

PALM DESERT HOUSING AUTHORITY STAFF REPORT

MEETING DATE: November 17, 2022

PREPARED BY: Jessica Gonzales, Housing Manager

REQUEST: ADOPT A RESOLUTION OF THE BOARD OF THE PALM DESERT HOUSING AUTHORITY (i) AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN THE AUTHORITY AND PALM DESERT PACIFIC ASSOCIATES APPROVING A LOAN IN THE AMOUNT OF \$6,030,000 FROM THE AUTHORITY'S LOW AND MODERATE INCOME HOUSING ASSET FUND TO FUND THE PURCHASE BY PALM DESERT PACIFIC ASSOCIATES OF A PROPERTY AND CONSTRUCTION OF 269 MULTIFAMILY HOUSING UNITS; AND (ii) TAKING RELATED ACTIONS.

RECOMMENDATION:

Waive further reading and adopt a Resolution (Housing Authority):

1. Authorizing the execution and delivery of a Loan Agreement, in substantial form, between the Palm Desert Housing Authority and Palm Desert Pacific Associates approving a loan in the amount of \$6,030,000 from the Authority's Low and Moderate Income Housing Asset Fund ("LMIHAF") to fund the purchase by Palm Desert Pacific Associates of a property and construction of 269 multi-family units consisting of 266 affordable housing units and three (3) on-site property manager units.
2. Authorize the Chairman or Executive Director, in consultation with legal counsel, to execute and deliver, for and in the name of the Authority, the Loan Agreement and documents presented to the Authority Board at this meeting, as modified, provided such modifications are materially consistent with the terms set forth in the Loan Agreement.
3. Authorize the Chairman, the Executive Director, or their respective designees, in consultation with legal counsel, to execute and deliver, for and in the name of the Authority, all other necessary or proper documents and instruments, and to do all things which they may deem necessary or proper to effectuate the purposes of the Resolution.

BACKGROUND/ANALYSIS:

On August 28, 2021, the Palm Desert Housing Authority ("Authority"), conditionally authorized and approved a loan commitment to Palm Desert Pacific Associates ("Pacific Associates"), in the amount of \$6,030,000 from the Authority's Low and Moderate Income Housing Asset Fund for the financing and construction of a 100% affordable multi-family apartment community project that will consist of 266 affordable units with 3 on-site manager units in one phase (the "Project").

Concurrently, the Authority Board authorized Pacific Associates to submit an application to CDLAC/TCAC for Tax Bonds, Federal Tax Credits and State Tax Credits. Thereafter, the Pacific Associates submitted an application to obtain an allocation of four percent (4%) Low Income Housing Tax Credits. Although Pacific Associates was successful in the first application submittal of August 2021, Pacific Associates was awarded an allocation in the application submittal of March 2022 and received notification of such in June 2022.

With the successful award to Pacific Associates, staff and legal counsel proceeded in negotiating and preparing such agreements and documents, or which are otherwise required, to effectuate the Authority's funding commitment for the Project as provided in the Conditional Loan Agreement. The documents consist of (i) a loan agreement, (ii) a promissory note, (iii) a deed of trust and (iv) a regulatory agreement, (entitled "Housing Agreement") each by and between, or for the benefit of the Authority or Pacific Associates (collectively, "Documents").

The initial terms of the Conditional Loan commitment required completion of the project by the date that is two years after closing, subject to force majeure delays (which was staff's attempt to reflect required completion within 5 years from the 8/2021 loan commitment). However, the borrower/developer and its primary lender have requested a three (3) year period; the primary lender's loan documents give the borrower/developer three years, and its policy is not to accept a shorter deadline in subordinate loans like the Housing Authority loan. We note that the Authority's conditional loan commitment permits the City Manager/Executive Director to negotiate loan terms. Staff and the Executive Director believe that the three-year period is reasonable, and the documents have been revised to three years

The Land was declared by the Successor Agency to the Palm Desert Redevelopment Agency (SARDA) exempt to the Surplus Land Act (SLA) and was qualified by the California Department of Housing and Community Development (HCD) for the grandfathered exemption which requires the land to be conveyed to Pacific Associates by December 31, 2022. If the land is not conveyed to by this deadline, the Purchase and Sale Agreement (PSA) would expire and no longer be valid. This would also terminate the authority provided under the PSA, for Pacific Associates to proceed with the Project.

The Documents require the following provisions:

Project. The Project will be operated for a period of fifty-five (55) years following the date of completion of construction and obtaining a certificate of occupancy for the Project to provide rental housing affordable to persons and families of low and extremely low income in accordance with the affordability restrictions contained in the Loan Documents and in accordance with the four percent (4%) Tax-Exempt Bonds, Federal Tax Credits, State Tax Credits being used to finance the Project. To the extent necessary, the Authority will subordinate the deed of trust securing its Loan to the liens and encumbrances of the Project's construction and permanent lenders. However, the Authority will not subordinate its interests in the LMIHAF Housing Agreement (described below) to such liens or encumbrances. The City will be able to count 81 extremely-low income units, 185 low income units and three (3) above-moderate income units towards the City's Regional Housing Needs Assessment ("RHNA") requirements. The Project will also be restricted by a density bonus regulatory agreement that will restrict 24 units to low

income households. It should be noted that the density bonus restrictions will be layered with the Authority Loan's restrictions, and the extremely-low income restrictions will prevail.

Authority Loan Terms. The Loan shall be in the principal amount of \$6,030,000, and will have a term of fifty-five (55) years following the date of completion of construction and obtaining a certificate of occupancy for the Project, bear simple interest at three (3%) per annum and will be repaid from fifty percent (50%) of the Project's residual receipts and the loans will be due and payable at the end of the loan term. There are no other soft lenders providing funding sources and the Authority will not have to share repayment of the residual receipts. The Authority Loan also includes an express event of default if a TCAC Regulatory Agreement is not recorded against the property for a 55 year period that restricts 266 units to 30%, 60% and 80% AMI households.

LMIHAF Housing Agreement: The regulatory agreement for the Project associated with the Authority Loan, will restrict 81 units in the Project for rental at affordable rents to individuals and families with incomes that do not exceed the 30% of the area median income for Riverside County adjusted for family size (AMI). Three two-bedroom units will be set-aside for the onsite managers, and the remaining 185 units will be restricted to 60% and 80% AMI households by the TCAC Regulatory Agreement. The City's Density Bonus Housing Agreement will also restrict 24 units to low income households for a 55 year term.

Based on the analysis, presented in Attachment 5, prepared by Keyser Marston Associates, Inc. ("KMA"), the Authority's financial consultant, the full \$6,030,000 in LMIHAF assistances can be attributed to the extremely-low income units for SB 341 income targeting purposes, which equates to approximately \$74,444 per restricted unit. A \$74,444 per unit subsidy for extremely-low income units that do not also have an operating subsidy, is very reasonable in Southern California. The proposed subsidy is only 22% of the estimated \$336,015 per unit cost to develop the Project.

KMA concluded after comparing the November 2, 2022, pro forma to the initial financial gap analysis completed in 2021, the Project costs have increased significantly (approximately 18%) as have interest rates. Both events cause the Project to have a significant financial gap if the Authority places affordability restrictions on all the units. The LMIHAF affordability restrictions, while restricting the units to the same income level, have slightly different rent calculation methodologies than the TCAC program. As such, if the Authority were to impose the LMIHAF requirements on all units, the permanent loan will decrease by over \$3 million and create an approximately \$3 million financial gap for the Project with no time to identify additional funding sources prior to the December 31, 2022, land closing deadline. While the LMIHAF Housing Agreement will only restrict 81 units to extremely-low income households, the LMIHAF Loan Agreement has a provision that if the TCAC Regulatory Agreement that restricts 266 units to households earning 30%, 60% and 80% AMI is not recorded against the property for 55 years, the LMIHAF Loan will be in default. Thus, 100% of the units will be restricted to households earning 30%, 60% and 80% AMI. In summary, the following is the comparison of the changes from 2021 to November 2, 2022, analysis:

	2021	2022
LMIHAF Affordability Restriction	81 - Extremely Low-Income	81 - Extremely Low-Income

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	186 – Lower Income	
LMIHAF Loan Assistance	\$6,030,000	\$6,030,000
Per Unit Cost	\$28,000	\$74,444

It should be noted that 100% of the \$6,030,000 will be allocated towards households earning up to 30% AMI. As such, future projects assisted by LMIHAF money will likely not be required to provide as many extremely-low income restricted units since the SB 341 LMIHAF income targeting requirements only require at least 30% of LMIHAF monies spent in a five year per are required to benefit households earning 30% of AMI.

	Vitalia	UHC Project	Palm Villas
Total Units	269	176	241
Total Affordable Units	266	175	239
Authority Restricted Units	81	175	239
Extremely-Low Income Units	81	175	239
Project Based Vouchers	0	88	60
Average AMI %	55%	46%	49%
Total Development Costs	\$336,000/Du	\$581,900/Du	\$539,300/Du
Includes Prevailing Wages	No	Yes	Yes
Authority LMIHAF Assistance	\$6,030,000	7,235,000	\$6,755,000
/Total Units	\$22,400	\$41,100	\$28,000
/Affordable Units	\$22,700	\$41,300	\$28,300
/Authority Restricted Units	\$74,400	\$41,300	\$28,300
/Authority ELI Units	\$74,400	\$77,800	\$93,800

Prior to close of escrow, Pacific Associates has to perform its due diligence and provide proof of financing commitments from all sources to fund the entire Project and the Project must be permit ready in which Pacific Associates has to obtain a conditional permit ready approval letter.

Adoption of the resolution approves a Loan Agreement with Pacific Associates, which provides a loan in the amount of \$6,030,000 from the Authority's Low and Moderate Income Housing Asset Fund (the "Loans"), approves the Documents, including the exhibits attached thereto, substantially in the form presented to the Authority Board at this meeting and authorize staff and officers of the City and Authority to finalize, execute and record the Documents, as applicable, and any other agreements and documents necessary to implement the Loan Agreement at the close of escrow.

By making the Loan to Pacific Associates, the Authority will benefit from a 55-year affordable restricted community available to extremely low and low income households. Staff recommends approval.

Strategic Plan:

One of the priorities of the City of Palm Desert's ("City") Envision Palm Desert Strategic Plan, as part of Land, Use, Housing and Open Space, is to facilitate development of high-quality housing

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for people of all income levels. This request meets that objective by diversifying the City's housing stock for lower income households.

FINANCIAL IMPACT:

The fiscal impact of this request is the loan itself in the amount of \$6,030,000 from the Authority's Low and Moderate Income Housing Asset Fund, or \$74,444 per restricted unit. This transaction will not impact the City's General Fund.

The Developer's sources of financing breakdown for the project are as follows:

Funding Source	Description	Total Project Cost
<i>Palm Desert Housing Authority Low and Moderate Income Housing Asset Fund</i>	Land Purchase and Construction Cost	\$6,030,000
Tax-Exempt Bonds	Permanent Loan	\$22,000,000
(4%) Federal Tax Credits	Investor Equity	\$37,478,458
State Tax Credits	Investor Equity	\$19,633,567
CVAG TUMF Waiver	Fee Waiver	\$361,228
Solar Tax Credit Equity	Investor Equity	\$432,000
Deferred Developer Fee	43% of Dev Fee	\$4,452,884
	TOTAL	\$90,388,137

REVIEWED BY:

Department Director:	<i>Eric Ceja</i>
City Attorney:	<i>Robert Hargreaves, BBK Law</i>
Special Counsel:	<i>Bruce W. Galloway, Richards, Watson & Gershon Law.</i>
Finance Director:	<i>Veronica Chavez</i>
Assistant City Manager:	<i>Chris Escobedo</i>
Executive Director:	<i>Todd Hileman</i>

ATTACHMENTS:

1. Palm Desert Housing Authority Resolution
2. Palm Desert Pacific Associates – Vitalia LMIHAF Housing Agreement
3. Palm Desert Pacific Associates – Vitalia Loan Agreement
4. Palm Desert Pacific Associates – Vitalia Deed of Trust and Assignment of Rents
5. Palm Desert Pacific Associates – Vitalia Promissory Note
6. Palm Desert Pacific Associates – Vitalia Notice of Affordability Restriction
7. KMA Financial Gap Analysis dated November 2, 2022
8. Project Site Map

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A RESOLUTION OF THE PALM DESERT HOUSING AUTHORITY APPROVING A LOAN AGREEMENT REGARDING VITALIA BETWEEN THE AUTHORITY AND PALM DESERT PACIFIC ASSOCIATES, L.P., AND TAKING RELATED ACTIONS

RECITALS:

A. Pursuant to AB X1 26 (enacted in June 2011) and the California Supreme Court's decision in California Redevelopment Association, et al. v. Ana Matosantos, et al., 53 Cal. 4th 231 (2011), the former Palm Desert Redevelopment Agency (the "**Former Agency**") was dissolved as of February 1, 2012, the Successor Agency to the Palm Desert Redevelopment Agency (the "**Successor Agency**"), as the successor entity to the Former Agency, was constituted, and a board of the Successor Agency (the "**Board**") was established.

B. AB X1 26 added Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) to Division 24 of the California Health and Safety Code ("**HSC**") (such Parts 1.8 and 1.85, including amendments and supplements enacted after AB X1 26, being referred to herein as the "**Dissolution Act**").

C. Pursuant to HSC Section 34176(b), the City Council of the City of Palm Desert (the "**City**") adopted Resolution No. 2012-07, electing for the City to not retain the responsibility for performing housing functions previously performed by the Former Agency, and determining that all of the assets, as allowed by law, and all rights, powers, liabilities, duties, and obligations associated with the housing activities of the Former Agency be transferred to the Palm Desert Housing Authority (the "**Authority**").

D. The Successor Agency and Pacific West Communities, Inc. ("Pacific West") entered into an Exclusive Negotiation Agreement, dated as of October 21, 2020, for the purpose of negotiating the terms and conditions upon which the Successor Agency would sell to the Pacific West the approximately +/- 11.94-acre portion of real property owned by the Successor Agency located in the City along Gerald Ford Drive and identified as APN 694-310-006 (the "**Property**") for the purpose of constructing thereon a 269-unit multi-family residential apartment community for households with incomes between 30% and 80% of the area median income (the "**Project**"). The Property is described in Exhibit "A", attached hereto and incorporated herein.

E. Pacific West created Palm Desert Pacific Associates, a California limited partnership ("Developer") to be the tax credit limited partnership that will be the borrower and the developer for the Project; Pacific West is its Administrative General Partner.

F. An appraisal of the Property was ordered from Novogradac Consulting, LLP, received and dated March 25, 2021. The report places the current appraised value of the Property at \$4,500,000.

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G. The Pacific West has submitted a funding request to the Authority to make a loan to the Pacific West in the amount of \$6,030,000 (the “**Loan**”) to assist the Pacific West in the purchase of the Property from the Successor Agency and the development of the Project. The Project is intended to be funded by leveraging multiple funding sources including four percent tax exempt bonds, federal tax credits, state tax credits, and the Loan.

H. At its meeting on August 26, 2021, the Board of the Successor Agency approved a purchase and sale agreement (the “**PSA**”) for the sale of the Property to the Pacific West for a purchase price equal to its appraised value, subsequently was approved on January 20, 2022, by the Countywide Oversight Board of the County of Riverside and, was deemed approved by the State Department of Finance.

I. The Authority, as the housing successor to the Former Agency, on August 26, 2021, approved a Conditional Agreement Regarding Vitalia Apartments between the Authority and the Pacific West and incorporated herein by reference (the “**Conditional Loan Agreement**”) which provides for the Authority to make the Loan to the Pacific West subject to the terms and conditions therein.

J. The Pacific West has submitted, an application, including the Conditional Loan Agreement, to the California Tax Credit Allocation Committee (“TCAC”) for an allocation of tax-exempt bonds, federal tax credits and state tax credits as described in the Conditional Loan Agreement.

K. The Pacific West has successfully received a Tax Allocation for the Project and has provided proof of financing commitments from all sources to fund the entire Project and the Project is in the process of obtaining a conditional Grading and Building and Safety permit ready approval.

NOW, THEREFORE, THE PALM DESERT HOUSING AUTHORITY DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The above recitals, and each of them, are true and correct and are a substantive part of this Resolution.

Section 2. The Agreement, in the form attached hereto as **Exhibit “B”**, is hereby approved. The Executive Director of the Authority is hereby authorized to execute and deliver, for and in the name of the Authority, the Agreement in substantially such form, with such changes thereto as the Executive Director, in consultation with the Authority legal counsel, may deem appropriate or necessary and consistent with the purposes of this Resolution (such approval to be conclusively evidenced by the execution and delivery thereof).

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Section 3. The members of this Board and the staff of the Authority are hereby authorized, jointly and severally, to do all things which they may deem necessary or proper to effectuate the purposes of this Resolution, including negotiating and preparing agreements and documents, and any such actions previously taken are hereby ratified and confirmed.

PASSED, APPROVED and ADOPTED on this 17th day of November 2022, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAN C HARNIK, CHAIRMAN

ATTEST:

ANTHONY J. MEJIA, MMC,
SECRETARY

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EXHIBIT "A"

The Land referred to herein below is situated in the City of Palm Desert, County of Riverside, State of California, and is described as follows:

LEGAL DESCRIPTION

A PORTION OF PARCEL 1 OF THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. 88-1, RECORDED JUNE 1, 1988 AS INSTRUMENT NO. 146461 OF OFFICIAL RECORDS. IN THE CITY OF PALM DESERT, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 4 NORTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 1;

THENCE NORTH 89°55'15" EAST, ALONG THE NORTHERLY LINE OF SAID PARCEL 1, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF GERALD FORD DRIVE, A DISTANCE OF 514.35 FEET;

THENCE SOUTH 47°23'23" EAST, A DISTANCE OF 34.01 FEET;

THENCE SOUTH 00°03'36" WEST, A DISTANCE OF 942.64 FEET;

THENCE NORTH 89°56'24" WEST, A DISTANCE OF 539.40 FEET;

THENCE NORTH 00°03'36" EAST, ALONG THE WESTERLY LINE OF SAID PARCEL 1 AND THE SOUTHERLY EXTENSION THEREOF, A DISTANCE OF 964.39 FEET, TO THE **POINT OF BEGINNING**;

SUBJECT TO EXISTING EASEMENTS, COVENANTS, RIGHTS AND RIGHTS-OF-WAY OF RECORD.

CONTAINING 520,257 SQUARE FEET OR 11.943 ACRES MORE OR LESS.

AS DEPICTED ON **EXHIBIT "B"** ATTACHED HERETO AND MADE A PART HEREOF.

THIS LEGAL DESCRIPTION DOES NOT DESCRIBE A LEGAL PARCEL OF LAND. IT IS NOT TO BE USED FOR CONVEYANCE OR FINANCING OR ANY OTHER PURPOSE THAT WOULD BE A VIOLATION OF THE CALIFORNIA SUBDIVISION MAP ACT.

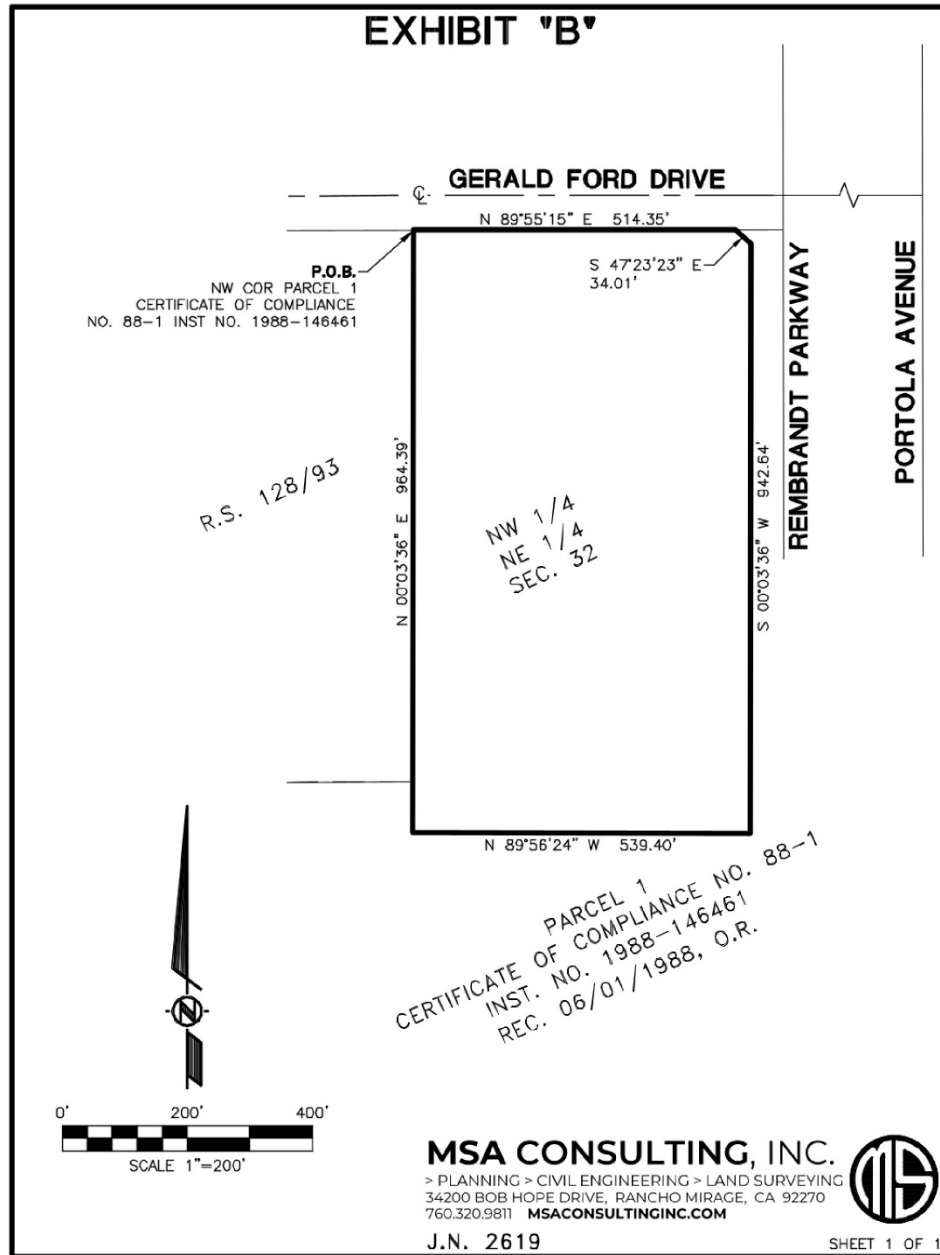


EXHIBIT "B"

LOAN AGREEMENT

THIS LOAN AGREEMENT "Loan Agreement") is dated as of _____, 2022 and is entered into by and between the PALM DESERT HOUSING AUTHORITY ("Lender"), and PALM DESERT PACIFIC ASSOCIATES, a California limited partnership ("Borrower").

RECITALS:

A. Borrower has acquired or will acquire the land located in the City of Palm Desert, County of Riverside, State of California, more particularly described on Exhibit "A" attached hereto (together with any improvements thereon, the "Property") from the Successor Agency to the Palm Desert Redevelopment Agency. (The sale of the Property was approved by the Countywide Oversight Board for the County of Riverside by its Resolution No. 2022-30, and the Property is exempt from the surplus land statutes under California Government Code 54234(b)(1)(A) because an Exclusive Negotiation Agreement for the Property was entered into prior to December 31, 2020, and the disposition of the Property is to occur prior to December 31, 2022.)

B. Borrower intends to construct the improvements on the land that are described on Exhibit "B" (the "Improvements" or "Development").

C. Borrower has requested that Lender make a loan to Borrower from low income housing set aside funds in the principal amount of \$6,030,000.00, consisting of a purchase money loan in the amount of \$4,500,000.00 to be disbursed to the seller of the Property (which is the Successor Agency to the Palm Desert Redevelopment Agency) and a construction loan of \$1,530,000.00 (collectively, the "Loan"), with the construction loan portion to be used after all available tax credit equity to pay for a portion of the costs of the Improvements, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT:

DEFINITIONS AND EXHIBITS.

Definitions. The following initially capitalized words and terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided to the contrary:

"Closing" shall mean the date on which the Deed of Trust is recorded in the Official Records of Riverside County, California.

"Completion of Construction" shall mean the date that Borrower obtains a certificate of occupancy for the Improvements.

"Construction Plans" means the construction plans, specifications and related documents consistent with the Scope of Development attached hereto as Exhibit "B" for the design and construction of the Improvements.

"Deed of Trust" shall mean a Deed of Trust and Assignment of Rents in the form attached hereto as Exhibit "C", executed by Borrower for the benefit of Lender and,

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acknowledged (which is to be recorded against the Property in the Official Records of Riverside County, California at the Closing).

“Entitlements” shall mean all authorizations, approvals, rights, maps, licenses, permits, franchises, certificates, instruments, documents, agreements, variances and other land use approvals required for the Development.

“Governmental Authority” shall mean any federal, state or local governments, and all subdivision thereof, including any City, authority, board, bureau, commission, department or other public body, including any court, administrative tribunal or public utility.

“Improvements”, “Development” or “Project” shall mean the project/work described in the Scope of Development attached hereto as Exhibit “B”.

“Loan” shall mean the loan contemplated by this Agreement as defined in the Recitals.

“Loan Documents” shall mean this Agreement, the Note, the Deed of Trust, the Regulatory Agreements, the Notice and all other documents and instruments executed and delivered, or to be executed and delivered, in connection with the Loan (including the Acknowledgment referred to in Section 3.6.1 below).

“Note” shall mean a Secured Promissory Note, in the form attached hereto as Exhibit “D”, executed by Borrower and payable to City.

“Notice” shall mean a Notice of Affordability Restrictions in the form attached hereto as Exhibit “E”.

“Operating Year” shall mean each calendar year or portion thereof during which the Project is operating.

“Project Net Cash Flow” shall mean the revenues (without regard to the source) derived from the operation of the Development minus (i) all real estate and personal property taxes and assessments, insurance premiums, monitoring fees and reasonable costs of maintenance, operation and management incurred by the Borrower in connection with the operation and maintenance of the Development, (ii) base property management fees not to exceed the lesser of (a) Twenty-Eight Dollars and Forty-Four cents (\$28.44) per unit per month (which amount shall increase annually by the lesser of three and a half percent (3.5%) or the rate of increase in the CPI (defined below) from the prior calendar year) or (b) three and a quarter percent (3.25%) of the effective gross income received by Borrower in connection with its applicable calendar year and other reasonable and customary management fees (iii) a minimum of \$24,000 per year in tenant services provided on-site (which amount shall increase annually by the rate of increase in the CPI from the prior calendar year, (iv) the costs of servicing the senior construction loan/financing (and any approved refinancing thereof) or other sources of financing approved by Lender (other than the Loan); (v) amounts necessary to maintain a guaranty or other form of security or bond for an operation reserve account which shall be capitalized in the amount not to exceed Six Hundred Fifty Three Thousand Six Hundred Sixty Five Dollars (\$653,665), including any replenishment of such reserve (vi) amounts deposited into a replacement initially capitalized reserve account in the sum of not to exceed \$250/unit per annum, increasing 3% per annum and any ongoing deposits to such reserve (vi) the repayment of any amounts loaned by

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the Borrower or its partners to the Development for material Development costs which costs were not reasonably foreseeable, and which loan, and the items for which funds were expended pursuant to such loan, are approved in advance by the Lender's Executive Director, (vii) deferred Borrower fees in the total maximum amount of \$5,000,000, (viii) a Limited Partner monitoring fee in the annual amount of \$7,500; and (ix) a managing general partner fee in the annual amount of \$26,900, which may increase up to three percent (3.0%) annually; any unpaid tax credit adjuster payments due to the limited partner of Borrower. The amounts of the operation reserves and replacement reserves described above may increase in accordance with the annual percentage increases from the date hereof in the Consumer Price Index, U.S. City Average, All Urban Consumers as published by the U.S. Bureau of Labor Statistics (the "CPI") or as required for the Borrower limited partner or any senior lender. Project Net Cash Flow shall be determined by Borrower and Lender on a cash basis without regard to any carry-over profit or loss from any prior calendar year, and shall be determined annually, on or before April 15 for the preceding Operating Year.

"Parties" shall mean Lender and Borrower, collectively, and "Party" shall mean Lender or Borrower, individually.

"Person" shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other business association or any Governmental Authority.

"Potential Default" shall mean any condition or event that could, with the lapse of time/expiration of applicable cure period under this Agreement after any written notice to

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Borrower thereof required by this Agreement is delivered, constitute a "Default" (as defined in Section 5.1 below).

"Property" shall have the meaning provided in Recital A, but shall also mean portions thereof or interests therein as the context requires.

"Preliminary Budget" shall mean the budget for the costs of the Project attached hereto as Exhibit "F".

"Regulatory Agreements" shall mean the Housing Agreements in the form attached hereto as Exhibit "G".

"Schedule of Performance" shall mean the schedule for the completion of the Improvements attached to this Agreement as Exhibit "H".

Exhibits. The following exhibits are attached to this Agreement and incorporated into, and made a part of, this Agreement by this reference:

Exhibit "A": Legal Description

Exhibit "B": Scope of Development

Exhibit "C": Form of Deed of Trust

Exhibit "D": Form of Promissory Note

Exhibit "E": Form of Notice of Affordability Restrictions

Exhibit "F": Preliminary Project Budget

Exhibit "G": Forms of Housing Agreement (LMIHF) or "Regulatory Agreement" and Housing Agreement (Density Bonus)

Exhibit "H": Schedule of Performance

CONSTRUCTION OF IMPROVEMENTS.

Construction Pursuant to Plans. The Improvements shall be constructed in accordance with final Construction Plans approved by the City of Palm Desert and the terms and conditions of the permits and approvals issued or to be issued by the City of Palm Desert.

Commencement and Completion of Improvements; Schedule of Performance. Borrower shall commence construction of the Improvements no later than the applicable date set forth in the Schedule of Performance, diligently prosecute to completion the construction of the Improvements no later than the applicable date set forth in the Schedule of Performance, and Borrower shall otherwise comply with the Schedule of Performance, in each case subject to Section 6.11 below (Force Majeure).

Compliance with Applicable Law. Borrower shall cause all construction to be performed in compliance with: (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter; (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or

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other officer of every governmental authority now having or hereafter acquiring jurisdiction; (c) all applicable permits and governmental approvals.

Monthly Progress Reports. Until such time as Borrower has completed the Improvements, Borrower shall provide Lender with monthly progress reports (within 30 days of the end of each calendar month for the previous calendar month) regarding the status of the construction of the Improvements.

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

Mechanics' Liens, Stop Notices, and Notices of Completion. If any claim of lien is filed against the Property or a stop notice with respect to the Loan is served on Lender or any other lender or other third party in connection with the Improvements, then Borrower shall, subject to Borrower's right to contest such lien in good faith and in accordance with applicable law, within ninety (90) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to Lender a surety bond from a surety acceptable to Lender in sufficient form and amount, or provide Lender with other assurance satisfactory to Lender that the claim of lien or stop notice will be paid or discharged.

Budget Amendments. After the Closing, Borrower shall submit any changes to the Budget to Lender for approval within ten (10) days after Borrower receives information indicating that actual costs therein vary or will vary from those shown on the Budget, together with evidence that Borrower has funds available from sources other than Lender to pay any cost increases and overruns.

LOAN PROVISIONS.

Use. The Loan shall be used solely for costs of the Project (including the purchase price for the Property) as shown on the Project Budget that exceed the equity available for and invested in the Project.

Interest; Payments. The outstanding principal balance of the Loan shall accrue interest as set forth in the Note and such principal and interest shall be payable as set forth in the Note.

Acceleration. Upon a Default by Borrower under Section 5 below, Lender may elect by written notice to Borrower that all outstanding principal and accrued interest on the Loan shall become due and payable.

Security. The Note shall be secured by the Deed of Trust.

Project Net Income Reporting. On or before April 15 of each calendar year, Borrower shall provide the Lender with an annual report in form and substance reasonably

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acceptable to Lender that include annual financial statements with respect to the Project that have been reviewed by an independent certified public accountant ("Annual Financial Report"). In the event the Residual Receipts reported or paid deviate by a deficit of three percent (3%) or more from that amount determined to be owing upon review of Developer's submittal and an audit (and the Lender shall have the right to audit Developer's books and records for the Project, which shall be kept at _____ in the City of Palm Desert), Borrower shall reimburse Lender for its cost to review and shall pay the amounts owing within ten (10) days after notice from Lender describing such amounts and costs.

Conditions Precedent to Closing. The obligation of Lender to close the Loan is expressly conditioned upon the satisfaction of the following on or before December 31, 2022:

City's receipt of originals of this Agreement and the Note, duly executed by Borrower, and City's receipt of an Acknowledgement regarding the management of the Project, in the form previously delivered to Borrower, duly executed by Palm Communities;

No Default or Potential Default by Borrower exists.

Commonwealth Land Title Insurance Company has recorded, or is irrevocably and unconditionally committed to record, the Deed of Trust, the Housing Agreement (LMIHF) and the Housing Agreement (Density Bonus) and the Notice of Affordability Restrictions (and any deeds of trust or other documents required as a condition to any other construction financing for the Project).

Commonwealth Land Title Insurance Company has unconditionally committed to issue a lender's title insurance policy to Lender in the amount of the Loan insuring the Deed of Trust, with exceptions approved by Lender and otherwise in form and substance acceptable to Lender.

Borrower shall have delivered to Lender copies of Borrower's organizational documents to Lender (including the partnership agreement for any tax credit limited partnership formed by the Borrower) as well as any other reasonable evidence requested by Lender showing Lender that Borrower has duly authorized the Loan Documents.

The City of Palm Desert shall have issued the building permit for the improvements and shall have completed its environmental (CEQA) review.

Borrower shall have provided reasonable evidence to the Lender of: (i) the cost of the Improvements (including a GMAX or stip sum construction contract from a reputable bondable contractor) and (ii) that Borrower has debt and equity funds to pay for such costs (and any tax credit equity shall have been committed and available, as shown by reasonable evidence delivered to City).

If Lender is requested to execute a subordination agreement with respect to the deed of trust securing senior construction financing, then Lender's receipt and approval of the loan documents for such senior construction financing.

Loan Disbursements. Disbursement of the purchase money portion of the Loan shall be made by Lender to escrow at closing for payment to the seller (the Successor Agency to

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the Palm Desert Redevelopment Agency), and disbursements of the construction loan portion of the Loan shall be conditioned upon the following additional conditions:

Borrower shall have delivered to Lender a written disbursement request in form and substance reasonably satisfactory to Lender, together with copies of the applicable invoices or other appropriate documentation for the costs to be paid (consistent with the final Project budget) and appropriate mechanics lien waivers for the work performed prior to the date of disbursement (i.e., unconditional progress payment waivers for all costs paid with the previous disbursement, and conditional progress payment waivers for the costs to be paid with the current disbursement, provided that final waivers shall be provided as a condition to the final disbursement).

No default shall have occurred under any Loan Document that remains uncured as of the date of the disbursement request or actual disbursement.

All equity funds shall have been disbursed and applied to Project costs in the Project Budget as shown by reasonable evidence delivered to Lender, and the Loan funds not yet disbursed together with any other committed sources of funds are sufficient to pay all remaining Project costs.

OTHER LOAN REQUIREMENTS.

Information. Borrower shall provide any information requested by Lender in good faith in connection with the Improvements.

Hazardous Materials. Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively, "Hazardous Materials"), except such of the foregoing as may be customarily used in connection with the ownership, operation, occupancy, maintenance and construction of improvements similar to the Improvements. Borrower acknowledges and agrees that each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

Construction Responsibilities; Commencement and Completion. Borrower shall cause the construction of the Improvements to be prosecuted with diligence, in good faith, and in accordance with the Schedule of Performance, subject to Section 6.11 below. Borrower shall cause the construction of the Improvements to be performed in a good and workmanlike manner in accordance with the Construction Plans approved by the City, in compliance with all applicable laws, ordinances, rules, regulations, building restrictions, recorded covenants and restrictions and requirements of each Governmental Authority having jurisdiction over the Property and free and clear of any liens or claims for liens. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property, including the quality and suitability of the Construction Plans and their compliance with the requirements of each applicable Governmental Authority and the Loan Documents, and the supervision of the construction of the Improvements, the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors, material suppliers, consultants and property managers, the accuracy

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of all applications for payment and loan draw requests and the proper application of all disbursements.

Fees and Taxes. Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings and (b) if requested by Lender, Borrower deposits with Lender such funds or other forms of assurance that Lender in good faith from time to time determines appropriate to protect Lender from the consequences of the contest being unsuccessful, provided, however, that if Borrower has deposited sufficient funds with a senior lender, Borrower shall not be required to deposit funds with Lender.

Notice of Litigation. Borrower shall promptly notify Lender of any litigation materially affecting Borrower or the Property and of any claims or disputes that Borrower reasonably believes involve a material risk of any such litigation.

Transfers. The qualifications and identity of the Borrower are of particular concern to the Lender and it is because of such qualifications and identity that the Lender has entered into this Agreement with the Borrower. No voluntary or involuntary successor in interest of the Borrower shall acquire any rights or powers under this Agreement except as expressly set forth herein. However, Borrower may assign this Loan Agreement to a single-asset limited partnership in which Borrower is the general partner, or which has a general partner that is directly or indirectly owned and controlled by Borrower, provided Lender approves the limited partnership agreement and evidence of such control or ownership, such approval not to be unreasonably withheld. The Loan may be accelerated by Lender if there is any conveyance by Borrower of the Property or any portion thereof or interest therein, or Borrower ceases to be (or ceases to own and control, as applicable) the general partner of such limited partnership prior to the completion of the Improvements without the City's prior written consent. Notwithstanding the foregoing, provided prior written notice to Lender of such transfer (with reasonable evidence of the nature of the transfer) is provided to Lender with respect to items (ii) and (ii) below as applicable, the Lender's consent shall not be required for (i) any direct or indirect transfer of the investor limited partner's interest in the Borrower if such transfer is to an entity controlled by, or under common control with Boston Financial Investment Management, LP or an affiliate thereof, (ii) the removal or replacement of a general partner of Borrower by the investor limited partner in accordance with the provisions of the Borrower's limited partnership agreement, (iii) the transfer of the Property or of a limited partner interest in Borrower to an entity affiliated with Pacific West Communities, Inc., an Idaho corporation made pursuant to an option agreement set forth in Borrower's limited partnership agreement (collectively, a "Permitted Transfer").

Insurance; Indemnity.

Insurance.

Borrower shall obtain and maintain at no cost or expense to the Lender, with a reputable and financially responsible insurance company reasonably acceptable to the Lender, (i) after the opening of the Project for business, commercially reasonable casualty insurance for the Improvements in an amount not less than the replacement cost of the Improvements (subject to commercially reasonable deductibles) with a reasonable inflation rider; (ii) commercial broad form general liability insurance, insuring against claims and liability for bodily injury, death, or property damage arising from the construction, use, occupancy, condition, or

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operation of the Property, which liability insurance shall provide combined single limit protection of at least \$2,000,000 and shall include a reasonable inflation rider, contractual liability coverage and products and completed operations coverage, and (iii) commercial automobile liability insurance of at least \$1,000,000 combined single limit. Such liability insurance policies shall name the Lender and its board members, officers, agents and employees as additional insureds.

Before commencement of any demolition or construction work by Developer, Borrower shall obtain and maintain in force until completion of such work (i) "all risk" builder's risk insurance, including coverage for vandalism and malicious mischief, in a form and amount and with a company reasonably acceptable to the Lender, and (ii) workers' compensation insurance covering all persons employed by Borrower in connection with work on the Project, or any portion thereof. During the construction of Improvements on any portion of the Property by Developer, such builder's risk insurance shall cover improvements in place and all material and equipment at the job site furnished under contract, but shall exclude contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.

Each architect and each engineer engaged by Borrower shall provide professional liability insurance with a limit of liability of at least One Million Dollars (\$1,000,000.00).

Borrower shall also furnish or cause to be furnished to the Lender evidence satisfactory to the Lender that any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

With respect to each policy of insurance required above, Borrower and each of Developer's general contractors, engineers and architects shall furnish to the Lender a certificate on the insurance carrier's form setting forth the general provisions of the insurance coverage promptly after written request by Lender showing the additional insureds. The certificate shall also be furnished by Borrower prior to commencement of construction of any Improvements.

All such policies required by this Section shall contain (i) language to the effect that the policies cannot be cancelled or materially changed except after thirty (30) days' written notice by the insurer to the City, and (ii) a waiver of the insurer of all rights of subrogation against the Lender and the other additional insureds. All such insurance shall have deductibility limits which shall be commercially reasonable.

Procuring the insurance required under this Section shall not be construed to limit Borrower's liability under the Loan Documents, or to fulfill its indemnity obligations under the Loan Documents. Notwithstanding such insurance policies, Borrower shall be responsible for the total amount of any damage, injury or loss caused by negligence or neglect connected with the ownership, operation or occupancy of the improvements on the land. The insurance requirements set forth in this Section are for the sole purpose of protecting Lender's security for the Loan and are not to be construed as a representation by Lender that the insurance required under this Section is sufficient to cover Borrower from or against all uninsured losses and Borrower releases Lender from any liability and forever waives any claims against Lender in connection therewith.

All insurance policies shall (a) be issued by an insurance company having a rating of "A:VII" or better by A.M. Best Co., in Best's Rating Guide; (b) name Lender as

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an additional insured on all liability insurance and the senior lender as mortgagee and loss payee on all casualty insurance, (c) contain the “standard non-contributory mortgagee clause” and the “standard lenders’ loss payable clause,” or their equivalents, (d) be evidenced by a certificate of insurance (or, if required by City, copy of insurance policy) to be delivered to City.

Indemnity. In addition to Developer’s obligations under Section 6.4 below, Borrower hereby agrees to indemnify, defend, protect, and hold harmless the Lender and any and all agents, employees, representatives, board members, consultants, and officers of the Lender, from and against all losses, liabilities, claims, damages (including foreseeable or unforeseeable consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out of pocket litigation costs and reasonable attorneys’ fees) and demands of any nature whatsoever, related directly or indirectly to, or arising out of or in connection with:

the validity of this Agreement;

the development and construction by Borrower of the Improvements on the Property or the use, ownership, management, occupancy, or possession of the Property during Developer’s period of ownership or control thereof;

any breach or Default by Borrower hereunder; and

any of Developer’s activities on the land (or the activities of Developer’s agents, employees, lessees, representatives, licensees, guests, invitees, contractors, subcontractors, or independent contractors on the land).

The Lender may in its discretion, and at their own cost, participate in the defense of any legal action naming the Lender. The provisions of this Section shall survive the Closing or the termination of this Agreement.

DEFAULT AND REMEDIES.

Events of Default. Each of the following shall constitute a “Default” by Borrower under this Agreement:

The failure by Borrower to make a payment of money to Lender within ten (10) business days from the date such payment was due under any of the Loan Documents.

The failure by Borrower to perform any obligation under the Loan Documents not involving the payment of money, and, if such failure is curable within thirty (30) days, the expiration of thirty (30) days after written notice of such failure from Lender to Borrower. If such failure is not curable within 30 days, Borrower may have such longer period of time as is reasonably necessary to complete the cure, provided that Borrower has commenced to cure within the initial 30-day period and diligently prosecutes such cure to completion.

Borrower (a) is unable, or admits in writing its inability, to pay its monetary obligations as they become due, (b) makes a general assignment for the benefit of creditors, or (c) applies for, consents to or acquiesces in the appointment of a trustee, receiver or other custodian for itself or its property, or, in the absence of such application, consent or acquiescence,

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a trustee, receiver or other custodian is appointed for Borrower or the property of Borrower (including the Development), and such appointment is not discharged within sixty (60) days.

The commencement of any case under the Bankruptcy Code or commencement of any other bankruptcy, arrangement, receivership, custodianship or similar proceeding under any federal, state or foreign law by or against Borrower, provided that if any such case or other bankruptcy, arrangement, reorganization, receivership, custodianship or similar proceeding is commenced against Borrower, such case or other bankruptcy, arrangement, receivership, custodianship or similar proceeding is not dismissed within sixty (60) days after its commencement.

A final judgment or decree for monetary damages or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged or stayed within sixty (60) days after the entry thereof.

The assets of Borrower are attached, levied on or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released within sixty (60) days of the date thereof.

There shall be filed any claim of lien against the Property or the service of any notice to withhold proceeds of the Loan and the continued maintenance of such claim of lien or notice to withhold for a period of sixty (60) days without discharge or satisfaction thereof or provision therefor (including the posting of bonds) satisfactory to City.

The occurrence of any conveyance that is prohibited under Section 4.6.

A failure to comply in any respect with the Schedule of Performance (subject to force majeure delays under Section 6.11 below).

Borrower's violation of any law or permit applicable to the Property or Improvements (or other improvements on the Property) that is not cured within thirty (30) days after written notice from City. If such failure is not curable within 30 days, Borrower may have such longer period of time as is reasonably necessary to complete the cure, provided that Borrower has commenced to cure within the initial 30-day period and diligently prosecutes such cure to completion.

Borrower's default under any other loans secured by the Property which is not cured within any applicable cure period in the loan documents for such loan or such longer cure period consented to in writing by the applicable lender.

5.1.12. Borrower fails to comply with the CTCAC Reservation Letter dated June 15, 2022 addressed to Christina Alley (which requires, among other things, executing and recording a CTCAC regulatory agreement), or fails to comply with the recorded CTCAC regulatory agreement.

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Remedies. The occurrence of any Default by Borrower will relieve Lender of any obligation to make further disbursement of the Loan and shall give Lender the right to proceed with any and all remedies set forth in the Loan Documents, including the following:

Lender shall have the right to declare, by written notice to Borrower, the outstanding principal balance of the Loan, together with any accrued and unpaid interest thereon, due and payable as of the date stated in such notice as determined by Lender in its sole and absolute discretion. Lender may proceed to enforce payment thereof and to exercise any or all rights afforded to Lender as a creditor and secured party under law, including the California, including foreclosure of the Deed of Trust. Borrower shall be obligated to pay City, on demand, all reasonable expenses, costs and fees (including reasonable attorney's fees and expenses) paid or incurred by Lender in connection with the collection of the Loan and the preservation, maintenance, protection, sale or other disposition of the security for the Loan, and such obligation shall be secured by the Deed of Trust.

Lender shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations under the Loan Documents or to enjoin acts or things that may be unlawful or in violation of the provisions of the Loan Documents.

Lender may cure any default by Borrower under the Loan Documents. Borrower shall be liable to reimburse City, on demand, for any funds advanced by Lender to cure any such monetary default, together with interest thereon at the lesser of the maximum rate permitted by law or eight percent (8%) per annum from the date of expenditure until the date of reimbursement, and the Deed of Trust shall secure such sums owed.

Lender shall have the right to file for record, as Borrower's attorney-in-fact (which appointment is a power coupled with an interest and is irrevocable), any notices of completion, notices of cessation of labor, notices of non-responsibility or any other notices that Lender considers necessary to protect its security for the Loan.

Lender shall also be entitled to all other remedies available at law, in equity or otherwise.

Prior to exercising any remedies hereunder, Lender will give Borrower's investor limited partner notice of default at the same time such notice is given to Borrower provided Lender shall have been given such investor limited partner's name and address by Borrower in writing. The investor limited partner shall have the cure periods set forth above within which to cure the default and Lender will accept or reject such cure on the same basis as if such cure had been tendered by Borrower.

Remedies Cumulative. Except as may be provided by law, no right, power or remedy given to Lender by the terms of the Loan Documents is intended to be exclusive of any other right, power or remedy, and each and every such right, power or remedy shall be cumulative and in addition to every other right, power or remedy given to Lender by the terms of the Loan Documents, by law or otherwise. Neither the failure nor any delay on the part of Lender to exercise any such right, power or remedy shall operate as a waiver thereof, nor shall any single

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or partial exercise by Lender of any such right, power or remedy preclude any other or further exercise of such right, power or remedy, or any other right, power or remedy.

GENERAL PROVISIONS.

Relationship of Parties. Nothing contained in this Agreement shall be interpreted by the Parties, or any other party, as creating the relationship of employer and employee, principal and agent, partnership or any other form of joint venture between Lender and Borrower, and Borrower shall at all times be deemed an independent contractor and shall be completely responsible for the manner in which it performs its obligations under this Agreement.

No Claims. Nothing contained in this Agreement shall create or authorize any claim against Lender by any Person that Borrower may have employed or with whom Borrower may have contracted related to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the construction or operation of the Property, and Borrower shall include similar requirements in any contracts entered into for the construction or operation of the Property.

Amendments. No modification of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

Indemnification for Prevailing Wages Claims. Borrower shall indemnify, defend, protect and hold harmless Lender and its board members, officers, employees, agents, successors and assigns (collectively, "Indemnified Parties") from and against any and all claims (including, without limitation, any claim under Labor Code Section 1781), losses, proceedings, damages, causes of action, liabilities, costs and expenses, (including attorneys' fees) (collectively, "Claim") arising from or in connection with, or caused by any violations of law by Borrower or any contractor with respect to the Property, including, without limitation, any failure to comply with Labor Code Sections 1720 et. seq. If any action or proceeding be brought against Lender by reason of any such claim, Borrower, upon notice from Lender, shall defend the same at Borrower's expense with counsel satisfactory to Lender (which consent shall not be unreasonably withheld) unless such Claim arose from the willful misconduct or gross negligence of an Indemnified Party. BORROWER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD LENDER HARMLESS LENDER SHALL SURVIVE CANCELLATION OF THE NOTE AND THE RECONVEYANCE OF THE DEED OF TRUST WITH RESPECT TO EVENTS OCCURRING PRIOR TO THE CANCELLATION OF THE NOTE AND RECONVEYANCE OF THE DEED OF TRUST.

Non-Liability of Lender and Lender Officials, Employees and Agents. No member, official, employee or agent of Lender shall be personally liable to Borrower in the event of any default or breach by Lender, or for any amount that may become due to Borrower, under the terms of this Agreement.

No Third Party Beneficiaries. There shall be no third party beneficiaries of this Agreement.

Notices, Demands and Communications. Except as otherwise required by law, any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (a) by certified mail, postage prepaid, return receipt requested, or (b) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and

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addressed to the parties at the addresses stated below, or at such other address as either party may hereafter notify the other in writing as aforementioned:

Lender: Palm Desert Housing Authority
73-510 Fred Waring Drive
Palm Desert, CA 92260
Attn: Executive Director

Borrower: Palm Desert Pacific Associates
c/o Pacific West Communities, Inc.
430 E. State Street, Suite 100
Eagle, ID
Attn: Caleb Roope

With a copies to:

McReynolds & McCormack, PLLC
430 E. State Street, Ste.140
Eagle, ID 83616
Attention: Clay McReynolds

And:

BF Vitalia LLLP
101 Arch Street, 13th Floor
Boston, MA 02110
Attn: Asset Management - Vitalia Apartments

Service of any such notice or other communications so made shall be deemed effective on the day of actual delivery or refusal to accept/inability to deliver, as shown by the addressee's return receipt if by certified mail, and as confirmed by the courier service if by courier; provided, however, that if such actual delivery occurs after 5:00 p.m. (local time where received) or on a non-business day, then such notice or demand so made shall be deemed effective on the first business day following the day of actual delivery. No communications via electronic mail shall be effective to give any notice, request, direction, demand, consent, waiver, approval or other communications hereunder.

Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of laws principles.

Attorneys' Fees. Should any action be brought to enforce any provision hereof, the prevailing party in such action shall be entitled to reasonable attorneys' fees, court costs and other litigation expenses, including expenses incurred for preparation and discovery. The right to recover such fees, costs and expenses shall accrue upon the commencement of the action regardless of whether the action is prosecuted to final judgment.

Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force

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and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Force Majeure. A Party shall not be deemed to be in default as to any construction obligation where delays are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Borrower or Borrower's inability to finance the construction of the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. However, no extension of time for any cause will be deemed granted if notice by the Party claiming such extension is not sent to the other Party within ten (10) business days from the commencement of the cause.

Approvals/Amendments/Subordination Agreements. Whenever this Agreement calls for or contemplates Lender approval or consent (including approval of the form and substance of other documents), the written approval or consent or waiver of the Executive Director of Lender shall constitute the approval or consent of Lender. The Lender also authorizes the Executive Director to make non-substantial changes to this Agreement, including, reasonable extensions of time deadlines set forth in this Agreement, provided they are in writing, and to send notices and demands, initiate and administer remedies and otherwise administer the Loan Documents, and to execute reasonable subordination agreements required by senior construction lenders as a condition to making their loans for the Project. The Executive Director shall have the authority to review and approve all documents listed in Section 3.5 hereof and may prohibit disbursement of Loan funds if the documents are not reasonably satisfactory to the Executive Director.

Warranty Against Payment of Consideration for Agreement. Borrower warrants that it has not paid or given, and will not pay or give, any Person, including the Lender or the City of Palm Desert, or any councilmember, board member, official or employee thereof, any money or other consideration for obtaining this Agreement.

Refinance. Borrower shall be permitted to refinance any senior construction or permanent loan on commercially reasonable terms in an amount equal to the then-outstanding principal balance of such senior loan(s) (the "Refinanced Loan"), and Lender agrees that Lender's Executive Director shall have the authority to execute reasonable subordination agreements to confirm such subordination such that the deed of trust securing the Loan shall remain subordinate to any such Refinanced Loan.

Time. Time is of the essence with respect to this Agreement and the performance of each obligation contained herein.

Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

WHEREAS, this Agreement has been entered into by the undersigned as of the date first above written.

LENDER:

PALM DESERT HOUSING AUTHORITY

By:

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Name:
Title:

ATTEST:

Anthony J. Mejia, Secretary

APPROVED AS TO FORM:

Robert W. Hargreaves, City Attorney

BORROWER:

PALM DESERT PACIFIC ASSOCIATES, a
California limited partnership

By: TPC HOLDINGS IX, LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its: Manager

By: _____
Name: Caleb Roope
Its: President and CEO

By: CENTRAL VALLEY COALITION
FOR AFFORDABLE HOUSING, a
California Nonprofit Public Benefit
Corporation
Its: Managing General Partner

By: _____
Name: Christina Alley
Its: Chief Executive Officer

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A RESOLUTION OF THE PALM DESERT HOUSING AUTHORITY APPROVING A LOAN AGREEMENT REGARDING VITALIA BETWEEN THE AUTHORITY AND PALM DESERT PACIFIC ASSOCIATES, L.P., PACIFIC WEST COMMUNITIES, INC., AND TAKING RELATED ACTIONS

RECITALS:

A. Pursuant to AB X1 26 (enacted in June 2011) and the California Supreme Court's decision in California Redevelopment Association, et al. v. Ana Matosantos, et al., 53 Cal. 4th 231 (2011), the former Palm Desert Redevelopment Agency (the "**Former Agency**") was dissolved as of February 1, 2012, the Successor Agency to the Palm Desert Redevelopment Agency (the "**Successor Agency**"), as the successor entity to the Former Agency, was constituted, and a board of the Successor Agency (the "**Board**") was established.

B. AB X1 26 added Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) to Division 24 of the California Health and Safety Code ("**HSC**") (such Parts 1.8 and 1.85, including amendments and supplements enacted after AB X1 26, being referred to herein as the "**Dissolution Act**").

C. Pursuant to HSC Section 34176(b), the City Council of the City of Palm Desert (the "**City**") adopted Resolution No. 2012-07, electing for the City to not retain the responsibility for performing housing functions previously performed by the Former Agency, and determining that all of the assets, as allowed by law, and all rights, powers, liabilities, duties, and obligations associated with the housing activities of the Former Agency be transferred to the Palm Desert Housing Authority (the "**Authority**").

D. The Successor Agency and Pacific West Communities, Inc. (~~the~~ "**Developer**" "Pacific West") entered into an Exclusive Negotiation Agreement, dated as of October 21, 2020, for the purpose of negotiating the terms and conditions upon which the Successor Agency would sell to the Developer Pacific West the approximately +/- 11.94-acre portion of real property owned by the Successor Agency located in the City along Gerald Ford Drive and identified as APN 694-310-006 (the "**Property**") for the purpose of constructing thereon a 269-unit multi-family residential apartment community for households with incomes between 30% and 80% of the area median income (the "**Project**"). The Property is described in Exhibit "A", attached hereto and incorporated herein.

E. Pacific West created Palm Desert Pacific Associates, a California limited partnership ("**Developer**") to be the tax credit limited partnership that will be the borrower and the developer for the Project; Pacific West is its Administrative General Partner.

F. An appraisal of the Property was ordered from Novogradac Consulting, LLP, received and dated March 25, 2021. The report places the current appraised value of the Property at \$4,500,000.

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FG. The DeveloperPacific West has submitted a funding request to the Authority to make a loan to the DeveloperPacific West in the amount of \$6,030,000 (the “**Loan**”) to assist the DeveloperPacific West in the purchase of the Property from the Successor Agency and the development of the Project. The Project is intended to be funded by leveraging multiple funding sources including four percent tax exempt bonds, federal tax credits, state tax credits, and the Loan.

GH. At its meeting on August 26, ~~2024~~2021, the Board of the Successor Agency approved a purchase and sale agreement (the “**PSA**”) for the sale of the Property to the DeveloperPacific West for a purchase price equal to its appraised value, subsequently was approved on March __, 2022 by the Countywide Oversight Board of the County of Riverside and, was deemed approved by the State Department of Finance.

HI. The Authority, as the housing successor to the Former Agency, on August 26, 2021, approved a Conditional Agreement Regarding Vitalia Apartments between the Authority and the DeveloperPacific West and incorporated herein by reference (the “**Conditional Loan Agreement**”) which provides for the Authority to make the Loan to the DeveloperPacific West subject to the terms and conditions therein.

IJ. The DeveloperPacific West has submitted, an application, including the Conditional Loan Agreement, to the California Tax Credit Allocation Committee (“TCAC”) for an allocation of tax-exempt bonds, federal tax credits and state tax credits as described in the Conditional Loan Agreement.

JK. The DeveloperPacific West has successfully received a Tax Allocation for the Project and has provided proof of financing commitments from all sources to fund the entire Project and the Project is in the process of obtaining a conditional Grading and Building and Safety permit ready approval.

NOW, THEREFORE, THE PALM DESERT HOUSING AUTHORITY DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The above recitals, and each of them, are true and correct and are a substantive part of this Resolution.

Section 2. The Agreement, in the form attached hereto as **Exhibit “B”**, is hereby approved. The Executive Director of the Authority is hereby authorized to execute and deliver, for and in the name of the Authority, the Agreement in substantially such form, with such changes thereto as the Executive Director, in consultation with the Authority legal counsel, may deem appropriate or necessary and consistent with the purposes of this Resolution (such approval to be conclusively evidenced by the execution and delivery thereof).

Section 3.

RESOLUTION NO. HA-104

Section 4.

Section 5.

Section 6. The members of this Board and the staff of the Authority are hereby authorized, jointly and severally, to do all things which they may deem necessary or proper to effectuate the purposes of this Resolution, including negotiating and preparing agreements and documents, and any such actions previously taken are hereby ratified and confirmed.

**PASSED, APPROVED and ADOPTED on this 17th day of November, 2022,
by the following vote, to wit:**

AYES: ~~HARNIK, JONATHAN, NESTANDE, QUINTANILLA, and KELLY~~

NOES: ~~NONE~~

ABSENT: ~~NONE~~

ABSTAIN: ~~NONE~~

~~KATHLEEN — KELLY JAN C HARNIK,~~
CHAIRMAN

ATTEST:

~~NORMA I. ALLEY~~ ANTHONY J. MEJIA,
MMC, SECRETARY

PALM DESERT HOUSING AUTHORITY

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RESOLUTION NO. HA-104

EXHIBIT "A"

The Land referred to herein below is situated in the City of Palm Desert, County of Riverside, State of California, and is described as follows:

LEGAL DESCRIPTION

A PORTION OF PARCEL 1 OF THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. 88-1, RECORDED JUNE 1, 1988 AS INSTRUMENT NO. 146461 OF OFFICIAL RECORDS. IN THE CITY OF PALM DESERT, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 4 NORTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 1;

THENCE NORTH 89°55'15" EAST, ALONG THE NORTHERLY LINE OF SAID PARCEL 1, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF GERALD FORD DRIVE, A DISTANCE OF 514.35 FEET;

THENCE SOUTH 47°23'23" EAST, A DISTANCE OF 34.01 FEET;

THENCE SOUTH 00°03'36" WEST, A DISTANCE OF 942.64 FEET;

THENCE NORTH 89°56'24" WEST, A DISTANCE OF 539.40 FEET;

THENCE NORTH 00°03'36" EAST, ALONG THE WESTERLY LINE OF SAID PARCEL 1 AND THE SOUTHERLY EXTENSION THEREOF, A DISTANCE OF 964.39 FEET, TO THE **POINT OF BEGINNING**;

SUBJECT TO EXISTING EASEMENTS, COVENANTS, RIGHTS AND RIGHTS-OF-WAY OF RECORD.

CONTAINING 520,257 SQUARE FEET OR 11.943 ACRES MORE OR LESS.

AS DEPICTED ON **EXHIBIT "B"** ATTACHED HERETO AND MADE A PART HEREOF.

THIS LEGAL DESCRIPTION DOES NOT DESCRIBE A LEGAL PARCEL OF LAND. IT IS NOT TO BE USED FOR CONVEYANCE OR FINANCING OR ANY OTHER PURPOSE THAT WOULD BE A VIOLATION OF THE CALIFORNIA SUBDIVISION MAP ACT.

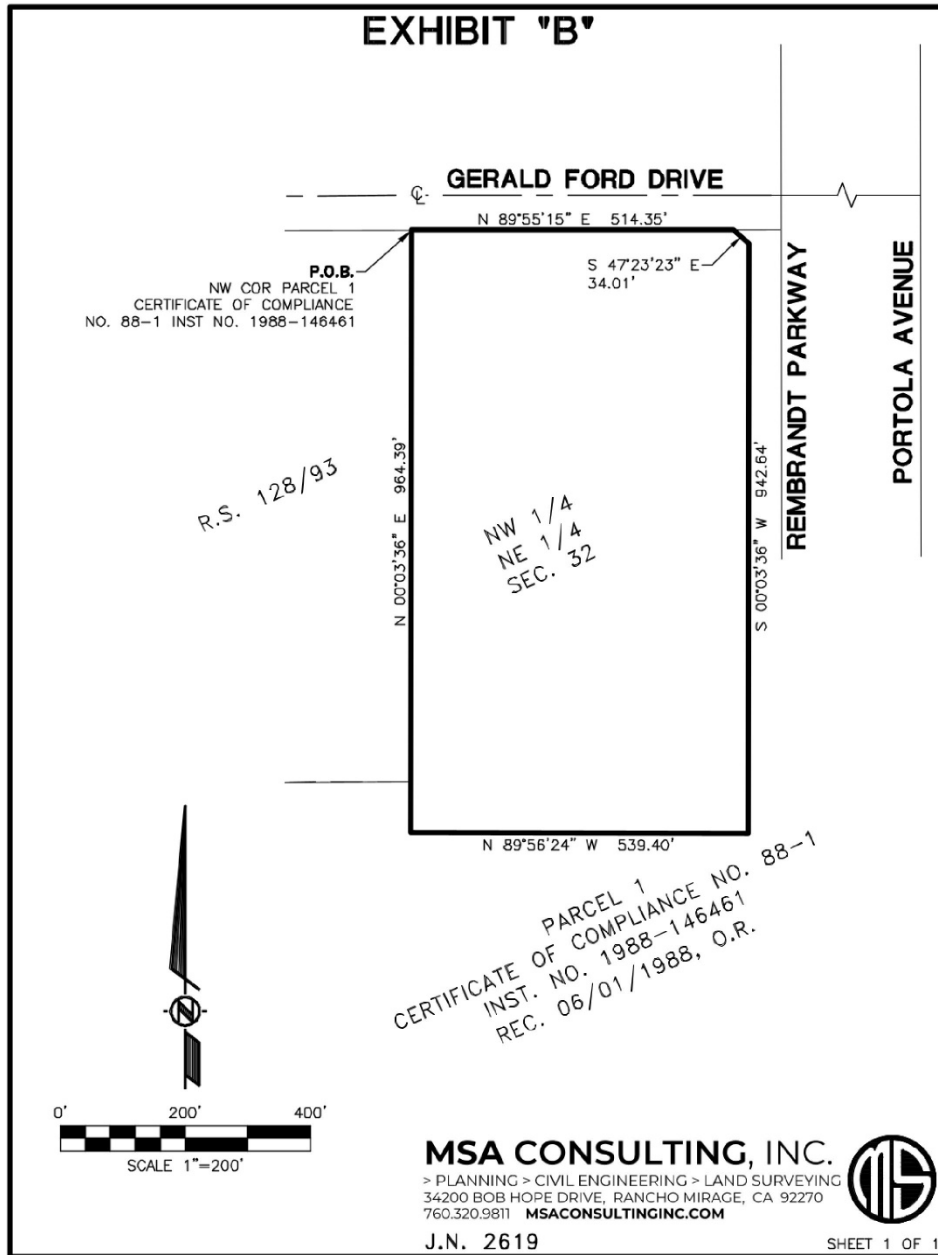


EXHIBIT "B"

CONDITIONAL AGREEMENT

August 26, 2021

Caleb Roope
Pacific West Communities, Inc.
430 East State Street, Suite 100
Eagle, ID 83616

Re: Conditional Agreement Regarding Vitalia

Dear Mr. Roope:

The Palm Desert Housing Authority (the "Housing Authority"), has approved a request from your firm, Pacific West Communities, Inc. ("Pacific West"), to finance a loan for the purchase of a +/-11.94-acre portion of APN 694-310-006 (the "Property"), located on the south side along Gerald Ford Drive at the intersection of Rembrandt Parkway directly east of the Riverside County Sheriff Station for the fair market price (as established by a third party appraiser), in the total amount of Six Million Thirty Thousand Dollars (\$6,030,000.00) (the "Housing Authority Loan") for the development of a 269-unit multi-family apartment community located on that certain real property located in the City of Palm Desert, California (the "City") and known as Vitalia Apartments (the "Project").

As of August 26, 2021, the Authority has conditionally approved of the proposed Loan commitment of the Housing Authority Loan to Six Million Thirty Thousand Dollars (\$6,030,000), subject to the following:

1. Project. The Project will be operated for a period of fifty-five (55) years following the date of completion of the Project and issuance of a certificate of occupancy to provide affordable housing to persons and households of low and very-low income in accordance with the affordability restrictions contained in the Loan Agreement (as defined below) and in accordance with the Tax Exempt Bonds and Low-Income Housing Tax Credit financing being used by the Project. To the extent necessary, the Housing Authority shall subordinate the deed of trust securing the Housing Authority Loan to the liens and encumbrances of the Project's construction and permanent lenders. The Housing Authority will not subordinate its interests in the regulatory agreement referenced in Section 3 below, and the City will not subordinate its interest in any regulatory agreement that is required to be recorded against the Property by virtue of a density bonus granted pursuant to Ordinance No. _____ of the City, to the liens or encumbrances of the Project's construction and permanent lenders.

RESOLUTION NO. HA-104

2. Project Owner. The Project owner shall be a California limited partnership whose administrative general partner is controlled by Pacific West Communities, Ins., an Idaho corporation, or its affiliates.
3. Housing Authority Loan Documents. The proposed structuring of the Housing Authority Loan will be evidenced by, among other things, a loan and development agreement (the "Loan Agreement"), and a promissory note, deed of trust and regulatory agreement, (collectively, the "Loan Documents"), each in form and substance acceptable to the Housing Authority and its counsel, and executed by the Project Owner and the Housing Authority as applicable.
4. Housing Authority Loan Terms. The Housing Authority Loan shall have a term of fifty-five (55) years, commencing as of the effective date of the Loan Agreement and shall bear simple interest at three percent (3%) per annum. The Housing Authority Loan shall be repaid from fifty-percent (50%) the Project's residual receipts remaining after payment of fees (including deferred developer fees, investor fees, partnership fees, and management fees), debt service and operating expenses.
5. Affordability Restrictions.
 - (i) A total of 81 Units are to be restricted by Health and Safety Code Sections 50106 and 50053 as Extremely-Low Income units:
 - a. 39 one-bedroom units
 - b. 21 two-bedroom units
 - c. 21 three-bedroom units
 - (ii) A total of 186 Units are to be restricted by Health and Safety Code Sections 50079.5 and 50053 (assuming rent is calculated at 80% of the Riverside County Area Median Income instead of 50% AMI) as Low Income Units:
 - a. 92 one-bedroom units
 - b. 46 two-bedroom units
 - c. 47 three-bedroom units
 - (iii) Three 2-bedroom units will be unrestricted and used as onsite manager units.
6. Construction and Permanent Lender Loan Documents. The loan documentation pertaining to the proposed construction and permanent loans to finance the Project, and all related instruments, shall be submitted to the Housing Authority for its approval and shall be in form and substance acceptable to, and approved by, the Board of the Housing Authority and its counsel.

RESOLUTION NO. HA-104

7. Award of Tax-Exempt Bonds from CDLAC. Prior to Loan closing and funding, the Project shall have all of their funding sources committed. This includes but is not limited to have been awarded the allocation of tax-exempt bonds pursuant to an application therefor by Pacific West Communities, Inc. to the California Debt Limit Allocation Committee (CDLAC), California Tax Credit Allocation Committee for State Tax Credits and any other funding source.
8. No Third Party Beneficiaries. This letter is solely for the benefit of the Housing Authority and Pacific West Communities, Inc., and shall not inure to the benefit of, or be relied upon by, any other person or entity other than the Project Owner.
9. Counterparts. This letter may be executed in counterparts, with the same effect as if each counterpart were an original document.

Very truly yours,

Palm Desert Housing Authority

By: _____
Name: _____
Its: _____

AGREED BY PACIFIC WEST COMMUNITIES, INC.:

By: _____
Caleb Roope,
President

Date: _____, 2021

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

This Document is recorded for the benefit of the Palm Desert Housing Authority and is exempt from recording fees pursuant to Sections 6103, 27383 and 27388.1 of the California Government Code.

HOUSING AGREEMENT
(LMIHF Funds)

by and between

the PALM DESERT HOUSING AUTHORITY,

and

PALM DESERT PACIFIC ASSOCIATES,
a California limited partnership

DATED AS OF _____, 2022

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- 1.1 Definitions
- 1.2 Rules of Construction

ARTICLE 2. ONGOING APARTMENT COMMUNITY OBLIGATIONS

- 2.1 Apartment Community and Affordable Units
- 2.2 Residential Rental Property
- 2.3 Extremely Low, Low, and Moderate Income Households
- 2.4 Affordable Rent
- 2.5 Rent Increases
- 2.6 Income Recertification of Affordable Units
- 2.7 Lease or Occupancy Agreement
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ARTICLE 3. TERM AND RECORDATION

- 3.1 Term of Agreement
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HOUSING AGREEMENT

THIS HOUSING AGREEMENT (the “**Agreement**”) is dated as of _____, 2022, and is by and between the PALM DESERT HOUSING AUTHORITY, a public body, corporate and politic (the “**Authority**”), and PALM DESERT PACIFIC ASSOCIATES, a California limited partnership (the “**Owner**”). Authority and Owner are sometimes referred to herein individually as a “Party” and collectively as “Parties”.

RECITALS

This Agreement is predicated upon the following facts:

A. The Owner (also referred to herein as the "Developer") has acquired the property described on Exhibit “A” (“Site”) from the Successor Agency to the Palm Desert Redevelopment Agency.

B. Developer has entered into a Loan Agreement (“Loan Agreement”) with the Authority which contemplates that the Authority, as successor to the housing assets of the former Palm Desert Redevelopment Agency, shall make a \$6,030,000.00 purchase money and construction loan (“Loan”) to Developer using moneys in the Authority’s low and moderate income housing asset fund for the purchase price for the Site and to pay certain construction costs of the 269 unit apartment project described in the Loan Agreement (“Project”). The Loan Agreement requires that Developer execute and record this Agreement against the Site and Project, and provides that an uncured default under this Agreement shall constitute a default under the Loan Agreement and shall entitle the Authority to accelerate the maturity date of the Loan.

C. As described in Resolution No. 2021-57 adopted by the City Council of the City, the City of Palm Desert (“City”) has granted a density bonus to Developer consisting of a reduction in the required parking from 538 spaces to 420 spaces, in exchange for Developer’s execution and recording of a separate Housing Agreement (Density Bonus) with the City.

D. This Agreement shall **not** be subordinate or subordinated to any deeds of trust or other liens encumbering the Site or Project.

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

ARTICLE 1. DEFINITIONS AND INTERPRETATION.

1.1 Definitions.

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

“**Affordable Units**” shall mean the 81 of the 269 units in the Apartment Community available to and occupied by, or held vacant for occupancy only by, Extremely Low Income Households and rented at an Affordable Rent. The Affordable Units will include the number of bedrooms shown on the following table:

Bedroom Size	Extremely Low Income Household Affordable Units
One	39
Two	21
Three	21
Total	81

“**Affordable Rent**” shall mean rent for an Affordable Unit, including a Reasonable Utility Allowance, determined pursuant to California Health and Safety Code Section 50053(b) and the state regulations adopted by the California Department of Housing and Community Development (“HCD”) pursuant thereto, as amended from time to time, based upon the AMI adjusted for a Household Size Appropriate to the Affordable Unit. More specifically, (1) for each of the 81 Affordable Units reserved for Extremely Low Income Households, the maximum monthly Affordable Rent, including a Reasonable Utility Allowance, may not exceed thirty percent (30%) of thirty percent (30%) of the AMI, adjusted for a Household Size Appropriate to the Affordable Unit, divided by twelve.

“**AMI**” shall mean the area median income for Riverside County as published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50052.5, or successor statute, as adjusted for family size in accordance with the state regulations adopted pursuant to California Health and Safety Code Section 50052.5, provided, however, that at any time the Project is subject to a CTCAC extended use agreement, CTCAC’s rules and regulations regarding area median income shall control.

“**CTAC**” means the California Tax Credit Allocation Committee.

“**Extremely Income Household**” shall mean persons and families whose income does not exceed the qualifying limits for persons and families of low or moderate income set forth in California Health and Safety Code Section 50106 and Title 25 of the California Code of Regulations, as such statute and regulations may be amended from time to time.

“**Household Size Appropriate to the Affordable Unit**” shall have the meaning set forth in California Health and Safety Code Section 50052.5(h), as amended from time to time.

“**Reasonable Utility Allowance**” shall mean a utility allowance for utilities paid by a tenant (not including telephone, internet or cable service) utilizing at Owner’s election, either (i)

the utility allowance schedule published annually by the Housing Authority of the County of Riverside, or (ii) if the California Utility Allowance Calculator.

“Required Covenant Period” shall mean the period commencing on the date all units in the Apartment Community have been completed as evidenced by the City’s issuance of a final Certificate of Occupancy for the Apartment Community, and ending as of the fifty-fifth (55th) anniversary thereof.

1.2 Rules of Construction.

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

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

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

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

ARTICLE 2. ONGOING APARTMENT COMMUNITY OBLIGATIONS.

2.1 Apartment Community and Affordable Units.

The Owner shall develop and construct the Apartment Community on the Property in conformity with the applicable governmental permits and approvals. Thereafter, during the Required Covenant Period, the Owner agrees that not less than 81 units in the Apartment Community shall be Affordable Units, meaning that 81 of such units shall be continually available to and occupied by, or held vacant for occupancy only by, Extremely Low Income Households. All of the rental units in the Apartment Community shall be similarly constructed and all of the Affordable Units shall be generally constructed at the same time as those units which are available to other tenants, and distributed in terms of location throughout the Apartment Community. The Affordable Units shall be of comparable quality to those rental units in the Apartment Community which are available to other tenants. The Owner agrees that, to the extent commercially reasonable, Affordable Units will not be underutilized. No persons shall be permitted to occupy any Affordable Unit in excess of applicable limit of maximum occupancy set by the City’s Municipal Code, the Authority and the laws of the State of California.

2.2 Residential Rental Property.

The Owner covenants to operate the Apartment Community as residential rental property. During the Required Covenant Period, the Affordable Units will be held and used for the purpose of providing residential living, and the Owner shall own, manage and operate, or cause the management and operation of, the Apartment Community to provide such affordable rental housing. All of the rental units in the Apartment Community **with the exception of three (3) manager units** will be available for rental on a continuous basis to members of the general public and the Owner will not give preference to any particular class or group in renting the units in the Apartment Community, except as required under the Housing Agreement (Density Bonus) with the City of Palm Desert, or any other required regulatory agreement for the Apartment Community. The Owner shall not convert any Affordable Unit(s) to condominiums or cooperative ownership or sell condominium or cooperative conversion rights to any Affordable Unit(s) during the term of this Agreement.

2.3 Extremely Low Income Households.

2.3.1 Income Qualification; Initial Certification. Subject to the applicable provisions hereof, throughout the Required Covenant Period, Affordable Units will be exclusively occupied by, or available for occupancy only by, Extremely Low Income Households, as applicable, on a continuous basis. Prior to the rental or lease of an Affordable Unit **and in accordance with Section 2.6 hereof**, the Owner will obtain and maintain on file a Household Income Certification (“**Income Certification**”) substantially in the form attached hereto as **Exhibit “B”** and incorporated herein by this reference for each Extremely Low Income Household, as applicable, and shall provide copies of same to the Authority at such times as the City may, from time to time, reasonably require. In addition, the Owner will provide such further information as may reasonably be required in the future by the Authority with respect to compliance with the income and occupancy requirements set forth herein. The Income Certification shall be dated immediately prior to the applicable household’s initial occupancy of an Affordable Unit. The Owner shall make a good faith effort to verify that the income provided by an applicant in an Income Certification is accurate by taking any one or more of the following steps as part of the verification process for all household members over the age of eighteen (18) as appropriate:

- (i) Obtain two (2) pay stubs for the two (2) most recent pay periods;
- (ii) Obtain a true copy of an income tax return for the most recent tax year in which a return was filed;
- (iii) Obtain an income verification form from the household member’s current employer;
- (iv) Obtain an income verification form from the Social Security Administration and/or the State Department of Social Services, or its equivalent, if the household member receives assistance from either of those agencies;
- (v) If the household member is unemployed and has no tax return, obtain another form of independent verification; or

(vi) Obtain such other documentation as may be reasonably acceptable pursuant to Title 25 of the California Code of Regulations or CTCAC, as amended from time to time, to verify income.

2.3.2 Certificate of Continuing Program Compliance; Annual Report. Throughout the Required Covenant Period, the Owner will prepare and submit to the Authority, at such periodic frequency as the Authority might reasonably require, but not more than once annually, a Certificate of Continuing Compliance in substantially the form attached hereto as **Exhibit “C”** and incorporated herein by this reference, and executed by the Owner. The Owner will also prepare and submit to the Authority on or before each anniversary date of the commencement of the Required Covenant Period, and for the preceding calendar year, a report in form and substance reasonably satisfactory to the Authority summarizing the vacancy rate of the Apartment Community, including the number of Affordable Units held vacant for occupancy by Extremely Low Income Households for such calendar year.

2.4 Affordable Rent. Throughout the Required Covenant Period, an Affordable Rent shall be charged to the Extremely Low Income Household occupants of Affordable Units, as more specifically described above.

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

2.6 Income Recertification of Affordable Units. Annually, on the anniversary date of occupancy of an Affordable Unit by an Extremely Low Income Household, as applicable, the Owner shall obtain and maintain on file an annual income certification, in form and substance reasonably satisfactory to the Authority (but CTCAC’s required form of income certification shall be deemed satisfactory, together with any other information reasonably requested by the Executive Director of the Authority), from each household occupying an Affordable Unit, based upon the current income of each household member over the age of eighteen (18). The Owner shall make a good faith effort to verify that the income provided by the household is accurate in accordance with Section 2.3.1, above.

2.6.1 A rental unit occupied by a household that qualifies as an Extremely Low Income Household at the time the household first occupies an Affordable Unit shall be deemed to continue to be so occupied until a recertification of such household’s income demonstrates that such household no longer qualifies as an Extremely Low Income Household, as applicable. At such time as a household ceases to qualify as an Extremely Low Income Household, based on income recertification, such Affordable Unit shall continue to be treated as a qualifying household for purposes of Owner’s compliance with this Agreement, provided, however, that the Owner shall designate the next available unit (one that is not occupied by a tenant) with the same number of bedrooms as the occupied Affordable Unit and it shall be leased to an Extremely Low Income Household so that the number of Affordable Units occupied by or reserved for

occupancy by Extremely Low Income Households will remain constant. For purposes of this Agreement, such designated unit will be considered an Affordable Unit if it is held vacant and available solely for occupancy by an Extremely Low Income Household and, upon occupancy, the income eligibility of the household as an Extremely Low Income Household is verified and the unit is rented at the applicable Affordable Rent.

2.7 Lease or Occupancy Agreement. Prior to the rental or lease of an Affordable Unit to an Extremely Low Income Household, the Owner shall require the tenant to execute a written lease or occupancy agreement. The Owner shall maintain on file throughout the Required Covenant Period and for a four (4) year period thereafter, the executed lease or occupancy agreement of each tenant occupying an Affordable Unit. The form of lease or **occupancy** agreement used by the Owner for the lease or rental of Affordable Units shall be that which is reasonable and customary in affordable residential leasing. In addition, each lease or **occupancy** agreement for an Affordable Unit shall (i) provide that the tenants of such Affordable Unit shall be subject to annual recertification of income and subject to rental increases in accordance with Sections 2.5 and 2.6 of this Agreement, and (ii) contain a provision to the effect that the Owner has relied on the income certification and supporting information supplied by the tenant in determining qualification for occupancy of the Affordable Unit, and that any material misstatement in such certification (whether or not intentional) may be cause for immediate termination of such lease or **occupancy** agreement.

2.7.1 The Owner shall refrain from restricting the rental or lease of Affordable Units on the basis of race, color, religion, sex, marital status, disability, ancestry or national origin of any person.

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

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

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

2.9 Additional Information; Books and Records. The Owner shall provide any additional information concerning the Affordable Units reasonably requested by the Authority. The Owner will maintain complete and accurate records pertaining to the Affordable Units throughout the Covenant Period **and** for a four (4) year period thereafter. The Authority shall have the right upon written notice of no less than two (2) business days to the Owner, at any time during normal business hours of 9:00 am to 5:00 pm, to examine of all books, records or other documents maintained by the Owner or by any of the Owner's agents which pertain to any Affordable Unit, including all executed leases or **occupancy** agreements and all Income Certifications, and obtain copies of any requested executed leases, **occupancy** agreements and Income Certifications within ten (10) business days following such examination and the Authority's written request.

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

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

2.12 Management. The Owner and/or the management agent (if not the Owner) shall operate the Apartment Community in a manner that will provide decent, safe and sanitary residential facilities to the occupants thereof, and will comply with provisions of this Agreement. Upon the written request of the Authority, the Owner shall cooperate with the Authority in the periodic review (but not more than once each calendar year) of the management practices and financial status of the Affordable Units. The purpose of each periodic review will be to enable the Authority to determine if the Affordable Units are being operated and managed in accordance with the requirements and standards of this Agreement. Results of such Authority review shall be provided to the Owner, and, if the Authority finds evidence of material noncompliance the Authority shall have the right to require the Owner to make modifications that are reasonably necessary to ensure the objectives of this Agreement are met.

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

ARTICLE 3. TERM AND RECORDATION.

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

3.2 Agreement to Record. The Owner represents, warrants, and covenants that this Agreement will be recorded in the real property records of Riverside County.

3.3 Early Termination of Restrictions. Notwithstanding the generality of the foregoing provisions of this Article 3 or any other provisions hereof, this Agreement and all of the terms and restrictions contained herein shall terminate and be of no further force and effect in the event of involuntary noncompliance as a result of unforeseen events such as fire or act of God which

leaves the entire Apartment Community uninhabitable (and the proceeds of insurance available to the Owner as a result thereof are insufficient to reconstruct the Apartment Community), or a change in a federal or state law or an action by the federal government, the State or a court of competent jurisdiction, after the date of recordation hereof, that prevents the Authority from enforcing the provisions of this Agreement, or a condemnation or a similar event. Upon termination of this Agreement, the Parties or their successors, as applicable, agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instrument shall not be necessary or a prerequisite to termination of this Agreement in accordance with its terms.

ARTICLE 4. DEFAULT; REMEDIES.

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

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

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

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

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

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

4.1.6 The seizure or appropriation of all or, in the reasonable opinion of the Authority, a substantial part of the Apartment Community, except for condemnation or similar event initiated by the Authority or any other governmental agency or authority.

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

4.2 Option to Lease. Upon the occurrence and during the continuance of an Event of Default, to cause the Apartment Community to meet the requirements of this Agreement, the Owner hereby grants to the Authority the option to lease up to all of the rental units as necessary to achieve compliance with the provisions of Article 2 of this Agreement and for the purpose of subleasing such units in accordance with the requirements of this Agreement. The amount of rental to be paid for such rental units following the exercise of the option by the Authority shall be equal to the applicable Affordable Rent. Any rental paid under any such sublease shall be paid to the Authority without obligation to pay any such rent to the Owner during the pendency of the Owner's default. Upon acceptance by the Authority of a cure by Owner or by owner's limited partner, any lease for Affordable Units with the Authority shall terminate and the Authority shall assign all subleases to Owner.

4.3 Authority Remedies. The Authority shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Owner to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions hereof, provided that in any such case the Authority has first provided the required notice of any alleged default and the Owner has had the requisite opportunity to cure pursuant to Section 4.1.1, above.

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

ARTICLE 5. GENERAL PROVISIONS.

5.1 Limitations on Recourse. Notwithstanding anything to the contrary contained in this Agreement, except in the event of fraud, intentional waste, or illegal acts, or with regard to any indemnity obligations imposed upon the Owner under the terms of this Agreement, (i) no partner, member, officer or director, as applicable, of the Owner (each, an "**Owner Affiliate**") shall have any direct, indirect or derivative personal liability for the obligations of the Owner

under this Agreement, and (ii) the Authority shall not exercise any rights or institute any action against any Owner Affiliate directly, indirectly or derivatively for the payment of any sum of money that is or may become payable hereunder.

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

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

If to the Authority:

Palm Desert Housing Authority
73-510 Fred Waring Drive
Palm Desert, CA 92260-2578
Attn: Housing Division
Phone: (760) 346-0611
Fax: (760) 341-6372

If to the Owner:

Palm Desert Pacific Associates
c/o Pacific West Communities, Inc.
430 E. State Street, Suite 100,
Eagle, ID 83616
Attention: Caleb Roope
With a copies to:

McReynolds & McCormack, PLLC
430 E. State Street, Ste.140
Eagle, ID 83616
Attention: Clay McReynolds

And:

BF Vitalia, LLLP
101 Arch Street, 13th Floor
Boston, MA 02110
Attn: Asset Management - Vitalia Apartments

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

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

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

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

5.8 Unavoidable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, performance of a construction obligation by any Party hereunder shall not be deemed to be in default where it is due to an “Unavoidable Delay.” “**Unavoidable Delay**” means a delay due to the elements (including unseasonable weather), fire, earthquakes or other acts of God, strikes, pandemics, labor disputes, lockouts, shortages of construction materials experienced generally in the construction industry in the local area, acts of the public enemy, riots, insurrections or governmental regulation of the sale or transportation of materials, supply or labor; provided, however, that to the extent a delay is caused by any other reason that the Owner reasonably believes is beyond its control, the Owner may request, on a case-by-case basis, that the Authority excuse any such delay as an Unavoidable Delay and the Authority shall make its determinations as to whether such delay constitutes an Unavoidable Delay using its reasonable judgment.

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

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

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

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

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

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

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

5.16 Approval by the Authority. Any approvals required under this Agreement to be made by the Authority shall be made by the Executive Director of the Authority or his or her designee. Any such approval or consent shall not be unreasonably withheld, conditioned, delayed or made, except where it is specifically provided herein that another standard applies, in which case the specified standard shall apply.

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

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

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

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

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

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

OWNER:

PALM DESERT PACIFIC ASSOCIATES, a
California limited partnership

By: TPC HOLDINGS IX, LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its: Manager

By: _____
Name: Caleb Roope
Its: President and CEO

By: CENTRAL VALLEY COALITION
FOR AFFORDABLE HOUSING, a
California Nonprofit Public Benefit
Corporation
Its: Managing General Partner

By: _____
Name: Christina Alley
Chief Executive Officer

AUTHORITY:

PALM DESERT HOUSING
AUTHORITY,
a public body, corporate and politic

By: _____
Name: _____
Title: _____

ATTEST:

[Anthony J. Mejia], Secretary

APPROVED AS TO FORM:

Richards, Watson & Gershon,
a Professional Corporation

By: _____
Special Counsel

NOTARY ACKNOWLEDGEMENT

STATE OF IDAHO)
) ss
COUNTY OF ADA)

On this ____ day of [____], in the year of 2022, before me, _____, a notary public, personally appeared Caleb Roope, known or identified to me to be President and CEO of Pacific West Communities, Inc., an Idaho corporation, the Manager of TPC Holdings IX, LLC, an Idaho limited liability company, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

~~[SEAL]~~

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 _____)

On _____, 2022, before me,
_____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____(Seal)

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 _____)

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

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

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

WITNESS my hand and official seal.

Signature _____(Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Palm Desert, County of Riverside, State of California, described as follows:

A PORTION OF PARCEL 1 OF THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. 88-1, RECORDED JUNE 1, 1988 AS INSTRUMENT NO, 146461 OF OFFICIAL RECORDS. IN THE CITY OF PALM DESERT. COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 4 NORTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 1;

THENCE NORTH 89°55'15" EAST, ALONG THE NORTHERLY LINE OF SAID PARCEL 1, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF GERALD FORD DRIVE, A DISTANCE OF 514.35 FEET;

THENCE SOUTH 47°23'23" EAST, A DISTANCE OF 34.01 FEET,
THENCE SOUTH 00°03'36" WEST, A DISTANCE OF 942.64 FEET,
THENCE NORTH 89°56'24" WEST, A DISTANCE OF 539.40 FEET;

THENCE NORTH 00°03'36" EAST, ALONG THE WESTERLY LINE OF SAID PARCEL 1 AND THE SOUTHERLY EXTENSION THEREOF, A DISTANCE OF 964.39 FEET, TO THE **POINT OF BEGINNING.**

HOUSEHOLD INCOME CERTIFICATION

Item 2E-62

EXHIBIT "C"

CERTIFICATE OF CONTINUING COMPLIANCE

OWNER'S CERTIFICATE OF CONTINUING COMPLIANCE

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

Attn: **DIRECTOR OF HOUSING**

Certification Dates:	From:	To:
Project Name:		
Project Number:		
Project Address:		
Tax Id # of Ownership Entity:		

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

<input type="checkbox"/> No buildings have been Placed in Service <input type="checkbox"/> Other _____

- The project meets the minimum requirements of:
☐ _____
☐ _____
- There has been change / no change for any building in the project:
☐ NO CHANGE ☐ CHANGE
If "Change," please list : _____
- The owner has received annual Tenant Income Certification from all low-income households and documentation to support that certification.
☐ YES ☐ NO
- All low-income units in the project have been rent-restricted under the terms of Agreement No.: _____
☐ YES ☐ NO
- All low-income units in the project have been and are being for used by the general public on a non-transient basis:
☐ YES ☐ NO
- No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court:
☐ YES ☐ NO
List Finding if occurred: _____

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

☐ YES ☐ NO

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

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

☐ YES ☐ NO

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

☐ YES ☐ NO

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

☐ YES ☐ NO

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

☐ NO CHANGE ☐ CHANGE

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

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

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

(Ownership Entry)

By: _____

Title: _____

Date: _____

Place: _____

EXHIBIT “D”

2022 STANDARD AFFORDABLE RENTAL RATES⁶

NO. OF BEDROOMS	HOUSEHOLD SIZE APPROPRIATE TO THE UNIT ¹ :	EXTREMELY LOW ²	VERY LOW ²	LOW ²	MODERATE ²
		(20%-30%) the product of 30% x 30% of AMI ⁴	(31% - 50%) the product of 30% x 50% of AMI ⁴	(51% - 80%) the product of 30% x 60% ³ of AMI ⁴	(81% - 120%) the product of 30% x 110% ³ of AMI ⁴
Studio	1	\$385.00	\$642.00	\$1,233.00	\$1,836.00
1 Bedroom	2	\$441.00	\$733.00	\$1,409.00	\$2,097.00
2 Bedroom	3	\$496.00	\$825.00	\$1,585.00	\$2,360.00
3 Bedroom	4	\$578.00	\$917.00	\$1,760.00	\$2,622.00
4 Bedroom	5	\$676.00	\$991.00	\$1,901.00	\$2,832.00

NOTES:

- 1 Pursuant to H&S Code Section 50052.5(h), "A HOUSEHOLD SIZE APPROPRIATE TO THE UNIT" shall mean: A household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, And five persons in the case of a four-bedroom unit.
- 2 Pursuant to H&S Code Section 50053(b), An affordable rent shall include a reasonable utility allowance. Utility Allowances are not included in the calculated affordable rental rates.
- 3 Pursuant to H&S Code Section 50053(b)(3)&(4), *Low and Moderate Calculation Exception is as follows:* For households with gross incomes that exceed 60 % for Low and 110% for Moderate of the area median income ("AMI") adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.
- 4 Pursuant to H&S Code Section 50053(c), "AMI" shall mean: The area median income for Riverside County as published by the Department of Housing and Community Development (HCD), or if such agency shall cease to publish such an index, then any comparable index published by any other federal or state agency which is approved by the Agency.
- 5 The Standard Affordable Rental Rates have been calculated based on what the California Code of Regulations establish and publish as a general definition of income, including inclusions, exclusions, and allowances, for qualifying persons under the income limits and are not specific to any agreement or qualification of an individual eligibility.

Updated 8.3.22

LOAN AGREEMENT

THIS LOAN AGREEMENT "Loan Agreement") is dated as of _____, 2022 and is entered into by and between the PALM DESERT HOUSING AUTHORITY ("Lender"), and PALM DESERT PACIFIC ASSOCIATES, a California limited partnership ("Borrower").

RECITALS:

A. Borrower has acquired or will acquire the land located in the City of Palm Desert, County of Riverside, State of California, more particularly described on Exhibit "A" attached hereto (together with any improvements thereon, the "Property") from the Successor Agency to the Palm Desert Redevelopment Agency. (The sale of the Property was approved by the Countywide Oversight Board for the County of Riverside by its Resolution No. 2022-30, and the Property is exempt from the surplus land statutes under California Government Code 54234(b)(1)(A) because an Exclusive Negotiation Agreement for the Property was entered into prior to December 31, 2020 and the disposition of the Property is to occur prior to December 31, 2022.)

B. Borrower intends to construct the improvements on the land that are described on Exhibit "B" (the "Improvements" or "Development").

C. Borrower has requested that Lender make a loan to Borrower from low income housing set aside funds in the principal amount of \$6,030,000.00, consisting of a purchase money loan in the amount of \$4,500,000.00 to be disbursed to the seller of the Property (which is the Successor Agency to the Palm Desert Redevelopment Agency) and a construction loan of \$1,530,000.00 (collectively, the "Loan"), with the construction loan portion to be used after all available tax credit equity to pay for a portion of the costs of the Improvements, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the Parties agree as follows:

A G R E E M E N T:

1. DEFINITIONS AND EXHIBITS.

1.1. Definitions. The following initially capitalized words and terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided to the contrary:

1.1.1. "Closing" shall mean the date on which the Deed of Trust is recorded in the Official Records of Riverside County, California.

1.1.2. "Completion of Construction" shall mean the date that Borrower obtains a certificate of occupancy for the Improvements.

1.1.3. "Construction Plans" means the construction plans, specifications and related documents consistent with the Scope of Development attached hereto as Exhibit "B" for the design and construction of the Improvements.

1.1.4. “Deed of Trust” shall mean a Deed of Trust and Assignment of Rents in the form attached hereto as Exhibit “C”, executed by Borrower for the benefit of Lender and, acknowledged (which is to be recorded against the Property in the Official Records of Riverside County, California at the Closing).

1.1.5. “Entitlements” shall mean all authorizations, approvals, rights, maps, licenses, permits, franchises, certificates, instruments, documents, agreements, variances and other land use approvals required for the Development.

1.1.6. “Governmental Authority” shall mean any federal, state or local governments, and all subdivision thereof, including any City, authority, board, bureau, commission, department or other public body, including any court, administrative tribunal or public utility.

1.1.7. “Improvements”, “Development” or “Project” shall mean the project/work described in the Scope of Development attached hereto as Exhibit “B”.

1.1.8. “Loan” shall mean the loan contemplated by this Agreement as defined in the Recitals.

1.1.9. “Loan Documents” shall mean this Agreement, the Note, the Deed of Trust, the Regulatory Agreements, the Notice and all other documents and instruments executed and delivered, or to be executed and delivered, in connection with the Loan (including the Acknowledgment referred to in Section 3.6.1 below).

1.1.10. “Note” shall mean a Secured Promissory Note, in the form attached hereto as Exhibit “D”, executed by Borrower and payable to City.

1.1.11. “Notice” shall mean a Notice of Affordability Restrictions in the form attached hereto as Exhibit “E”.

1.1.12. “Operating Year” shall mean each calendar year or portion thereof during which the Project is operating.

1.1.13. “Project Net Cash Flow” shall mean the revenues (without regard to the source) derived from the operation of the Development minus (i) all real estate and personal property taxes and assessments, insurance premiums, monitoring fees and reasonable costs of maintenance, operation and management incurred by the Borrower in connection with the operation and maintenance of the Development, (ii) base property management fees not to exceed the lesser of (a) Twenty-Eight Dollars and Forty-Four cents (\$28.44) per unit per month (which amount shall increase annually by the lesser of three and a half percent (3.5%) or the rate of increase in the CPI (defined below) from the prior calendar year) or (b) three and a quarter percent (3.25%) of the effective gross income received by Borrower in connection with its applicable calendar year and other reasonable and customary management fees (iii) a minimum of \$24,000 per year in tenant services provided on-site (which amount shall increase annually by the rate of increase in the CPI from the prior calendar year, (iv) the costs of servicing the senior construction loan/financing (and any approved refinancing thereof) or other sources of financing approved by Lender (other than the Loan); (v) amounts necessary to maintain a guaranty or other form of security or bond for an operation reserve account which shall be capitalized in the amount

not to exceed Six Hundred Fifty Three Thousand Six Hundred Sixty Five Dollars (\$653,665), including any replenishment of such reserve (vi) amounts deposited into a replacement initially capitalized reserve account in the sum of not to exceed \$250/unit per annum, increasing 3% per annum and any ongoing deposits to such reserve (vi) the repayment of any amounts loaned by the Borrower or its partners to the Development for material Development costs which costs were not reasonably foreseeable, and which loan, and the items for which funds were expended pursuant to such loan, are approved in advance by the Lender's Executive Director, (vii) deferred Borrower fees in the total maximum amount of \$5,000,000, (viii) a Limited Partner monitoring fee in the annual amount of \$7,500; and (ix) a managing general partner fee in the annual amount of \$26,900, which may increase up to three percent (3.0%) annually; any unpaid tax credit adjuster payments due to the limited partner of Borrower. The amounts of the operation reserves and replacement reserves described above may increase in accordance with the annual percentage increases from the date hereof in the Consumer Price Index, U.S. City Average, All Urban Consumers as published by the U.S. Bureau of Labor Statistics (the "CPI") or as required for the Borrower limited partner or any senior lender. Project Net Cash Flow shall be determined by Borrower and Lender on a cash basis without regard to any carry-over profit or loss from any prior calendar year, and shall be determined annually, on or before April 15 for the preceding Operating Year.

1.1.14. "Parties" shall mean Lender and Borrower, collectively, and "Party" shall mean Lender or Borrower, individually.

1.1.15. "Person" shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other business association or any Governmental Authority.

1.1.16. "Potential Default" shall mean any condition or event that could, with the lapse of time/expiration of applicable cure period under this Agreement after any written notice to Borrower thereof required by this Agreement is delivered, constitute a "Default" (as defined in Section 5.1 below).

1.1.17. "Property" shall have the meaning provided in Recital A, but shall also mean portions thereof or interests therein as the context requires.

1.1.18. "Preliminary Budget" shall mean the budget for the costs of the Project attached hereto as Exhibit "F".

1.1.19. "Regulatory Agreements" shall mean the Housing Agreements in the form attached hereto as Exhibit "G".

1.1.20. "Schedule of Performance" shall mean the schedule for the completion of the Improvements attached to this Agreement as Exhibit "H".

1.2. Exhibits. The following exhibits are attached to this Agreement and incorporated into, and made a part of, this Agreement by this reference:

1.2.1. Exhibit "A": Legal Description

1.2.2. Exhibit "B": Scope of Development

- 1.2.3. Exhibit “C”: Form of Deed of Trust
- 1.2.4. Exhibit “D”: Form of Promissory Note
- 1.2.5. Exhibit “E”: Form of Notice of Affordability Restrictions
- 1.2.6. Exhibit “F”: Preliminary Project Budget
- 1.2.7. Exhibit “G”: Forms of Housing Agreement (LMIHF) or “Regulatory Agreement” and Housing Agreement (Density Bonus)
- 1.2.8. Exhibit “H”: Schedule of Performance

2. CONSTRUCTION OF IMPROVEMENTS.

2.1. Construction Pursuant to Plans. The Improvements shall be constructed in accordance with final Construction Plans approved by the City of Palm Desert and the terms and conditions of the permits and approvals issued or to be issued by the City of Palm Desert.

2.2. Commencement and Completion of Improvements; Schedule of Performance. Borrower shall commence construction of the Improvements no later than the applicable date set forth in the Schedule of Performance, diligently prosecute to completion the construction of the Improvements no later than the applicable date set forth in the Schedule of Performance, and Borrower shall otherwise comply with the Schedule of Performance, in each case subject to Section 6.11 below (Force Majeure).

2.3. Compliance with Applicable Law. Borrower shall cause all construction to be performed in compliance with: (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter; (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental authority now having or hereafter acquiring jurisdiction; (c) all applicable permits and governmental approvals.

2.4. Monthly Progress Reports. Until such time as Borrower has completed the Improvements, Borrower shall provide Lender with monthly progress reports (within 30 days of the end of each calendar month for the previous calendar month) regarding the status of the construction of the Improvements.

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

2.6. Mechanics' Liens, Stop Notices, and Notices of Completion. If any claim of lien is filed against the Property or a stop notice with respect to the Loan is served on Lender or any other lender or other third party in connection with the Improvements, then Borrower shall, subject to Borrower's right to contest such lien in good faith and in accordance with applicable law, within ninety (90) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to Lender a surety bond from a surety acceptable to Lender in sufficient form and amount, or provide Lender with other assurance satisfactory to Lender that the claim of lien or stop notice will be paid or discharged.

2.7. Budget Amendments. After the Closing, Borrower shall submit any changes to the Budget to Lender for approval within ten (10) days after Borrower receives information indicating that actual costs therein vary or will vary from those shown on the Budget, together with evidence that Borrower has funds available from sources other than Lender to pay any cost increases and overruns.

3. LOAN PROVISIONS.

3.1. Use. The Loan shall be used solely for costs of the Project (including the purchase price for the Property) as shown on the Project Budget that exceed the equity available for and invested in the Project.

3.2. Interest; Payments. The outstanding principal balance of the Loan shall accrue interest as set forth in the Note and such principal and interest shall be payable as set forth in the Note.

3.3. Acceleration. Upon a Default by Borrower under Section 5 below, Lender may elect by written notice to Borrower that all outstanding principal and accrued interest on the Loan shall become due and payable.

3.4. Security. The Note shall be secured by the Deed of Trust.

3.5. Project Net Income Reporting. On or before April 15 of each calendar year, Borrower shall provide the Lender with an annual report in form and substance reasonably acceptable to Lender that include annual financial statements with respect to the Project that have been reviewed by an independent certified public accountant ("Annual Financial Report"). In the event the Residual Receipts reported or paid deviate by a deficit of three percent (3%) or more from that amount determined to be owing upon review of Developer's submittal and an audit (and the Lender shall have the right to audit Developer's books and records for the Project, which shall be kept at _____ in the City of Palm Desert), Borrower shall reimburse Lender for its cost to review and shall pay the amounts owing within ten (10) days after notice from Lender describing such amounts and costs.

3.6. Conditions Precedent to Closing. The obligation of Lender to close the Loan is expressly conditioned upon the satisfaction of the following on or before December 31, 2022:

3.6.1. City's receipt of originals of this Agreement and the Note, duly executed by Borrower, and City's receipt of an Acknowledgement regarding the management of the Project, in the form previously delivered to Borrower, duly executed by Palm Communities;

3.6.2. No Default or Potential Default by Borrower exists.

3.6.3. Commonwealth Land Title Insurance Company has recorded, or is irrevocably and unconditionally committed to record, the Deed of Trust, the Housing Agreement (LMIHF) and the Housing Agreement (Density Bonus) and the Notice of Affordability Restrictions (and any deeds of trust or other documents required as a condition to any other construction financing for the Project).

3.6.4. Commonwealth Land Title Insurance Company has unconditionally committed to issue a lender's title insurance policy to Lender in the amount of the Loan insuring the Deed of Trust, with exceptions approved by Lender and otherwise in form and substance acceptable to Lender.

3.6.5. Borrower shall have delivered to Lender copies of Borrower's organizational documents to Lender (including the partnership agreement for any tax credit limited partnership formed by the Borrower) as well as any other reasonable evidence requested by Lender showing Lender that Borrower has duly authorized the Loan Documents.

3.6.6. The City of Palm Desert shall have issued the building permit for the improvements and shall have completed its environmental (CEQA) review.

3.6.7. Borrower shall have provided reasonable evidence to the Lender of: (i) the cost of the Improvements (including a GMAX or stip sum construction contract from a reputable bondable contractor) and (ii) that Borrower has debt and equity funds to pay for such costs (and any tax credit equity shall have been committed and available, as shown by reasonable evidence delivered to City).

3.6.8. If Lender is requested to execute a subordination agreement with respect to the deed of trust securing senior construction financing, then Lender's receipt and approval of the loan documents for such senior construction financing.

3.7. Loan Disbursements. Disbursement of the purchase money portion of the Loan shall be made by Lender to escrow at closing for payment to the seller (the Successor Agency to the Palm Desert Redevelopment Agency), and disbursements of the construction loan portion of the Loan shall be conditioned upon the following additional conditions:

(i) Borrower shall have delivered to Lender a written disbursement request in form and substance reasonably satisfactory to Lender, together with copies of the applicable invoices or other appropriate documentation for the costs to be paid (consistent with the final Project budget) and appropriate mechanics lien waivers for the work performed prior to the date of disbursement (i.e., unconditional progress payment waivers for all costs paid with the

previous disbursement, and conditional progress payment waivers for the costs to be paid with the current disbursement, provided that final waivers shall be provided as a condition to the final disbursement).

(ii) No default shall have occurred under any Loan Document that remains uncured as of the date of the disbursement request or actual disbursement.

(iii) All equity funds shall have been disbursed and applied to Project costs in the Project Budget as shown by reasonable evidence delivered to Lender, and the Loan funds not yet disbursed together with any other committed sources of funds are sufficient to pay all remaining Project costs.

4. OTHER LOAN REQUIREMENTS.

4.1. Information. Borrower shall provide any information requested by Lender in good faith in connection with the Improvements.

4.2. Hazardous Materials. Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including any substances defined as or included in the definition of “hazardous substances,” hazardous wastes,” “hazardous materials,” or “toxic substances” under any applicable federal or state laws or regulations (collectively, “Hazardous Materials”), except such of the foregoing as may be customarily used in connection with the ownership, operation, occupancy, maintenance and construction of improvements similar to the Improvements. Borrower acknowledges and agrees that each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an “environmental provision” for purposes of California Code of Civil Procedure Section 736.

4.3. Construction Responsibilities; Commencement and Completion. Borrower shall cause the construction of the Improvements to be prosecuted with diligence, in good faith, and in accordance with the Schedule of Performance, subject to Section 6.11 below. Borrower shall cause the construction of the Improvements to be performed in a good and workmanlike manner in accordance with the Construction Plans approved by the City, in compliance with all applicable laws, ordinances, rules, regulations, building restrictions, recorded covenants and restrictions and requirements of each Governmental Authority having jurisdiction over the Property and free and clear of any liens or claims for liens. Borrower shall be solely responsible for all aspects of Borrower’s business and conduct in connection with the Property, including the quality and suitability of the Construction Plans and their compliance with the requirements of each applicable Governmental Authority and the Loan Documents, and the supervision of the construction of the Improvements, the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors, material suppliers, consultants and property managers, the accuracy of all applications for payment and loan draw requests and the proper application of all disbursements.

4.4. Fees and Taxes. Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency. However,

Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings and (b) if requested by Lender, Borrower deposits with Lender such funds or other forms of assurance that Lender in good faith from time to time determines appropriate to protect Lender from the consequences of the contest being unsuccessful, provided, however, that if Borrower has deposited sufficient funds with a senior lender, Borrower shall not be required to deposit funds with Lender.

4.5. Notice of Litigation. Borrower shall promptly notify Lender of any litigation materially affecting Borrower or the Property and of any claims or disputes that Borrower reasonably believes involve a material risk of any such litigation.

4.6. Transfers. The qualifications and identity of the Borrower are of particular concern to the Lender and it is because of such qualifications and identity that the Lender has entered into this Agreement with the Borrower. No voluntary or involuntary successor in interest of the Borrower shall acquire any rights or powers under this Agreement except as expressly set forth herein. However, Borrower may assign this Loan Agreement to a single-asset limited partnership in which Borrower is the general partner, or which has a general partner that is directly or indirectly owned and controlled by Borrower, provided Lender approves the limited partnership agreement and evidence of such control or ownership, such approval not to be unreasonably withheld. The Loan may be accelerated by Lender if there is any conveyance by Borrower of the Property or any portion thereof or interest therein, or Borrower ceases to be (or ceases to own and control, as applicable) the general partner of such limited partnership prior to the completion of the Improvements without the City's prior written consent. Notwithstanding the foregoing, provided prior written notice to Lender of such transfer (with reasonable evidence of the nature of the transfer) is provided to Lender with respect to items (i) and (ii) below as applicable, the Lender's consent shall not be required for (i) any direct or indirect transfer of the investor limited partner's interest in the Borrower if such transfer is to an entity controlled by, or under common control with Boston Financial Investment Management, LP or an affiliate thereof, (ii) the removal or replacement of a general partner of Borrower by the investor limited partner in accordance with the provisions of the Borrower's limited partnership agreement, (iii) the transfer of the Property or of a limited partner interest in Borrower to an entity affiliated with Pacific West Communities, Inc., an Idaho corporation made pursuant to an option agreement set forth in Borrower's limited partnership agreement (collectively, a "Permitted Transfer").

4.7. Insurance; Indemnity.

4.7.1. Insurance.

4.7.1.1. Borrower shall obtain and maintain at no cost or expense to the Lender, with a reputable and financially responsible insurance company reasonably acceptable to the Lender, (i) after the opening of the Project for business, commercially reasonable casualty insurance for the Improvements in an amount not less than the replacement cost of the Improvements (subject to commercially reasonable deductibles) with a reasonable inflation rider; (ii) commercial broad form general liability insurance, insuring against claims and liability for bodily injury, death, or property damage arising from the construction, use, occupancy, condition, or operation of the Property, which liability insurance shall provide

combined single limit protection of at least \$2,000,000 and shall include a reasonable inflation rider, contractual liability coverage and products and completed operations coverage, and (iii) commercial automobile liability insurance of at least \$1,000,000 combined single limit. Such liability insurance policies shall name the Lender and its board members, officers, agents and employees as additional insureds.

4.7.1.2. Before commencement of any demolition or construction work by Developer, Borrower shall obtain and maintain in force until completion of such work (i) "all risk" builder's risk insurance, including coverage for vandalism and malicious mischief, in a form and amount and with a company reasonably acceptable to the Lender, and (ii) workers' compensation insurance covering all persons employed by Borrower in connection with work on the Project, or any portion thereof. During the construction of Improvements on any portion of the Property by Developer, such builder's risk insurance shall cover improvements in place and all material and equipment at the job site furnished under contract, but shall exclude contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.

4.7.1.3. Each architect and each engineer engaged by Borrower shall provide professional liability insurance with a limit of liability of at least One Million Dollars (\$1,000,000.00).

4.7.1.4. Borrower shall also furnish or cause to be furnished to the Lender evidence satisfactory to the Lender that any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

4.7.1.5. With respect to each policy of insurance required above, Borrower and each of Developer's general contractors, engineers and architects shall furnish to the Lender a certificate on the insurance carrier's form setting forth the general provisions of the insurance coverage promptly after written request by Lender showing the additional insureds. The certificate shall also be furnished by Borrower prior to commencement of construction of any Improvements.

4.7.1.6. All such policies required by this Section shall contain (i) language to the effect that the policies cannot be cancelled or materially changed except after thirty (30) days' written notice by the insurer to the City, and (ii) a waiver of the insurer of all rights of subrogation against the Lender and the other additional insureds. All such insurance shall have deductibility limits which shall be commercially reasonable.

4.7.1.7. Procuring the insurance required under this Section shall not be construed to limit Borrower's liability under the Loan Documents, or to fulfill its indemnity obligations under the Loan Documents. Notwithstanding such insurance policies, Borrower shall be responsible for the total amount of any damage, injury or loss caused by negligence or neglect connected with the ownership, operation or occupancy of the improvements on the land. The insurance requirements set forth in this Section are for the sole purpose of protecting Lender's security for the Loan and are not to be construed as a representation by Lender that the insurance required under this Section is sufficient to cover Borrower from or against all uninsured losses and Borrower releases Lender from any liability and forever waives any claims against Lender in connection therewith.

4.7.1.8. All insurance policies shall (a) be issued by an insurance company having a rating of "A:VII" or better by A.M. Best Co., in Best's Rating Guide; (b) name Lender as an additional insured on all liability insurance and the senior lender as mortgagee and loss payee on all casualty insurance, (c) contain the "standard non-contributory mortgagee clause" and the "standard lenders' loss payable clause," or their equivalents, (d) be evidenced by a certificate of insurance (or, if required by City, copy of insurance policy) to be delivered to City.

4.8. Indemnity. In addition to Developer's obligations under Section 6.4 below, Borrower hereby agrees to indemnify, defend, protect, and hold harmless the Lender and any and all agents, employees, representatives, board members, consultants, and officers of the Lender, from and against all losses, liabilities, claims, damages (including foreseeable or unforeseeable consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out of pocket litigation costs and reasonable attorneys' fees) and demands of any nature whatsoever, related directly or indirectly to, or arising out of or in connection with:

- (i) the validity of this Agreement;
- (ii) the development and construction by Borrower of the Improvements on the Property or the use, ownership, management, occupancy, or possession of the Property during Developer's period of ownership or control thereof;
- (iii) any breach or Default by Borrower hereunder; and
- (iv) any of Developer's activities on the land (or the activities of Developer's agents, employees, lessees, representatives, licensees, guests, invitees, contractors, subcontractors, or independent contractors on the land).

The Lender may in its discretion, and at their own cost, participate in the defense of any legal action naming the Lender. The provisions of this Section shall survive the Closing or the termination of this Agreement.

5. DEFAULT AND REMEDIES.

5.1. Events of Default. Each of the following shall constitute a "Default" by Borrower under this Agreement:

5.1.1. The failure by Borrower to make a payment of money to Lender within ten (10) business days from the date such payment was due under any of the Loan Documents.

5.1.2. The failure by Borrower to perform any obligation under the Loan Documents not involving the payment of money, and, if such failure is curable within thirty (30) days, the expiration of thirty (30) days after written notice of such failure from Lender to Borrower. If such failure is not curable within 30 days, Borrower may have such longer period of time as is reasonably necessary to complete the cure, provided that Borrower has commenced to cure within the initial 30-day period and diligently prosecutes such cure to completion.

5.1.3. Borrower (a) is unable, or admits in writing its inability, to pay its monetary obligations as they become due, (b) makes a general assignment for the benefit of creditors, or (c) applies for, consents to or acquiesces in the appointment of a trustee, receiver or other custodian for itself or its property, or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for Borrower or the property of Borrower (including the Development), and such appointment is not discharged within sixty (60) days.

5.1.4. The commencement of any case under the Bankruptcy Code or commencement of any other bankruptcy, arrangement, receivership, custodianship or similar proceeding under any federal, state or foreign law by or against Borrower, provided that if any such case or other bankruptcy, arrangement, reorganization, receivership, custodianship or similar proceeding is commenced against Borrower, such case or other bankruptcy, arrangement, receivership, custodianship or similar proceeding is not dismissed within sixty (60) days after its commencement.

5.1.5. A final judgment or decree for monetary damages or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged or stayed within sixty (60) days after the entry thereof.

5.1.6. The assets of Borrower are attached, levied on or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released within sixty (60) days of the date thereof.

5.1.7. There shall be filed any claim of lien against the Property or the service of any notice to withhold proceeds of the Loan and the continued maintenance of such claim of lien or notice to withhold for a period of sixty (60) days without discharge or satisfaction thereof or provision therefor (including the posting of bonds) satisfactory to City.

5.1.8. The occurrence of any conveyance that is prohibited under Section 4.6.

5.1.9. A failure to comply in any respect with the Schedule of Performance (subject to force majeure delays under Section 6.11 below).

5.1.10. Borrower's violation of any law or permit applicable to the Property or Improvements (or other improvements on the Property) that is not cured within thirty (30) days after written notice from City. If such failure is not curable within 30 days, Borrower may have such longer period of time as is reasonably necessary to complete the cure, provided that Borrower has commenced to cure within the initial 30-day period and diligently prosecutes such cure to completion.

5.1.11. Borrower's default under any other loans secured by the Property which is not cured within any applicable cure period in the loan documents for such loan or such longer cure period consented to in writing by the applicable lender.

5.1.12. Borrower fails to comply with the CTCAC Reservation Letter dated June 15, 2022 addressed to Christina Alley (which requires, among other things, executing

and recording a CTCAC regulatory agreement), or fails to comply with the recorded CTCAC regulatory agreement.

5.2. Remedies. The occurrence of any Default by Borrower will relieve Lender of any obligation to make further disbursement of the Loan and shall give Lender the right to proceed with any and all remedies set forth in the Loan Documents, including the following:

5.2.1. Lender shall have the right to declare, by written notice to Borrower, the outstanding principal balance of the Loan, together with any accrued and unpaid interest thereon, due and payable as of the date stated in such notice as determined by Lender in its sole and absolute discretion. Lender may proceed to enforce payment thereof and to exercise any or all rights afforded to Lender as a creditor and secured party under law, including the California, including foreclosure of the Deed of Trust. Borrower shall be obligated to pay City, on demand, all reasonable expenses, costs and fees (including reasonable attorney's fees and expenses) paid or incurred by Lender in connection with the collection of the Loan and the preservation, maintenance, protection, sale or other disposition of the security for the Loan, and such obligation shall be secured by the Deed of Trust.

5.2.2. Lender shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations under the Loan Documents or to enjoin acts or things that may be unlawful or in violation of the provisions of the Loan Documents.

5.2.3. Lender may cure any default by Borrower under the Loan Documents. Borrower shall be liable to reimburse City, on demand, for any funds advanced by Lender to cure any such monetary default, together with interest thereon at the lesser of the maximum rate permitted by law or eight percent (8%) per annum from the date of expenditure until the date of reimbursement, and the Deed of Trust shall secure such sums owed.

5.2.4. Lender shall have the right to file for record, as Borrower's attorney-in-fact (which appointment is a power coupled with an interest and is irrevocable), any notices of completion, notices of cessation of labor, notices of non-responsibility or any other notices that Lender considers necessary to protect its security for the Loan.

5.2.5. Lender shall also be entitled to all other remedies available at law, in equity or otherwise.

5.2.6. Prior to exercising any remedies hereunder, Lender will give Borrower's investor limited partner notice of default at the same time such notice is given to Borrower provided Lender shall have been given such investor limited partner's name and address by Borrower in writing. The investor limited partner shall have the cure periods set forth above within which to cure the default and Lender will accept or reject such cure on the same basis as if such cure had been tendered by Borrower.

5.3. Remedies Cumulative. Except as may be provided by law, no right, power or remedy given to Lender by the terms of the Loan Documents is intended to be exclusive of any other right, power or remedy, and each and every such right, power or remedy shall be cumulative and in addition to every other right, power or remedy given to Lender by the

terms of the Loan Documents, by law or otherwise. Neither the failure nor any delay on the part of Lender to exercise any such right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by Lender of any such right, power or remedy preclude any other or further exercise of such right, power or remedy, or any other right, power or remedy.

6. GENERAL PROVISIONS.

6.1. Relationship of Parties. Nothing contained in this Agreement shall be interpreted by the Parties, or any other party, as creating the relationship of employer and employee, principal and agent, partnership or any other form of joint venture between Lender and Borrower, and Borrower shall at all times be deemed an independent contractor and shall be completely responsible for the manner in which it performs its obligations under this Agreement.

6.2. No Claims. Nothing contained in this Agreement shall create or authorize any claim against Lender by any Person that Borrower may have employed or with whom Borrower may have contracted related to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the construction or operation of the Property, and Borrower shall include similar requirements in any contracts entered into for the construction or operation of the Property.

6.3. Amendments. No modification of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

6.4. Indemnification for Prevailing Wages Claims. Borrower shall indemnify, defend, protect and hold harmless Lender and its board members, officers, employees, agents, successors and assigns (collectively, "Indemnified Parties") from and against any and all claims (including, without limitation, any claim under Labor Code Section 1781), losses, proceedings, damages, causes of action, liabilities, costs and expenses, (including attorneys' fees) (collectively, "Claim") arising from or in connection with, or caused by any violations of law by Borrower or any contractor with respect to the Property, including, without limitation, any failure to comply with Labor Code Sections 1720 et. seq. If any action or proceeding be brought against Lender by reason of any such claim, Borrower, upon notice from Lender, shall defend the same at Borrower's expense with counsel satisfactory to Lender (which consent shall not be unreasonably withheld) unless such Claim arose from the willful misconduct or gross negligence of an Indemnified Party. BORROWER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD LENDER HARMLESS LENDER SHALL SURVIVE CANCELLATION OF THE NOTE AND THE RECONVEYANCE OF THE DEED OF TRUST WITH RESPECT TO EVENTS OCCURRING PRIOR TO THE CANCELLATION OF THE NOTE AND RECONVEYANCE OF THE DEED OF TRUST.

6.5. Non-Liability of Lender and Lender Officials, Employees and Agents. No member, official, employee or agent of Lender shall be personally liable to Borrower in the event of any default or breach by Lender, or for any amount that may become due to Borrower, under the terms of this Agreement.

6.6. No Third Party Beneficiaries. There shall be no third party beneficiaries of this Agreement.

6.7. Notices, Demands and Communications. Except as otherwise required by law, any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (a) by certified mail, postage prepaid, return receipt requested, or (b) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and addressed to the parties at the addresses stated below, or at such other address as either party may hereafter notify the other in writing as aforementioned:

Lender: Palm Desert Housing Authority
73-510 Fred Waring Drive
Palm Desert, CA 92260
Attn: Executive Director

Borrower: Palm Desert Pacific Associates
c/o Pacific West Communities, Inc.
430 E. State Street, Suite 100
Eagle, ID
Attn: Caleb Roope

With a copies to:

McReynolds & McCormack, PLLC
430 E. State Street, Ste.140
Eagle, ID 83616
Attention: Clay McReynolds

And:

BF Vitalia LLLP
101 Arch Street, 13th Floor
Boston, MA 02110
Attn: Asset Management - Vitalia Apartments

Service of any such notice or other communications so made shall be deemed effective on the day of actual delivery or refusal to accept/inability to deliver, as shown by the addressee's return receipt if by certified mail, and as confirmed by the courier service if by courier; provided, however, that if such actual delivery occurs after 5:00 p.m. (local time where received) or on a non-business day, then such notice or demand so made shall be deemed effective on the first business day following the day of actual delivery. No communications via electronic mail shall be effective to give any notice, request, direction, demand, consent, waiver, approval or other communications hereunder.

6.8. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of laws principles.

6.9. Attorneys' Fees. Should any action be brought to enforce any provision hereof, the prevailing party in such action shall be entitled to reasonable attorneys' fees, court

costs and other litigation expenses, including expenses incurred for preparation and discovery. The right to recover such fees, costs and expenses shall accrue upon the commencement of the action regardless of whether the action is prosecuted to final judgment.

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

6.11. Force Majeure. A Party shall not be deemed to be in default as to any construction obligation where delays are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Borrower or Borrower's inability to finance the construction of the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. However, no extension of time for any cause will be deemed granted if notice by the Party claiming such extension is not sent to the other Party within ten (10) business days from the commencement of the cause.

6.12. Approvals/Amendments/Subordination Agreements. Whenever this Agreement calls for or contemplates Lender approval or consent (including approval of the form and substance of other documents), the written approval or consent or waiver of the Executive Director of Lender shall constitute the approval or consent of Lender. The Lender also authorizes the Executive Director to make non-substantial changes to this Agreement, including, reasonable extensions of time deadlines set forth in this Agreement, provided they are in writing, and to send notices and demands, initiate and administer remedies and otherwise administer the Loan Documents, and to execute reasonable subordination agreements required by senior construction lenders as a condition to making their loans for the Project. The Executive Director shall have the authority to review and approve all documents listed in Section 3.5 hereof and may prohibit disbursement of Loan funds if the documents are not reasonably satisfactory to the Executive Director.

6.13. Warranty Against Payment of Consideration for Agreement. Borrower warrants that it has not paid or given, and will not pay or give, any Person, including the Lender or the City of Palm Desert, or any councilmember, board member, official or employee thereof, any money or other consideration for obtaining this Agreement.

6.14. Refinance. Borrower shall be permitted to refinance any senior construction or permanent loan on commercially reasonable terms in an amount equal to the then-outstanding principal balance of such senior loan(s) (the "Refinanced Loan"), and Lender agrees that Lender's Executive Director shall have the authority to execute reasonable subordination agreements to confirm such subordination such that the deed of trust securing the Loan shall remain subordinate to any such Refinanced Loan.

6.15. Time. Time is of the essence with respect to this Agreement and the performance of each obligation contained herein.

6.16. Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

WHEREAS, this Agreement has been entered into by the undersigned as of the date first above written.

LENDER:

PALM DESERT HOUSING AUTHORITY

By: _____
Name: _____
Title: _____

ATTEST:

Anthony J. Mejia, Secretary

APPROVED AS TO FORM:

Robert W. Hargreaves, City Attorney

BORROWER:

PALM DESERT PACIFIC ASSOCIATES, a
California limited partnership

By: TPC HOLDINGS IX, LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its: Manager

By: _____
Name: Caleb Roope
Its: President and CEO

By: CENTRAL VALLEY COALITION
FOR AFFORDABLE HOUSING, a
California Nonprofit Public Benefit
Corporation
Its: Managing General Partner

By: _____
Name: Christina Alley
Its: Chief Executive Officer

EXHIBIT "A"

LEGAL DESCRIPTION OF the PROPERTY

Real property in the City of Palm Desert, County of Riverside, State of California, described as follows:

A PORTION OF PARCEL 1 OF THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. 88-1, RECORDED JUNE 1, 1988 AS INSTRUMENT NO. 146461 OF OFFICIAL RECORDS. IN THE CITY OF PALM DESERT. COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 4 NORTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 1;

THENCE NORTH 89°55'15" EAST, ALONG THE NORTHERLY LINE OF SAID PARCEL 1, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF GERALD FORD DRIVE, A DISTANCE OF 514.35 FEET;

THENCE SOUTH 47°23'23" EAST, A DISTANCE OF 34.01 FEET,
THENCE SOUTH 00°03'36" WEST, A DISTANCE OF 942.64 FEET,
THENCE NORTH 89°56'24" WEST, A DISTANCE OF 539.40 FEET;

THENCE NORTH 00°03'36" EAST, ALONG THE WESTERLY LINE OF SAID PARCEL 1 AND THE SOUTHERLY EXTENSION THEREOF, A DISTANCE OF 964.39 FEET, TO THE **POINT OF BEGINNING.**

EXHIBIT “B”

SCOPE OF DEVELOPMENT

A 269 unit apartment complex, with 131 one-bedroom apartments, 70 two-bedroom apartments, and 68 three-bedroom apartments (including 3 three-bedroom manager units).

420 parking spaces (which is reduced parking based on a density bonus).

Laundry facilities in each building.

Gate-controlled access to the project.

Project amenities in a central location/area, may include: leasing office; fitness center; community room; covered community patio; dog run and dog park; outdoor children's playground; swimming pool; barbecue area; child care room.

EXHIBIT “C”
FORM OF DEED OF TRUST

EXHIBIT “D”
FORM OF PROMISSORY NOTE

EXHIBIT “E”

FORM OF NOTICE OF AFFORDABILITY RESTRICTIONS

(Attached.)

EXHIBIT “F”
PRELIMINARY PROJECT BUDGET

(Attached.)

EXHIBIT “G”
FORMS OF HOUSING AGREEMENTS

EXHIBIT “H”

SCHEDULE OF PERFORMANCE

<u>Action</u>	<u>Date / Deadline</u>
Items 1 – 8 Relate to Borrower Actions and Requirements Prior to the Closing	
1. <u>Project Budget</u> . The Borrower shall submit a comprehensive Project Budget for the Improvements.	Prior and as a condition to Closing.
2. <u>Final Plans and Specifications</u> . The Borrower shall submit the Final Plans and Specifications for Lender approval.	Prior and as a condition to Closing.
3. <u>Building Permits</u> . The Borrower shall obtain the Building Permit for the construction of the Improvements.	Prior and as a condition to the Closing.
4. <u>Construction Contract</u> . The Borrower shall submit the stipulated sum construction contract for the construction of the Improvements to the Lender for approval.	Prior and as a condition to the Closing.
5. <u>Intentionally omitted</u> .	
6. <u>Insurance</u> . The Borrower shall submit evidence of insurance to the City.	Prior and as a condition to the Closing.
7. <u>Tax Credit Applications/Award</u> .	Obtained
8. <u>Tax Credit Equity</u> . All tax credit equity must have been committed and no less than the amount of the initial capital contribution and all capital contributions to be used for construction costs shall have been funded by the tax credit investor and committed and available to pay the initial Project costs, as shown by reasonable evidence delivered to City.	Prior and as a condition to Closing].
Items 9 – 13 Relate to Requirements After the Closing	
9. <u>Closing</u> . The Borrower shall acquire the Property and close the Loan.	December 31, 2022

<u>Action</u>	<u>Date / Deadline</u>
10. <u>Commencement of Construction.</u> Borrower shall substantially commence the Improvements.	No later than 90 days after the Closing.
11. <u>Completion of Grading.</u> Borrower shall substantially complete the grading for the Project.	Not later than six (6) months following the commencement of construction.
12. <u>Commencement of Vertical Construction.</u> Borrower shall substantially commence vertical construction.	Not later than 9 months after the commencement of construction.
13. <u>Completion; Qualification for Certificate of Completion.</u> The Project shall be completed and shall qualify for a Certificate of Occupancy.	No later than two (2) calendar years after the Closing.

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

Palm Desert Housing Authority
73-510 Fred Waring Drive
Palm Desert, CA 92260
Attn: Jessica Gonzales

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This Document is recorded for the benefit of the Palm Desert Housing Authority and is exempt from recording fees pursuant to Sections 6103, 27383 and 27388.1 of the California Government Code.

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS (this "Deed of Trust") is dated as of _____, 2022, and is executed by PALM DESERT PACIFIC ASSOCIATES, a California limited partnership ("Trustor"), in favor of FIDELITY NATIONAL TITLE COMPANY, as "Trustee," for the benefit of the PALM DESERT HOUSING AUTHORITY ("Beneficiary").

Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that certain land in the City of Palm Desert, Riverside County, California, described on Exhibit "A" attached hereto;

TOGETHER WITH the rents, issues and profits thereof and all leases and rental agreements related thereto, SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to Trustor to collect and apply such rents, issues, and profits;

TOGETHER WITH all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty;

TOGETHER WITH all building materials and equipment now or hereafter delivered to the premises and intended to be installed therein;

TOGETHER WITH all articles of personal property owned by the Trustor now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands described which are necessary to the complete and comfortable use and

occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the building or buildings in any manner.

All of the foregoing, together with the real property, is herein referred to as the "Property."

For the purpose of securing (a) payment of the indebtedness evidenced by that certain promissory note (the "Note") of substantially even date herewith, in the stated principal sum of \$6,030,000.00, executed by Trustor, as maker, in favor of Beneficiary, as payee, and all amendments thereof; and (b) sums owing by Trustor to Beneficiary under this Deed of Trust.

(1) That it shall faithfully perform each and every covenant contained in the Note, the Loan Agreement ("Loan Agreement") between Trustor and Beneficiary dated substantially concurrently herewith and the Regulatory Agreement described therein. Upon a Default under (and as defined in) the Loan Agreement, Beneficiary may accelerate the loan evidenced by the Note, and if not paid, may exercise any and all remedies permitted by law, including foreclosure of this Deed of Trust.

(2) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(3) To pay before delinquency all property taxes and assessments and any other taxes affecting the Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto (provided, however, that Trustor may dispute in good faith any such tax or assessment after posting bond on same).

(4) That should Trustor fail to make any payment or to do any act as herein provided and such failure continues past any applicable notice and cure period, then Beneficiary, without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes with written notice to Trustor and subject to the rights of tenants; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary hereunder, or under Note the in accordance with the terms thereof.

(6) The Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the Property any lien or liens except for deeds of trust securing financing used to pay for construction of the Project, as defined in the Loan Agreement (or securing refinancing of such construction loans) and further that it will keep and maintain the Property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on the Property, or will cause the release of or will provide a bond against any such liens within thirty (30) days of the attachment of the lien or liens.

(7) That any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys it receives in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(8) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay all other sums when due so secured.

(9) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of the Property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(10) That upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven by Beneficiary, and upon surrender of the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(11) That Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents, income and profits of the Property encumbered hereby, and hereby give to and confer upon Beneficiary the right, power and authority to collect such rent, income, and profits, and Trustor irrevocably appoints Beneficiary Trustor's true and lawful attorney at the option of Beneficiary, at any time, to give receipts, releases and satisfactions and to sue, either in the name of Trustor or in the name of Beneficiary, for all income, and apply the same to the indebtedness secured hereby; provided, however, so long as no default by Trustor in the payment of any indebtedness secured hereby shall exist and be continuing beyond any applicable cure period expressly provided therein, then, Trustor shall have the right to collect all rent, income and profits from the Property and to retain, use and enjoy the same. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness

hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(12) That upon a Default by Trustor under the Loan Agreement, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and election to cause to be sold the Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at the sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(13) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title estate, rights, powers and duties. The instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

(14) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the

masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(15) If Trustor shall sell, convey, hypothecate, transfer, encumber or alienate the Property, or any part thereof, or any interest therein, or any interest in Trustor is transferred, or Trustor shall be divested of title or any interest in the Property in any manner or way, whether voluntarily or involuntarily, without the prior written consent of the Beneficiary being first had and obtained (if and to the extent such consent is required in the Loan Agreement or if the failure to get such consent would be a Default) or if a Default by Trustor shall occur under the Loan Agreement then Beneficiary shall have the right, at its option, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable.

(16) That Trustor shall promptly pay when due the payments of interest, principal, and all other charges accruing under any superior or prior trust deed, mortgage, or other instrument encumbering the Property. Beneficiary shall have the right, but not the obligation, to cure any defaults on any superior or prior deed of trust or promissory note secured thereby and upon curing such default Trustor shall immediately reimburse Beneficiary for all costs and expenses incurred thereby, together with interest thereon at the lesser of seven percent (7%) or the maximum legal rate permitted to be charged by non-exempt lenders under the State of California, and Trustor's failure to pay such amount on demand shall be a breach hereof. Trustor's breach or default of any covenant or condition of any superior or prior trust deed, mortgage or other instrument encumbering the Property shall be a default under this Deed of Trust, whereupon Beneficiary shall have the right to declare all sums under the Note secured hereby immediately due and payable as provided in the Note.

(17) The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder (and any other notices hereunder) be mailed to it at its address for notices in the Loan Agreement.

(18) Trustor shall not commit intentional waste with respect to the Property.

(19) Beneficiary acknowledges that Trustor and the California Tax Credit Allocation Committee have or intend to enter into, or concurrently with the execution and delivery of the Loan Documents are entering into, a Regulatory Agreement (the "TCAC Regulatory Agreement"), which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "Code"). Beneficiary acknowledges and agrees that, in the event of a foreclosure of its interest under the Deed of Trust or delivery by the Trustor of a deed in lieu thereof (collectively, a "Foreclosure"), the following rule contained in Section 42(h)(6)(E)(ii) of the Code shall apply: For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the TCAC Regulatory Agreement, (i) none of the eligible tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause, including but not limited to, the tenants' ineligibility pursuant to Section 42 of the Code), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

TRUSTOR:

PALM DESERT PACIFIC ASSOCIATES, a
California limited partnership

By: TPC HOLDINGS IX, LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its: Manager

By: _____
Name: Caleb Roope
Its: President and CEO

By: CENTRAL VALLEY COALITION
FOR AFFORDABLE HOUSING, a
California Nonprofit Public Benefit
Corporation
Its: Managing General Partner

By: _____
Name: Christina Alley
Its: Chief Executive Officer

NOTARY ACKNOWLEDGEMENT

STATE OF IDAHO)
) ss
COUNTY OF ADA)

On this ____ day of [____], in the year of 2022, before me, _____, a notary public, personally appeared Caleb Roope, known or identified to me to be President and CEO of Pacific West Communities, Inc., an Idaho corporation, the Manager of TPC Holdings IX, LLC, an Idaho limited liability company, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

EXHIBIT "A"

DESCRIPTION OF LAND

Real property in the City of Palm Desert, County of Riverside, State of California, described as follows:

A PORTION OF PARCEL 1 OF THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. 88-1, RECORDED JUNE 1, 1988 AS INSTRUMENT NO, 146461 OF OFFICIAL RECORDS. IN THE CITY OF PALM DESERT. COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 4 NORTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 1;

THENCE NORTH 89°55'15" EAST, ALONG THE NORTHERLY LINE OF SAID PARCEL 1, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF GERALD FORD DRIVE, A DISTANCE OF 514.35 FEET;

THENCE SOUTH 47°23'23" EAST, A DISTANCE OF 34.01 FEET,
THENCE SOUTH 00°03'36" WEST, A DISTANCE OF 942.64 FEET,
THENCE NORTH 89°56'24" WEST, A DISTANCE OF 539.40 FEET;

THENCE NORTH 00°03'36" EAST, ALONG THE WESTERLY LINE OF SAID PARCEL 1 AND THE SOUTHERLY EXTENSION THEREOF, A DISTANCE OF 964.39 FEET, TO THE **POINT OF BEGINNING.**

SECURED PROMISSORY NOTE

_____, 2022

\$6,030,000.00

Palm Desert, California

FOR VALUE RECEIVED, the undersigned, PALM DESERT PACIFIC ASSOCIATES, a California limited partnership ("Maker"), having its principal place of business at 430 E. State Street, Suite 100, Eagle, ID, Attn: Caleb Roope, promises to pay to the order of the PALM DESERT HOUSING AUTHORITY ("Payee" or "PDHA"), at 73-510 Fred Waring Drive, Palm Desert, CA 92260, Attn: _____, or at such other place as the holder of this Note from time to time may designate in writing, the principal sum of SIX MILLION THIRTY THOUSAND AND NO/100 DOLLARS (\$6,030,000.00) (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.

As of the date of this Note, the sum of \$4,500,000.00 of principal has been disbursed to the Successor Agency to the Palm Desert Redevelopment Agency as a purchase money loan to Maker for its acquisition of the property encumbered by the deed of trust securing this Note. The remainder of the Principal Amount shall be disbursed as a construction loan as described in Section 3 of the Loan Agreement. "Applicable Interest Rate" means three percent (3%) per annum, simple interest, except that amounts not paid when due shall accrue interest from the date due until the date paid at the lesser of: (i) seven percent (7%) per annum, simple interest, or (ii) 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, as defined in the Loan Agreement ("PDHA Portion") shall be paid to PDHA on an annual basis [on _____ after] the first anniversary of issuance of a final certificate of occupancy for the Project (defined in the Loan Agreement), and each [_____] anniversary thereafter (with respect to the Project Net Cash Flow for the preceding year ending on _____ 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 Payee as of the earliest of: (i) a Default under the Loan Agreement; (ii) as provided in Section 4 below; or (iii) fifty-five (55) years after the date a final certificate of occupancy is issued for the Project (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 Payee 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, Payee 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 Payee for all reasonable attorneys' fees, costs and expenses, incurred by Payee in connection with the enforcement of Payee'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 Payee'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 Payee 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 Payee in connection with any such proceeding.

(ii) Payee 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 several 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 Housing Agreements 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 Housing Agreements 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 Borrower hereunder, under the Loan Agreement, Housing Agreements or Deed of Trust shall be a non-recourse obligation of Borrower, such that a general partner of Borrower shall not have any personal obligation to make any payments or perform any other obligations of Borrower.

(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:

BF Vitalia LLLP
c/o Boston Financial Investment Management
101 Arch Street, 13th Floor
Boston, MA 02110
Attention: Asset Management - Vitalia Apartments

MAKER:

PALM DESERT PACIFIC ASSOCIATES, a
California limited partnership

By: TPC HOLDINGS IX, LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its: Manager

By: _____
Name: Caleb Roope
Its: President and CEO

By: CENTRAL VALLEY COALITION
FOR AFFORDABLE HOUSING,
a California Nonprofit Public Benefit
Corporation
Its: Managing General Partner

By: _____
Name: Christina Alley
Its: Chief Executive Officer

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

Palm Desert Housing Authority
73-510 Fred Waring Drive
Palm Desert, CA 92260
Attn: Jessica Gonzales

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This Document is recorded for the benefit of the Palm Desert Housing Authority and is exempt from recording fees pursuant to Sections 6103, 27383 and 27388.1 of the California Government Code.

NOTICE OF AFFORDABILITY RESTRICTIONS

IMPORTANT NOTICE TO OWNERS, PURCHASERS, TENANTS, LENDERS, BROKERS, ESCROW AND TITLE COMPANIES, AND OTHER PERSONS, REGARDING AFFORDABLE HOUSING RESTRICTIONS ON THE REAL PROPERTY DESCRIBED IN THIS NOTICE: RESTRICTIONS HAVE BEEN RECORDED WITH RESPECT TO THE PROPERTY DESCRIBED BELOW WHICH RESTRICT OCCUPANCY TO EXTREMELY LOW AND VERY LOW-INCOME HOUSEHOLDS AND THE RENTS WHICH MAY BE CHARGED. THESE RESTRICTIONS MAY LIMIT THE RENTS FOR EACH UNIT TO AN AMOUNT WHICH IS LESS THAN FAIR MARKET RENT. THESE RESTRICTIONS LIMIT THE INCOME OF PERSONS AND HOUSEHOLDS WHO ARE PERMITTED TO RENT AND OCCUPY THE UNITS.

This NOTICE OF AFFORDABILITY RESTRICTIONS (the "Notice"), is dated as of _____, ___, 2022, and is executed by PALM DESERT PACIFIC ASSOCIATES, a California limited partnership ("Owner"), whose address is 430 E. State Street, Suite 100, Eagle, ID, Attn: Caleb Roope, and by the PALM DESERT HOUSING AUTHORITY (the "PDHA") in connection with that certain Housing Agreement between Owner and the PDHA dated substantially concurrently herewith and recorded in the Official Records of Riverside County substantially concurrently herewith (the "Regulatory Agreement").

RECITALS

A. Owner owns the land described on Exhibit "A" in the City of Palm Desert, State of California and the improvements thereon (the "Property"), which is part of APN 694-310-006.

B. Owner and PDHA are entering into the Regulatory Agreement substantially concurrently herewith.

C. Capitalized terms used herein but not defined shall have the meaning set forth as described in the Regulatory Agreement.

TERMS OF NOTICE

1. Requirement for Recorded Notice. This Notice is being executed and recorded pursuant to California Health and Safety Code Section 33334.3(f)(3)(B).

2. Regulatory Agreement. This Notice is being recorded substantially concurrently with the recordation of the Regulatory Agreement, which is incorporated herein by reference.

3. General Recitation of Affordability Restrictions; Term. The Regulatory Agreement restricts the occupancy of eighty-one (81) rental units on the Property to occupancy by extremely low income households as their principal residence at an affordable rent (as more particularly described in and required by the Regulatory Agreement), and in compliance with California Health & Safety Code Sections 50052.5(h), 50053(b), 50106 and Title 25 of the California Code of Regulations Section 6910, et. seq., for a term commencing on the issuance of a Certificate of Occupancy by the PDHA for the improvements required to be made by Owner to the Property under that certain Loan Agreement between Owner and the PDHA dated substantially concurrently herewith, and continuing until 55 years thereafter. Such restrictions in the Regulatory Agreement are incorporated herein by reference. An additional three (3) units are restricted to be used by on-site managers as their residences.

4. Summary of Affordable Housing Restrictions. The Regulatory Agreement restricts the occupants (tenants) of the apartments on the Property to extremely low income households and restrict the amount of rent which may be charged for the apartment, as follows:

(a) Eighty-one (81) units shall be available to households whose income does not exceed thirty percent (30%) of the Area Median Income (as defined below), adjusted by family size appropriate to the unit. Such units include 39 one-bedroom units; 21 two-bedroom units; and 21 three-bedroom units.

(b) Three (3) units (all three-bedroom units) shall be used solely as manager's units for on-site apartment managers.

Rent Restrictions: Rent is restricted to an "affordable" rent for extremely low income households pursuant to Section 50053(b) of the California Health & Safety Code. As used therein, "adjusted by family size appropriate to the unit" shall have the meaning set forth in California Health and Safety Code Section 50052.5(h).

This Notice does not contain a full description of the details of all of the terms and conditions of the Affordable Housing Restrictions. You will need to obtain and read the Regulatory Agreement to fully understand the restrictions and requirements which apply to the Property.

IN WITNESS WHEREOF, this Notice has been executed and made effective on the day and year first above written.

PDHA:

PALM DESERT HOUSING AUTHORITY

By: _____
Name: _____
Title: Executive Director

OWNER:

**PALM DESERT PACIFIC ASSOCIATES,
a California limited partnership**

By: TPC HOLDINGS IX, LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its: Manager

By: _____
Name: Caleb Roope
Its: President and CEO

By: CENTRAL VALLEY COALITION FOR
AFFORDABLE HOUSING, a California Nonprofit
Public Benefit Corporation
Its: Managing General Partner

By: _____
Name: Christina Alley
Its: Chief Executive Officer

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

State of California)
County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTARY ACKNOWLEDGEMENT

STATE OF IDAHO)
) ss
COUNTY OF ADA)

On this ____ day of [____], in the year of 2022, before me, _____, a notary public, personally appeared Caleb Roope, known or identified to me to be President and CEO of Pacific West Communities, Inc., an Idaho corporation, the Manager of TPC Holdings IX, LLC, an Idaho limited liability company, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

Real property in the City of Palm Desert, County of Riverside, State of California, described as follows:

A PORTION OF PARCEL 1 OF THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. 88-1, RECORDED JUNE 1, 1988 AS INSTRUMENT NO, 146461 OF OFFICIAL RECORDS. IN THE CITY OF PALM DESERT. COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 4 NORTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 1;

THENCE NORTH 89°55'15" EAST, ALONG THE NORTHERLY LINE OF SAID PARCEL 1, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF GERALD FORD DRIVE, A DISTANCE OF 514.35 FEET;

THENCE SOUTH 47°23'23" EAST, A DISTANCE OF 34.01 FEET,
THENCE SOUTH 00°03'36" WEST, A DISTANCE OF 942.64 FEET,
THENCE NORTH 89°56'24" WEST, A DISTANCE OF 539.40 FEET;

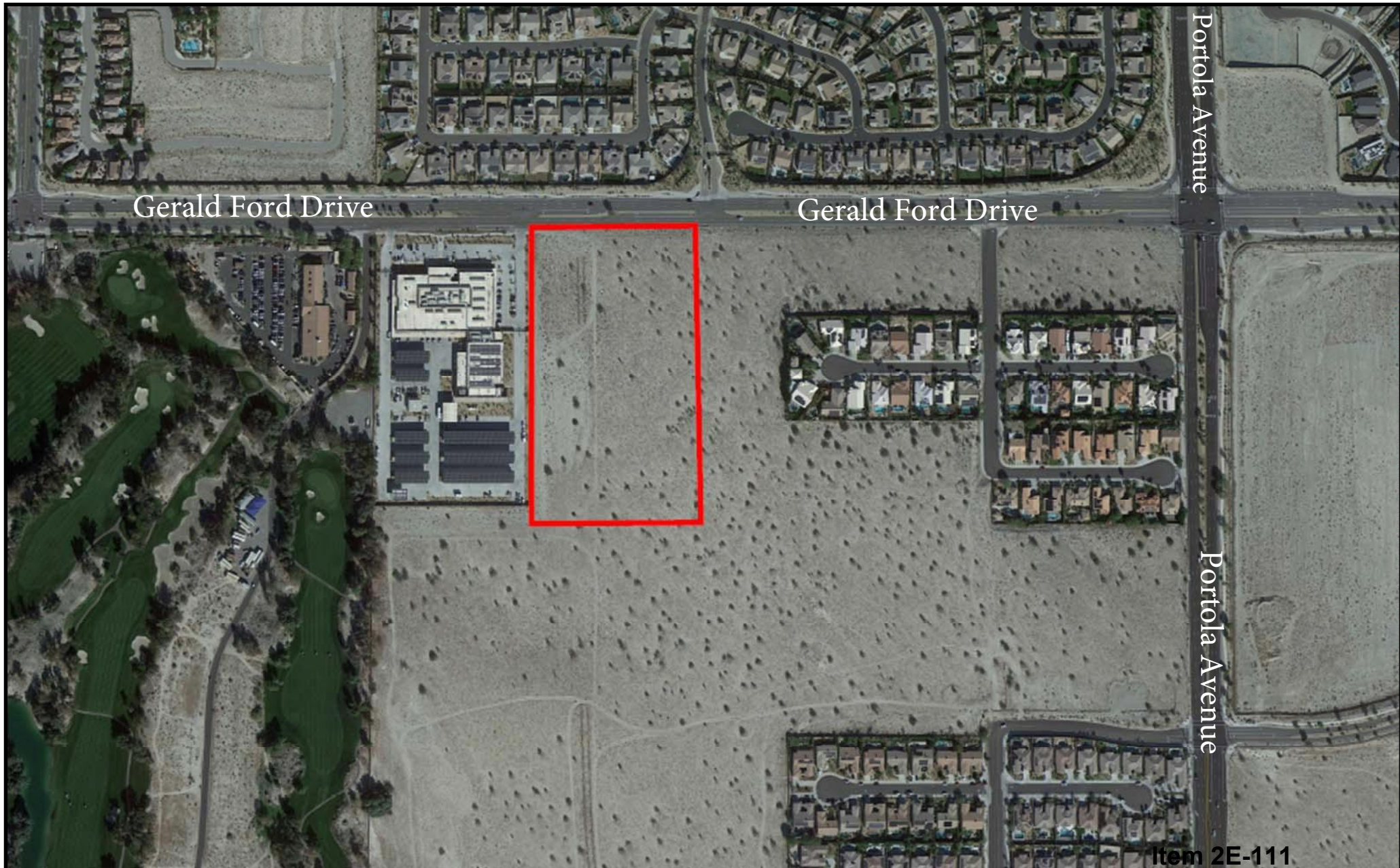
THENCE NORTH 00°03'36" EAST, ALONG THE WESTERLY LINE OF SAID PARCEL 1 AND THE SOUTHERLY EXTENSION THEREOF, A DISTANCE OF 964.39 FEET, TO THE **POINT OF BEGINNING.**

ATTACHMENT 5

**KMA FINANCIAL GAP ANALYSIS
VITALIA APARTMENTS
PALM DESERT, CALIFORNIA**

		LMIHAF SB 341 Income Targeting Categories			TCAC	
		Up to 30% AMI	31% - 59% AMI	60% - 80% AMI	Restrictions Only	Totals
I.	Number of Units	81	0	0	185	266
II.	Total Development Costs	\$27,524,000	\$0	\$0	\$62,864,000	\$90,388,000
III.	<u>Net Operating Income</u>					
	Potential Gross Rental Income	\$447,588	\$0	\$0	\$2,529,372	\$2,976,960
	Miscellaneous Income	12,000	0	0	28,350	40,350
	Total Potential Gross Income	\$459,588	\$0	\$0	\$2,557,722	\$3,017,310
	(Less) Vacancy & Collection Allowance	(22,979)	0	0	(127,886)	(150,866)
	Effective Gross Income	\$436,609	\$0	\$0	\$2,429,836	\$2,866,445
	<u>Operating Expenses</u>					
	Supportive Services	\$24,000	\$0	\$0	\$0	\$24,000
	Other Operating Expenses	392,000	0	0	894,030	1,286,030
	Total Operating Expenses	\$416,000	\$0	\$0	\$894,030	\$1,310,030
	Net Operating Income	\$20,609	\$0	\$0	\$1,535,806	\$1,556,415
IV.	Available Funding Sources					
	Tax-Exempt Bonds	\$291,000	\$0	\$0	\$21,709,000	\$22,000,000
	4% Federal Tax Credit Equity	11,412,000	0	0	26,066,000	37,478,000
	State Tax Credit Equity	5,979,000	0	0	13,655,000	19,634,000
	CVAG TUMF Waiver	110,000	0	0	251,000	361,000
	Solar Tax Credit Equity	132,000	0	0	300,000	432,000
	Deferred Developer Fee	3,570,000	0	0	883,000	4,453,000
	Total Available Funding Sources	\$21,494,000	\$0	\$0	\$62,864,000	\$84,358,000
V.	Financial Gap	\$6,030,000	\$0	\$0	\$0	\$6,030,000
	Per Unit	\$74,400	\$0	\$0	\$0	\$22,700

Vitalia Apartments
Gerald Ford Drive, west of Portola
Drive Palm Desert, California



Item 2E-111



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