing with respect to the Project Property. The City acknowledges that the lenders providing such financing may require certain modifications to this Agreement, and the City agrees upon request, from time-to-time, to meet with Owner and/or representatives of such lenders to negotiate in good faith any such request for modification. City further agrees that it will not unreasonably withhold its consent to any such requested modification.

8.2 Mortgage Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Site or any portion thereof by a Mortgagee (whether pursuant to a Mortgage, foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall be subject to all of the terms and conditions of this Agreement.

8.3 Mortgagee Not Obligated.

Notwithstanding the provisions of Section 8.1, no Mortgagee will have any obligation or duty under this Agreement to perform the obligations of Owner or other affirmative covenants of Owner hereunder, or to guarantee such performance, except that to the extent that any covenant to be performed by Owner is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder.

8.4 Estoppel Certificates.

Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified, or if so amended or modified, identifying such amendments or modifications, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. City acknowledges that a certificate hereunder may be relied upon by transferees, assignees and lessees of the Owner and the holders of any Mortgage.

9. Transfers and Assignments; Effect of Agreement on Title.

9.1 Rights and Interests Appurtenant.

The rights and interests conveyed as provided herein to Owner benefit and are appurtenant to the Project Property. Owner has the right to sell, assign and transfer any and all of its rights and interests hereunder and to delegate and assign any and all of its duties and obligations hereunder. Such rights and interests hereunder may not be sold, transferred or assigned and such duties and obligations may not be delegated or assigned except in compliance with the following conditions:

(i) Said rights and interests may be sold, transferred or assigned only together with and as an incident of the sale, lease, transfer or assignment of the portions of the Project Property to which they relate, including any transfer or assignment pursuant to any foreclosure of a Mortgage or a deed in lieu of such foreclosure. Following any such sale, transfer or assignment of any of the rights and interests of Owner under this Agreement, the exercise, use and enjoyment thereof shall continue to be subject to the terms of this Agreement to the same extent as if the purchaser, transferee or assignee were Owner hereunder.

9.2 Covenants Run with Land.

(i) All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, lessees, and all other persons acquiring any rights or interests in the Project Property, or any portion thereof, whether by operation of laws or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

(ii) All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law;

(iii) Each covenant to do or refrain from doing some act on the Project Property hereunder (A) is for the benefit of and is a burden upon every portion of the Property, (B) runs with such lands, and (C) is binding upon each Party and each successive owner during its ownership of the Project Property or any portions thereof, and shall benefit each Party and its lands hereunder, and each such other person or entity succeeding to an interest in such lands.

10. Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, to the following addresses:

If to City:

City Clerk of the City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, California 92260

If to Owner:

Palm Desert University Gateway, LLC
30875 Date Palm Drive
Cathedral City, CA 92234
Attention: Mr. Ted Seldin

And to:

Lewis Brisbois Bisgaard & Smith LLP
78-075 Main Street, Suite 203
La Quinta, California 92253
Attention: Gregory R. Oleson Esq.

Either Party may change its mailing address at any time by giving written notice of such change to the other Party in the manner provided herein. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

11. Indemnification.

11.1 Owner's Obligation.

Owner will defend, indemnify and hold the City and its elected officials, officers, employees, agents and volunteers free and harmless from any loss, cost or liability (including, without limitation, liability arising from injury or damage to persons or property, including wrongful death and worker's compensation claims), which results from (i) any obligation of Owner which arises from the development of the Project Property, specifically excluding however Planning Areas 8 and 9, including, without limitation, obligations for the payment of money for material and labor; (ii) any failure on the part of Owner to take any action which it is required to take as provided in this Agreement; (iii) any action taken by Owner which it is prohibited from taking as provided in this Agreement and (iv) any claim which results from any willful or negligent act or omission of Owner. Anything contained herein notwithstanding, City shall be responsible for any loss, cost or liability (including, without limitation, liability arising from injury or damage to persons or property, including wrongful death and worker's compensation claims), which results from or is caused by City's own negligent acts or omissions or intentional conduct, and not caused to any extent by Owner's negligent acts or omissions or intentional conduct.

In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any provision of this Agreement, the procedures leading to its adoption, or the Project Approvals for the Project, Owner and City each shall have the right, in its sole discretion, to elect whether or not to defend such action. Owner shall defend, indemnify, and hold harmless the City (including its agents, officers and employees) from any such action, claim, or proceeding with counsel chosen by the City, subject to Owner's approval of counsel, which shall not be unreasonably denied, and at Owner's sole expense. If the City is aware of such an action or proceeding, it shall promptly notify Owner and cooperate in the defense. Owner upon such notification shall deposit with City sufficient funds in the judgment of City Finance Director to cover the expense of defending such action without any offset or claim against said deposit to assure that the City expends no City funds. If both Parties elect to defend, the Parties hereby agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law. As part of the cooperation in defending an action, City and Owner shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Owner and City shall each have sole discretion to terminate its defense at any time. The City shall not settle any third party litigation of Project Approvals without Owner's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

11.2 Environmental Assurances.

Both Parties agree to indemnify and hold the other Party and its elected officials, its officers, employees, agents and volunteers, as may be applicable, free and harmless from any liability deriving from the execution or performance of this Agreement, based or asserted upon any act or omission of either Party, its officers, agents, employees, contractors, subcontractors and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to hazardous or toxic materials, industrial hygiene, or environmental conditions created by the other Party or its officers, agents or employees, contractors, subcontractors and independent contractors after the Effective Date on or under the Project

Property, including, but not limited to soil and groundwater conditions, and each Party shall defend, at its expense, including attorneys fees, the other Party and its elected officials, employees, agents and volunteers, as applicable, in any action based or asserted upon any such alleged act or omission. Either Party may in its discretion participate in the defense of any such action. The provisions of this Section 11.2 shall survive the termination or expiration of this Agreement.

12. Miscellaneous.

12.1 Relationship of Parties.

The Parties specifically acknowledge that this Agreement is a contract that has been negotiated and knowingly and voluntarily entered into by the City and Owner and that the Owner is an independent contractor and not an agent or partner of the City. The Parties further acknowledge that neither Party is acting as the agent of the other in any respect hereunder and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement.

None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the business of Owner, the affairs of the City, or otherwise. City and Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making the City and Owner joint venturers or partners. The only relationship between the City and Owner is that of a governmental entity regulating development and the owner of the Project Property and developer of the Project.

12.2 Consents.

Unless otherwise herein provided, whenever approval, consent, acceptance or satisfaction (collectively, a "Consent") is required of a Party pursuant to this Agreement, it shall not be unreasonably withheld or delayed. Unless provision is otherwise specified in this Agreement or otherwise required by law for a specific time period, Consent shall be deemed given within thirty (30) days after receipt of the written request for Consent, and if a Party shall neither approve nor disapprove within such thirty (30) day period, or other time period as may be specified in this Agreement or otherwise required by law for Consent, that Party shall then be deemed to have given its consent. If a Party shall disapprove, the reasons therefor shall be stated in reasonable detail in writing. This Section does not apply to development approvals by the City.

12.3 Not a Public Dedication.

Except as otherwise expressly provided herein, nothing herein contained shall be deemed to be a gift or dedication of the Project Property, or of the Project or any portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the Project as private property.

12.4 Severability.

If any term, provision covenant or condition of this Agreement shall be determined invalid, void or unenforceable by judgment or court order, the remainder of this Agreement shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the relevant circumstances or would frustrate the purposes of this Agreement.

12.5 Exhibits.

Each reference to a Section or Exhibit in this Agreement shall mean the sections of this Agreement and the exhibits attached to this Agreement, unless the context requires otherwise. Each such exhibit is incorporated herein by this reference.

12.6 Entire Agreement.

This written Agreement and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement and the Exhibits hereto, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits hereto.

12.7 Governing Law; Construction of Agreement.

This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of California. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties hereunder. The captions preceding the text of each Section and subsection hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa.

12.8 Signature Pages.

The signatures of the Parties of this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

12.9 Time.

Time is of the essence of this Agreement and of each and every term and condition hereof.

12.10 Prevailing Party's Attorney's Fees and Costs.

If any Party to this Agreement shall fail to perform any of its obligations hereunder, or if a dispute arises with respect to the meaning or interpretation of any provision hereof or the performance of the obligations of any Party hereto, the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall promptly pay any and all costs and expenses (including without limitation, all court costs and reasonable attorneys' fees and expenses) incurred by the other Party with respect to such dispute or in enforcing or establishing its rights hereunder.

12.11 Incorporation of Recitals.

The Recitals and all defined terms set forth herein are hereby incorporated into this Agreement as if fully and completely rewritten.

12.12 Third Party Beneficiaries.

This Agreement is made and entered into for the sole protection and benefit of Owner and the City and their successors-in-interest, heirs and assigns. No other person or entity shall have any right of action based upon any provision in this Agreement.

12.13 Interpretation.

This Agreement is the product of mutual negotiations and participation by both the City and Owner. For purposes of construing the meaning or effect of this Agreement, or any portion hereof, it shall be presumed this Agreement was drafted by both Parties and not as if it had been prepared by one Party or the other. Each Party to this Agreement specifically acknowledges that it had sufficient opportunity to review the Agreement, confer with its separate legal counsel regarding the meaning of this Agreement and any provision contained herein, and negotiate revisions to this Agreement. Each Party relies solely upon its own judgment and the advice of its counsel in interpreting the provisions of this Agreement and is not relying on any representation, interpretation, presumed assent, or implied agreement of the other Party which is not expressly contained in this Agreement. Accordingly, neither Party shall use or rely upon California Civil Code Section 1654 in order to interpret any uncertainty in the meaning of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first above-written.

-signatures on following page-

OWNER:

Palm Desert University Gateway, LLC,
a Nebraska Limited Liability Company

by its Manager,

PD 80 Management, Inc.


By: Theodore M. Seldin, President

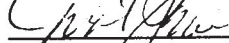
CITY:

CITY OF PALM DESERT, CALIFORNIA, a municipal corporation organized and existing
under the laws of the State of California

By: 
Susan Marie Weber, Mayor

Attest: 
Rachelle D. Klassen, City Clerk

Approved as to Form

By: 
David J. Erwin, of Best Best & Krieger LLP
City Attorney

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

State of ~~California~~ Nebraska)
County of ~~Riverside~~ Douglas)

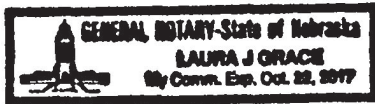
On June 30, 2015, before me, Laura J. Grace, a Notary Public, personally appeared Theodore M. Seldin, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

Laura Grace



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

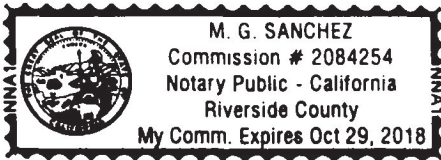
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)
On July 8, 2015 before me, M. G. Sanchez, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Susan Marie Weber
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Development Agreement (Ord 1281) Document Date: July 8, 2015
Number of Pages: _____ Signer(s) Other Than Named Above: Theodore M. Seldin

Capacity(ies) Claimed by Signer(s)

Signer's Name: Susan Marie Weber
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: Mayor
Signer Is Representing: City of Palm Desert

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Notary Seal

Under the provisions of Government Code 27361.7, I certify under the penalty of perjury that the Notary Seal on the document to which this statement is attached reads as follows:

Name of Notary: Laura J Grace

Commission # _____

Date Commission Expires: Oct 22 2017

County where Bond is filed: Nebraska

Vendor: _____

Place of Execution: San Bernardino

Date: 7/17/15

Signature: _____

A.Salters

EXHIBIT A
CITY PROPERTY

Parcels 1 through 7 of Parcel Map No. 36792, in the City of Palm Desert, County of Riverside, State of California, as shown by Map on file in Book 239, of Parcel Maps, pages 9 through 15, in the office of the County Recorder of said County.

EXHIBIT B
OWNER PROPERTY

Parcels 8 and 9 and A thorough E of Parcel Map No. 36792, in the City of Palm Desert, County of Riverside, Date of California, as shown by Map on file in Book 239, of Parcel Maps, pages 9 through 15, in the office of the County Recorder of said County.

EXHIBIT C

intentionally Deleted