

SECURED PROMISSORY NOTE

_____, 2023
Palm Desert, California

\$7,235,000.00

FOR VALUE RECEIVED, the undersigned, A0358 MONTEREY, L.P. a California limited partnership (“Maker”), having its principal place of business at 2000 E. 4th Street, Suite 205, Santa Ana, CA 92705, Attn: Mark Bigley, promises to pay to the order of the PALM DESERT HOUSING AUTHORITY (“PDHA”), at 73-510 Fred Waring Drive, Palm Desert, CA 92260, Attn: Jessica Gonzales, Housing Manager, or at such other place as the holder of this Note from time to time may designate in writing, the principal sum of SEVEN MILLION TWO HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$7,235,000.00) (the “Principal Amount”), together with interest on the unpaid principal amount disbursed under this promissory note (“Note”) from time to time outstanding at the “Applicable Interest Rate,” as defined below, in lawful money of the United States of America. This Note is being delivered, and the loans evidenced hereby are being made, pursuant to the terms of a Loan Agreement between Maker and PDHA (“Loan Agreement”). All capitalized terms used herein which are not separately defined herein shall have the meanings set forth therefor in the Loan Agreement.

The Principal Amount of this Note shall be disbursed as a construction loan as described in Section 3 of the Loan Agreement. “Applicable Interest Rate” means (i) three percent (3%) per annum, compounded monthly, from the date of this Note to the date on which the City of Palm Desert issues a final certification of occupancy with respect to the Project, and (ii) thereafter three percent (3%) per annum, simple interest, and (iii) with respect to amounts not paid when due, interest from the date due until the date paid at the lessor of (a) eight percent (8%) per annum, simple interest, or (b) the maximum rate permitted by applicable law.

1. Payments. Payments under this Note shall be due and payable as follows: 50% of Project Net Cash Flow (“PDHA Portion”) shall be paid to PDHA on an annual basis on June 30th after the first anniversary of issuance of a final certificate of occupancy for the Project, and each annual anniversary thereafter (with respect to the Project Net Cash Flow for the preceding year ending on June 30th prior to each such payment date), until this Note has been satisfied in full. Payments shall first be applied to accrued interest, then to remaining outstanding principal. In addition, the entire amount of outstanding principal and accrued interest and any additional amounts which become owing hereunder shall be paid by Maker to PDHA as of the earliest of: (i) a Default under the Loan Agreement; (ii) as provided in Section 4 below; or (iii) _____, 2080 (the “Maturity Date”).

2. Secured by Deed of Trust. Repayment of this Note is secured by a deed of trust (the “Deed of Trust”) executed by Maker for the benefit of PDHA encumbering the property described in the Deed of Trust (the “Property” or “Site”) on which the Project is to be developed/constructed.

3. Prepayment. Maker shall have the right to prepay amounts owing under this Note at any time, without premium.

4. Due on Sale or Encumbrance. In the event of any Transfer (as defined below) of the Property, or any portion thereof or interest therein, PDHA shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, the term “Transfer” means and includes the direct or indirect sale, transfer, conveyance, assignment, or other alienation of the Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, or the lease of all or substantially all of the Property or of all or substantially all of the improvements located thereon or a transfer of the general partner interest in Maker or transfer of control of the general partner. Transfer shall not include the sale, transfer, assignment, pledge, hypothecation or encumbrance by Maker’s limited partner of its partnership interest, nor shall Transfer include the removal of any general partner of Maker by the limited partner for cause and the replacement of such removed general partner by another person or entity in accordance with the terms of Maker’s partnership agreement nor any other “Permitted Transfer” as such term is defined in the Loan Agreement. “Transfer” shall not include any lease of a rental unit so long as Trustor complies with the provisions of the Regulatory Agreement relating to such leasing activity. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer.

5. Miscellaneous.

(a) Governing Law. All questions with respect to the construction of this Note and the rights and liabilities of the parties to this Note shall be governed by the laws of the State of California.

(b) Attorneys’ Fees.

(i) Maker shall reimburse PDHA for all reasonable attorneys’ fees, costs and expenses, incurred by Payee in connection with the enforcement of PDHA’s rights under this Note, including, without limitation, reasonable attorneys’ fees, costs and expenses for trial, appellate proceedings, out-of-court negotiations, workouts and settlements or for enforcement of rights under any state or federal statute, including, without limitation, reasonable attorneys’ fees, costs and expenses incurred to protect PDHA’s security and attorneys’ fees, costs and expenses incurred in bankruptcy and insolvency proceedings such as (but not limited to) seeking relief from stay in a bankruptcy proceeding. The term “expenses” means any expenses incurred by PDHA in connection with any of the out-of-court, or state, federal or bankruptcy proceedings referred to above, including, without limitation, the fees and expenses of any appraisers, consultants and expert witnesses retained or consulted by PDHA in connection with any such proceeding.

(ii) PDHA shall also be entitled to its attorneys' fees, costs and expenses incurred in any post-judgment proceedings to collect and enforce the judgment. This provision is separate and severable and shall survive the merger of this Note into any judgment on this Note.

(c) Entire Agreement. This Note, the Loan Agreement, the Deed of Trust and the Regulatory Agreement required by the Loan Agreement constitute the entire agreement and understanding between and among the parties in respect of the subject matter of such agreements and supersede all prior agreements and understandings with respect to such subject matter, whether oral or written.

(d) Time of the Essence. Time is of the essence with respect to every provision hereof.

(e) Waivers by Maker. Maker waives: presentment; demand; notice of dishonor; notice of default or delinquency; notice of acceleration; notice of protest and nonpayment; notice of costs, expenses or losses and interest thereon; and diligence in taking any action to collect any sums arising under this Note or in any proceeding against any of the rights or interests in or to properties securing payment of this Note.

(f) Non-waivers. No previous waiver and no failure or delay by Maker in acting with respect to the terms of this Note, the Loan Agreement, the Deed of Trust or Regulatory Agreement shall constitute a waiver of any breach, default, or failure of condition under any of them. A waiver of any term must be made in writing and shall be limited to the express written terms of such waiver.

(g) Non-Recourse. Repayment of this Note and all other obligations of Maker hereunder, under the Loan Agreement, Regulatory Agreement or Deed of Trust shall be a non-recourse obligation of Maker, such that a general partner of Maker shall not have any personal obligation to make any payments or perform any other obligations of Maker.

(h) Cure by Limited Partner(s). PDHA hereby agrees that any cure of any default made or tendered by Maker's limited partner (whose name and notice address is as set forth below in this Section 5(h)) shall be deemed to be a cure by Maker and shall be accepted or rejected on the same basis as if made or tendered by Maker.

Investor Limited Partner Name and Notice Address:

[To Be Provided By Maker]

MAKER:

A0358 MONTEREY, L.P.,
a California limited partnership

By: A0358 Monterey Admin Holdings LLC
A California limited liability company
Its: Administrative General partner

By: _____
Name: _____
Its: _____

By: A0358 Monterey Holdings LLC,
A California limited liability company
Its: Managing General Partner

By: _____
Name: _____
Its: _____