



CITY COUNCIL/COMMUNITY  
REDEVELOPMENT AGENCY  
STAFF REPORT

DATE: June 15, 2011

UNFINISHED BUSINESS

SUBJECT: APPROVE AN OWNER PARTICIPATION AGREEMENT WITH PS HOUSING INVESTORS, LP IN AN AMOUNT NOT TO EXCEED \$1,500,000, AND A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS AUTHORIZING SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE HOME INVESTMENT PARTNERSHIPS PROGRAM, FOR THE ACQUISITION AND REHAB OF A 23-UNIT SENIOR APARTMENT PROJECT AT 1433 AND 1455 NORTH INDIAN CANYON DRIVE IN MERGED PROJECT AREA NO. 1

FROM: David H. Ready, City Manager/Executive Director

BY: Community and Economic Development

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SUMMARY

PS Housing Investors, LP ("Owner") is a limited partnership, with Global Premier Development, Inc. of Irvine as the managing partner and The Pate Foundation as the non-profit partner. The Owner has applied for a 9% Low Income Housing Tax Credit (LIHTC) allocation from the California Tax Credit Allocation Committee (TCAC) for a property at 1433 and 1455 North Indian Canyon Drive. The LIHTC application deadline was March 23<sup>rd</sup>. The application was successfully submitted with a 5 point reduction for readiness to proceed, but the application requested the smallest amount of credit out of any other project submitted in that round. The March 16 commitment was by resolution and did not include this Agreement. The Project is the acquisition and rehab of 23 apartment units at the southwest corner of Stevens Road and Indian Canyon Drive. The Agency made a preliminary commitment by resolution of up to \$1,500,000, with the goal of offsetting up to \$500,000 of the Agency's commitment through the receipt of HOME or AHP funds into the project, leaving a commitment of \$1,000,000 in a residual receipts loan. This action also includes authorizing an application of HOME funds on behalf of the Project through the State of California in the amount of \$1,550,000.

ITEM NO. 4A

The Project targets the senior population of Palm Springs; it is very competitive because of the senior population and the proximity to the hospital, among other amenities. The unit mix will consist of 19 studio units, 3 one-bedroom units and 1 two-bedroom unit. Therefore this Project will serve 26 unduplicated persons. Additionally, this Project will be 100% affordable with rents between 30% - 60% area median income. The Project will benefit the City by rehabbing an older apartment complex and providing 23 affordable housing units, and will transform this existing older property into a contemporary apartment complex assisting in the revitalization of the Uptown area. The proposed rehab project will consist of cosmetic exterior and major interior improvements to the existing apartment complex.

Major interior improvements will include ADA upgrades, HVAC, water heaters, new energy efficient appliances, new cabinets and countertops, new vinyl flooring and carpeting, and bathroom upgrades.

RECOMMENDATION:

1. Adopt Agency Resolution No. \_\_\_\_, "APPROVE AN OWNER PARTICIPATION AGREEMENT WITH PS HOUSING INVESTORS, LP FOR A FINANCIAL COMMITMENT FOR A 23-UNIT LOW INCOME ACQUISITION AND REHAB SENIOR HOUSING PROJECT IN AN AMOUNT NOT TO EXCEED \$1,500,000"
2. Authorize the Executive Director or his designee to execute all necessary documents.
3. Adopt City Council Resolution No. \_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS AUTHORIZING SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE HOME INVESTMENT PARTNERSHIPS PROGRAM; AND IF SELECTED, THE EXECUTION OF A STANDARD AGREEMENT, ANY AMENDMENTS THERETO, AND OF ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE HOME INVESTMENT PARTNERSHIPS PROGRAM"
4. Authorize the City Manager or his designee to execute all necessary documents.

STAFF ANALYSIS:

Global Premier Development, Inc. and its joint venture partners specialize in the development of Low Income Housing, under Section 42 of the Internal Revenue Code, and Tax Exempt Bond financing. GPD was incorporated in 2004 and has been instrumental in planning and developing almost 2,700 low income housing units

throughout the state, and continues to pursue additional opportunities in markets in California, with project values amounting to nearly \$600 million in tax credits. GPD's management team have planned and developed over 3,400 low income and market rate units with values worth over \$397,900,000.

The proposed rehab project, through a single purpose limited partnership PS Housing Partners, LP, will consist of 23 units and target the senior population of the City of Palm Springs. The unit mix will consist of 19 studio units, 3 one-bedroom units and 1 two-bedroom unit. Therefore this project will serve 26 unduplicated persons. Additionally, this project will be 100% affordable with rents between 30% - 60% area median income.

While the Developer has asked that the Agency for a permanent commitment of \$1,000,000 toward the project, it has asked that the Agency commit up to \$1,500,000 in Agency set-aside funds to qualify the project for a higher tax credit "tie-breaker" score to ensure a successful application, with the requirement that the Developer apply for both HOME and AHP funds (through the Federal Home Loan Bank Board) to offset the additional \$500,000 Agency commitment beyond the \$1,000,000. With the additional commitment by the Agency, the tie-breaker score was 92, almost guaranteeing success. In the tight capital market, winning tie-breaker scores at TCAC have crept up from the mid-60's to the mid-high 80's.

The OPA commits up to the \$1,500,000, but breaks the commitment into the permanent \$1,000,000 note and a note for \$500,000 that would be repaid to the Agency upon the successful award of HOME or AHP funds in an amount no less than the \$500,000. This resolution authorizes the City to apply to the State for HOME funds on behalf of the Project for an amount up to \$1,550,000.

Global Premier Development, Inc., the managing partner, currently has site control of this property and through the partnership was expected to close on the acquisition of the property by June 22, 2011, two weeks later than the expected CTCAC award date of June 6, 2011. The delay in the formal CTCAC awards has created a crunch for the project as it occurs after the original closing date for the acquisition.

In addition, the Owner is working through several design issues with the Planning Department. Once those drawings are completed, the working plans will be submitted to the City for permits. Once started, the rehabilitation of this project will be completed within 16 weeks. The property management company will initiate the process of lease-up for tenants approximately six weeks prior to the completion of construction. Furthermore, the Owner expects the project to be fully stabilized within 24 weeks of the construction start date.

Since the property is occupied, the Developer has hired Overland Pacific to undertake a relocation plan for the property in order to ensure the minimum amount of displacement of existing tenants. The City and Agency have used this firm in the past on their own

relocation issues. Many of those living there today will income-qualify for the new units. The unit mix / rent level breakdown is as follows:

Unit size	AMI Level	Number of Units	Proposed Rents*
Studio	30%	2	341
Studio	40%	3	455
Studio	50%	6	568
Studio	60%	7	682
One-bedroom	30%	1	365
One-bedroom	40%	1	548
One-bedroom	60%	1	731
Two-bedroom	30%	1	438
Studio-Manager's Unit		1	

\*Proposed rents are determined by the rents published by HUD and the utility allowances published by the local Housing Authority

The proposed Project will benefit the City of Palm Springs by rehabbing an older apartment complex and providing 23 affordable housing units. The proposed rehab will transform this existing older property into a contemporary apartment complex assisting in the revitalization of the City, particularly the Uptown area where it is located. The Project will consist of exterior and major interior improvements to the existing apartment complex. For the exterior, the building will receive a thorough power-washing, fresh paint, new shutters, new doors, new windows, and a new roof. A lift will be installed to assist residents in accessing the second floor of the two-story building. The surrounding property will be professionally landscaped, adding to the overall décor and appearance of the development. Additionally, one of the existing pools would undergo rehabilitation, with the second being filled in and incorporated into the overall landscape design which will include a barbeque and picnic area. Major interior improvements will include ADA upgrades, HVAC, water heaters, new energy efficient appliances, new cabinets and countertops, new vinyl flooring and carpeting, and bathroom upgrades.

**FISCAL IMPACT:**

The Agency has the \$1,500,000 in fund balance of the Low-Mod Housing Fund and actually appropriated the funds for this project in the 2011-2012 fiscal year, anticipating that the OPA would go to the Agency in July. A successful application by the Developer for HOME or AHP funds, as expected, would decrease the Agency's permanent commitment to \$1,000,000. Because the Agency funds would be used in the closing on the Property, the full OPA commits up to the \$1,500,000 would be disbursed; however, the commitment is broken into a permanent \$1,000,000 note and a note for \$500,000 that would be repaid to the Agency if the Owner is successful in receiving an award of HOME or AHP funds in an amount no less than the \$500,000. There is also a resolution authorizing the City to apply to the State for HOME funds on behalf of the Project for an amount up to \$1,550,000.

At \$1,000,000 in commitment, the Agency's subsidy per restricted unit (22) would be \$45,454. Because the project is in a redevelopment project area, all of the units would count toward the Agency's housing production goals set under redevelopment law and reported to the State.



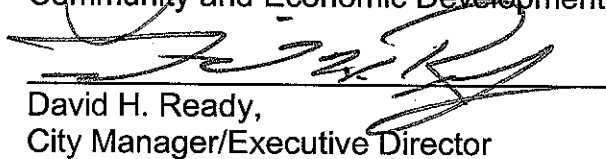
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John Raymond, Director  
Community and Economic Development



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Dale E. Cook, Jr.  
Community Development Administrator



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David H. Ready,  
City Manager/Executive Director

Attachment: Resolution Approving the Owner Participation Agreement  
Owner Participation Agreement  
HOME Resolution

RESOLUTION NO.

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS APPROVING AN OWNER PARTICIPATION AGREEMENT WITH PS HOUSING INVESTORS, LP TO PROVIDE ASSISTANCE IN THE ACQUISITION AND REDEVELOPMENT OF THE SUNSET PALM SENIOR APARTMENTS, A 23-UNIT APARTMENT PROJECT AT NORTH INDIAN CANYON DRIVE AND STEVENS ROAD, INCLUDING AGENCY FINANCIAL PARTICIPATION NOT TO EXCEED \$1,500,000 IN GAP FINANCING, MERGED PROJECT AREA NO. 1

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WHEREAS, the Community Redevelopment Agency of the City of Palm Springs (the "Agency") has established an affordable housing setaside fund in accordance with Section 33000 et. seq. of the California Health and Safety Code; and

WHEREAS, the funds are earmarked for the acquisition, construction, or rehabilitation of affordable housing to benefit the community; and

WHEREAS, Sunset Palm Senior Apartments, proposed for low-income seniors, was submitted for funding in the March 23, 2011 application round of the California Tax Credit Advisory Commission for 9% Low Income Housing Tax Credits (LIHTC) under Article 42 of the Internal Revenue Code; and

WHEREAS, the property developers, PS Housing Investors, LP, through its managing general partner, Global Premier Development, Inc., sought Agency financial assistance to cover a portion of the development cost; and

WHEREAS, the property developers will apply for project funding from State HOME funds and the Affordable Housing Program (AHP) of the Federal Home Loan Bank Board and and have requested Agency assistance to strengthen the application; and

WHEREAS, while all of the units are income-restricted under agreements with CTCAC, the Owners shall agree to restrict, through a Regulatory Agreement approved as an attachment to the Owner Participation Agreement, the rents on the proposed units to levels affordable to households with incomes no more than 60% of Area Median Income (AMI); and

NOW THEREFORE BE IT RESOLVED by the Community Redevelopment Agency of the City of Palm Springs, as follows:

SECTION 1. The above recitals are true and correct and incorporated herein.

SECTION 2. Pursuant to the California Environmental Quality Act (CEQA), the Community Redevelopment Agency finds as follows:

- a) The project has been environmentally assessed and determined to be a Class 1 Categorical Exemption under CEQA (Section 15301) as the renovation of an Existing Facility.
- b) Under CEQA, Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The project involves negligible or no expansion of an existing use.

SECTION 3. The Owner has proposed acquiring and rehabilitating 23 low- and very low-income apartment units on the site, including 19 studio units, 3 one-bedroom units, 1 two-bedroom units, and 1 manager's unit. This project helps the City meet its requirements to provide affordable housing under California law.

SECTION 4. The OPA effectuates the purposes of the Community Redevelopment Law as it is intended to eliminate blight and promote the health, safety and general welfare of the people of Palm Springs.

SECTION 6. The proposed project is consistent with the Five Year Implementation Plan and Housing Compliance Plan for the Palm Springs Community Redevelopment Agency, insofar as this project will provide additional housing for persons of low- or moderate income within the City of Palm Springs.

SECTION 7. Based on foregoing reasons, this Owner Participation Agreement with PS Housing Investors, LP is hereby approved and incorporated herein by this reference.

SECTION 8. The Executive Director, or his designee, is hereby authorized to execute on behalf of the Agency the Owner Participation Agreement and other documents necessary to the

Agreement, and make minor changes as may be deemed necessary, in a form approved by Agency Counsel.

PASSED, APPROVED, AND ADOPTED THIS \_\_\_\_\_ DAY OF JUNE, 2011.

\_\_\_\_\_  
STEVE POUCKET, CHAIRMAN

ATTEST:

\_\_\_\_\_  
James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, do hereby certify that Resolution No. \_\_\_\_\_ is a full, true and correct copy, and was adopted at a regular meeting of the Palm Springs City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
James Thompson, City Clerk  
City of Palm Springs, California



RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS AUTHORIZING SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE HOME INVESTMENT PARTNERSHIPS PROGRAM; AND IF SELECTED, THE EXECUTION OF A STANDARD AGREEMENT, ANY AMENDMENTS THERETO, AND OF ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE HOME INVESTMENT PARTNERSHIPS PROGRAM

WHEREAS, the California Department of Housing and Community Development (the "Department") is authorized to allocate HOME Investment Partnerships Program ("HOME") funds made available from the U.S. Department of Housing and Urban Development ("HUD"). HOME funds are to be used for the purposes set forth in Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, in federal implementing regulations set forth in Title 24 of the Code of Federal Regulations, part 92, and in Title 25 of the California Code of Regulations commencing with section 8200; and

WHEREAS, on June 1, 2010 the Department issued a 2010 Notice of Funding Availability announcing the availability of funds under the HOME program (the "NOFA"); and

WHEREAS, PS Housing Investors, LP, a California Limited Partnership comprised of Global Premier Development, Inc. and The Pate Foundation, requested the City support a HOME grant application of up to one million five hundred fifty thousand dollars (\$1,550,000) to supplement or supplant a portion of the City of Palm Springs Community Redevelopment Agency's commitment of one million, five hundred thousand dollars(\$1,500,000) in Housing Set-Aside funds for the 23-unit multi-family housing project known as Sunset Palms Apartments, 22 units of which are to be affordable to low- and very low-income residents; and

WHEREAS, in response to the 2010 NOFA, the City of Palm Springs, a California Charter City, (the "Applicant") wishes to apply to the Department for, and receive allocation of, HOME funds in support of the Sunset Palms Apartments project.

NOW, THEREFORE, be it resolved that the City Council of the City of Palm Springs supports the following;

SECTION 1. In response to the 2010 NOFA, the Applicant shall submit an application to the Department to participate in the HOME program for an allocation of funds not to exceed one million five hundred fifty thousand dollars

(\$1,550,000) for the rehabilitation of a 23-unit multi-family rental complex with 22 of the units affordable to low- and very low-income residents, located in the City of Palm Springs.

SECTION 2. If the application for funding is approved, then the Applicant hereby agrees to use the HOME funds for eligible activities in the manner presented in its application as approved by the Department in accordance with the statutes and regulations cited above. The Applicant may also execute a standard agreement, any amendments thereto, and any and all other documents or instruments necessary or required by the Department or HUD for participation in the HOME program (collectively, "the required documents").

SECTION 3. The City Council of the City of Palm Springs authorizes the City Manager or his designee to execute, in the name of the applicant, the required documents.

ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
David H. Ready, City Manager

ATTEST:

\_\_\_\_\_  
James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. \_\_\_\_\_ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
James Thompson, City Clerk  
City of Palm Springs, California

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

Community Redevelopment Agency of the City of Palm Springs  
3200 Tahquitz Canyon Way, P.O. Box 2743  
Palm Springs, Ca. 92263  
Attention: Executive Director

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Agreement is recorded at the request and for the benefit of the Community Redevelopment Agency of the City of Palm Springs and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

REDEVELOPMENT AGENCY OF THE  
CITY OF PALM SPRINGS

By: \_\_\_\_\_  
Its: Executive Director

Dated: \_\_\_\_\_

OWNER PARTICIPATION AGREEMENT

by and between

Community Redevelopment Agency of the City of Palm Springs,  
a public body, corporate and politic

and

PS Housing Partners, LP, a California Limited Partnership

1433 and 1455 North Indian Canyon Drive  
Residential Rental Project  
Palm Springs, CA 92262

## ATTACHMENTS

1. Exhibit A: Legal Description of Property
2. Exhibit B: Schedule of Performance/Payment Schedule
3. Exhibit C: Budget/Financial Plan
4. Exhibit D: Certificate of Completion
5. Exhibit E: Basic Design
6. Exhibit F: Affordability Restrictions Running with Land.
7. Exhibit G: Promissory Note

## OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT ("Agreement") is entered as of the Effective Date (defined in this Agreement), between the Community Redevelopment Agency of the City of Palm Springs, a public body, corporate and politic, ("Agency") and Global Premier Development, Inc., a California Corporation ("Owner").

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### RECITALS

The parties enter this Agreement based on the following facts, understandings, and intentions:

A. By authority granted under California Redevelopment Law (the "Law"), the Agency has prepared and is responsible for carrying out the Amended and Restated Redevelopment plan for the Merged Redevelopment Project Area No. 1 (the "Plan").

B. To the extent provided in or allowed by the Law including Cal. H.&S.C. Sections 33334.2 and 33449, as provided by joint resolutions of the Palm Springs City Council and the Agency, findings and determinations pursuant to Health and Safety Code Section 33334.2.(g), the Plan and limited to the terms and conditions therein, the Agency may make improvements upon and/or construct and improve structures in order to provide housing for persons and families of low or moderate income, including related on-site and off-site improvements, by variously (1) allowing the use of Housing Set Aside Funds outside the Project Areas and (2) placing a priority on the use of the Housing Set Aside Funds from the Project Areas to be used either within or adjacent to the Project Area or adjacent to certain Project Areas.

C. Agency administers the Low and Moderate Income Housing Fund established pursuant to Cal. H.&S. C. Sections 33334.2 et seq.

D. The Agency shall permit owner participation in the redevelopment of property in the Plan area in conformity with the Plan and all owner participation rules and criteria, to the extent provided by Cal. H.&S.C. Sections 33339, 33339.5, 33380 and 33381.

E. At the effective date for the Agency, Owner shall hold all right, title and interest in fee to the certain real property described in Exhibit "A" attached hereto and incorporated herein (the "Property"), including improvements located thereon which shall be improved by Owner as contemplated by this Agreement and known as the Sunset Palm Project located at 1433 and 1453 North Indian Canyon Drive, Palm Springs, California (the "Project"). The Property and Project are located within the territorial jurisdiction of the Agency.

F. Owner proposes to renovate a residential rental project on the Property consisting of twenty three (23) residential units. All of the residential units (the "Affordable Units") are to be rented and preserved as Affordable Rental Housing.

G Owner agrees to undertake improvements in accordance with the combined Performance and Payment Schedule described in Exhibit B attached hereto and incorporated herein (the "Performance and Payment Schedule").

H. To the extent Housing Set Aside Funds will exceed 50 percent of the cost of producing the Affordable Units, the Agency has determined based on substantial evidence, that the use of the Funds is necessary because the Agency or Owner of the Affordable Units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity. The Project is not feasible and cannot be completed and restricted to the affordable rental housing purposes and uses provided under Law and this Agreement absent the financial support of the Agency.

I. The Property and associated on site and off site improvements are collectively referred to in this Agreement as the "Improvements" or the "Project," all of which will directly benefit the Property and the Plan area, cannot otherwise be reasonably paid for or financed, and are necessary to eliminate blight.

J. Agency is willing to assist Owner's acquisition and reconstruction of the Affordable Units by making available to Owner as a loan certain Housing Set Aside (Tax Increment) Funds in the amount of \$1,500,000 (the "Loan") upon the terms and conditions specified this Agreement.

K. The Loan shall be paid in accordance with the schedule set out in Exhibit B to the Agreement and repaid in accordance with the promissory note a specimen of which is attached hereto as Exhibit G. The Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement shall be evidenced by this Agreement and the Restrictions and Loan deed of trust which shall be recorded against and run with and encumber the Property.

L. The Project is categorically exempt under Section 15301 of the California Environmental Quality Act as a renovation of an existing residential property without the creation of new environmental impacts and was determined to have or cause no adverse or reportable conditions or effects pursuant to CEQA.

M. Agency has further determined this Project is in the best interests of, and will materially contribute to, Plan implementation. Further, Agency has found the Project: (i) will have a positive influence in the Plan Area, and surrounding environs, (ii) is in the vital and best interests of Agency and the health, safety, and welfare of City residents, (iii) complies with applicable federal, state, and local laws and requirements, (iv) will help eliminate blight, (v) will improve and preserve the community's supply of low and moderate income housing available at affordable rent, as defined by Cal. H.&S.C. Sections 50052.5 and 50053, to persons and families of low or moderate income, as defined in Cal. H.&S.C. Section 50093 of Code; (vi) will be available to meet the replacement housing provisions in Cal. H.&S.C. Section 33413; (vii) will apply funds

solely within the respective Plan areas except to the extent otherwise provided herein and allowed by Law; (viii) all planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of low and moderate income housing; (ix) will comply with all owner participation rules and criteria of Agency and the Plan; and (x) will comply with any and all applicable review and other requirements of the City's Historical Preservation Commission.

O. The Owner and the Agency have determined that this Agreement is not subject to Article XXXIV of the California Constitution.

## **AGREEMENT**

1. **DEFINITIONS.** Besides definitions contained elsewhere in this Agreement, the definitions in this Section will govern the construction, meaning, application and interpretation of the various terms used in this Agreement.
  - 1.1 "ADA" means the Americans with Disabilities Act of 1990.
  - 1.2 "Affordability Period" means a period of fifty-five (55) years commencing from the date Agency records the Certificate of Completion.
  - 1.3 "Affordable Rental Housing" or Affordable Units means the Units available at affordable rent, as defined by Cal. H.&S.C. Section 50052.5 (4), to persons and families of low and moderate income, as defined in Cal. H.&S.C. Section 50093 of Code, consistent with Recital F above which requirements shall be enforceable by covenants running with the land. As used in this Agreement, the term "Affordable Low Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of sixty percent (60%) of the Riverside County Median Income adjusted for the family size appropriate for the Unit and the term "Affordable Moderate Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of one-hundred-ten percent (110%) of the Riverside County Median Income adjusted for the family size appropriate for the Unit.
  - 1.4 "Agency" means the Community Redevelopment Agency of the City of Palm Springs, a public body, corporate and politic, organized and existing under the Law, and any assignee of or successor to its rights, powers and responsibilities.
  - 1.5 "Agreement" means this Owner Participation Agreement.

- 1.6 "Budget" means the Budget/Financial Plan for the Project attached hereto and incorporated herein as Exhibit "C" (the "Budget").
- 1.7 "Certificate of Completion" means that Certificate issued in the form attached as Exhibit "D" to Owner by Agency evidencing completion of the Project for purposes of this Agreement.
- 1.8 "Conditions Precedent of Agency" means the conditions precedent to the effectiveness of this Agreement against the Agency.
- 1.9 "Day" whether or not capitalized, means a calendar day, unless stated otherwise.
- 1.10 "Restrictions" means the affordability restrictions contained in this Agreement and Exhibit F thereto, containing all conditions, covenants, and restrictions required by the Law, any other applicable laws and regulations, the Plan, and this Agreement, running with the Property and the Affordable Units thereon and burdening such for the Affordability Period.
- 1.11 "Default" means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.
- 1.12 "Director" means the Executive Director of Agency.
- 1.13 "Entitlements" mean all permits and fees that the City, County of Riverside, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.
- 1.14 "Effective Date" means the date of complete execution of the Agreement following City Council approval thereof.
- 1.15 "Environmental Laws" means any federal, state, or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials or waste including, without limitation, any state or federal lien or "super lien" law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.
- 1.16 "Funding Source" means the Loan and other funding sources secured by Owner to construct the Improvements.
- 1.17 "Financing Plan" means the Budget including sources and uses of funds sufficient for Owner to complete the Improvements according to the Performance and Payment Schedule.



1.18 Reserved.

1.19 "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated byphenyls, (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (I) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), or (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.*); provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential rental housing or associated buildings and grounds, or typically used in household activities, in a manner typical of other residential rental housing developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Sections 25249.8 *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine.

1.20 "Household" means one or more persons occupying an Affordable Unit.

1.21 "Housing Set-Aside Funds" means those California Health and Safety Code Section 33334.2 monies held and administered by Agency a portion of which shall be made available as the Loan to Owner for eligible costs and expenses incurred by Owner in constructing the Improvements in such amounts, and upon such terms and conditions specified in this Agreement.

- 1.22 "Improvements" mean the construction of the Affordable Units and other units that Owner will complete on the Property as part of the Project, including associated fencing, and landscaping improvements.
- 1.23 "Law" means the Community Redevelopment Law of the State (California Health and Safety Code Sections 33000 *et seq.*).
- 1.24 "Loan" means the principal sum of \$1,500,000 provided by Agency to Owner as a loan, upon the terms and conditions set forth in this Agreement and the Promissory Note(s) attached hereto as Exhibit G to be secured by a no worse than [3rd position] deed of trust lien against the Property. If the deed of trust securing the Promissory Note is recorded prior to the recordation of the deed or deeds of trust securing the other Funding Sources consistent with the Financing Plan, the Agency shall subordinate such deed of trust to such other deed(s) of trust.
- 1.25 "Loan Documents" are collectively this Agreement and all exhibits and attachments thereto any deed of trust given as security, as they may be amended, modified or restated from time to time.
- 1.26 "Material Change" means a change, modification, revision or alteration to the Loan Documents that significantly deviates from those previously approved by the Agency, provided that fully funded change(s) which do not result in a change in the number or type (i.e. residential, affordable) of Units and/or an increase in the total Loan funding provided in this Agreement shall not constitute Material Change(s).
- 1.27 "Owner" means Global Premier Development, Inc. or an affiliated company in which it is a Member, Managing Member, or Principal.
- 1.28 "Plan" means the Redevelopment Plan for the Merged Project Area No. 1
- 1.29 "Project" means the rehabilitation of 23 residential Units on the Property, of which all Units shall be Low Income Housing.
- 1.30 "Project Area" means the Merged Project Area No. 1
- 1.31 "Project Completion Date" means the date that Agency shall have determined the Project has reached completion in accordance with the plans and specifications in the Performance and Payment Schedule, as evidenced by Agency's issuance of a Certificate of Completion.
- 1.32 "Property" means the real property described in Exhibit "A".
- 1.33 "Release of Restrictions" means a release of those covenants, conditions and restrictions contained in this Agreement.

1.34 "Performance and Payment Schedule" means the schedule attached as Exhibit "B," setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may revise the Performance and Payment Schedule from time to time on mutual written agreement of Owner and Agency, but any delay or extension of the Completion Date is subject to the requirements in this Agreement.

1.35 "Security Financing Interest" means a security interest which Owner grants in the Property and the Improvements thereon before the Agency issues and records a Release of Restrictions.

1.36 "Unit" mean a residential unit constituting the Project.

2. CONDITIONS PRECEDENT TO AGENCY'S OBLIGATION TO PERFORM UNDER THIS AGREEMENT. The following are conditions precedent to Agency's obligation to perform under this Agreement. Until each and all of the conditions are satisfied, Agency is not obligated to take any action, or provide any funding under this Agreement. Agency, in writing by its authorized representative, may waive any condition or agree to extend the time for satisfaction of any condition set forth in this Section 2. Agency may terminate this Agreement as provided herein for the failure of a condition.

2.1 Owner shall pay for and provide a title report, recorded deed or other evidence acceptable to Agency that Owner owns the Property.

2.2 Owner has entered into, and provided Agency copies of agreements with any and all funding sources and the general contractor for the Project. All such funding source agreements shall contain a provision whereby the party(ies) to each such agreement, other than Owner, agree to make reasonable efforts to (i) notify Agency immediately of any event of default by Owner under such agreement; (ii) notify Agency immediately of termination or cancellation of such agreement; and (iii) provide Agency, upon Agency's request, an estoppel certificate certifying that such agreement is in full force and effect and Owner is not in default under such agreement.

2.3 Owner has submitted evidence that the combined monies from the Funding Sources are not less than the greater of a total development cost of \$\_\_\_\_\_ or the amount which Agency determines is necessary to complete the Project. If Agency determines that said funds are not sufficient to complete the Project, Owner may satisfy this condition as agreed to by Owner and Agency in writing.

- 2.4 Owner will submit its Financing Plan to the Agency for review and acceptance provided that the purpose of Agency's review is solely to confirm Owner has sufficient funds available to complete the Improvements and maintain Project as this Agreement requires.

After Agency accepts the Financing Plan, Owner will not make any Material Change in the Financing Plan without first submitting such change to Agency for review and acceptance, which shall not be unreasonably withheld, delayed or conditioned.

- 2.5 Owner, at Owner's expense, shall have investigated and determined all environmental, soil, seismic, and other surface and subsurface conditions of the Property and the suitability of such conditions for the Project. Owner's responsibility and due diligence includes, but is not limited to, determining the presence of Hazardous Materials. Both Owner and Agency will promptly give the other copies of all reports and test results. Owner will indemnify, defend, and hold Agency harmless from any damages or claims arising out of Owner's inspections and tests.

- 2.6 Should Owner's property assessment/inspection reveal any Hazardous Materials or environmental conditions requiring remediation, Owner will promptly notify Agency. Not later than ten (10) days from and after such notice, Owner shall, at its sole cost and expense, commence to make required submittals, develop required remedial action plans, and thereafter pursue remediation activities as to such Hazardous Materials or environmental conditions and to diligently prosecute such to completion as required by applicable federal, state and local law and in a manner and according a reasonable time frame agreeable to Agency. Without limiting the foregoing, any remediation will be performed pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction and will be performed according to applicable environmental laws and governmental requirements.

- 2.7 Owner shall not be in default of this Agreement and all representations and warranties of Owner contained herein shall be true and correct in all material respects.

2.7.1 Owner will have signed and delivered all documents required hereunder.

2.7.2 Owner will have received all land use and development approvals, variances, permits and the like required by this Agreement.

- 2.8 Owner will have provided proof of insurance as required by this Agreement.

2.9 This Agreement shall have been recorded with the Riverside County Recorder's Office.

3. OWNER OBLIGATIONS AFTER SATISFACTION OF CONDITIONS PRECEDENT. The following obligations of Owner will run with the land and survive this Agreement:

3.1 Owner will take all reasonable precautions to prevent the release into the environment of any Hazardous Materials in, on or under the Property in violation of applicable laws or regulations. Owner will comply with all governmental requirements with respect to Hazardous Materials. In addition, Owner shall install and use equipment and implement and follow procedures that are consistent with reasonable standards for the disclosure, storage, use, removal and disposal of Hazardous Materials.

3.2 Owner will notify the Agency and give Agency a copy of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Property including, without limitation, notices of violation, notices to comply, citations, inquiries, cleanup or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any governmental regulation relating to Hazardous Materials. Within 3 days after each incident, Owner will report to Agency any unusual or potentially important incidents respecting the environmental condition of the Property.

If a release of any Hazardous Materials into the environment occurs, Owner will, as soon as possible after the release, furnish Agency with a copy of any reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Owner will furnish Agency with a copy of any other environmental entitlements or inquiries relating to or affecting the Property including, without limitation, all permit applications, permits and reports, even reports and other matters.

3.3 From the Effective Date of this Agreement, Owner shall indemnify, hold harmless and defend Agency, City and each of their officers, officials, employees, agents and volunteers from any and all claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), arising out of (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to any use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property. This

indemnity will include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination leak, spill, release or other adverse effect on the environment. Owner's obligations under the preceding sentence shall apply regardless of whether Agency, City or any of their officers, officials, employees, agents or volunteers are negligent, but shall not apply to any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense caused solely by the gross negligence, or caused by the willful misconduct, of Agency, City or any of their officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

- 3.4 The status and qualifications of Owner are of particular concern to Agency. From the Effective Date of this Agreement until the Restrictions expire, no voluntary or involuntary successor-in-interest of Owner will acquire any rights or powers under this Agreement, provided that the parties acknowledge the Owner shall hold the Affordable Units for rental as Affordable Rental Housing as provided in this Agreement. Notwithstanding anything to the contrary herein, Owner shall have the right to transfer ownership of the Property to another person or entity having experience in the ownership and operation of Affordable Rental Housing, as reasonably determined by Agency, which approval shall not be unreasonably withheld, delayed or conditioned.

#### 4. DEVELOPMENT OF THE PROPERTY.

- 4.1 Except as set forth in this Agreement, before Owner begins constructing the Improvements or undertakes any other work of improvement on the Property, Owner, at its own cost and expense, will secure all land use and other entitlements, permits, and approvals that Agency or any other governmental agency with jurisdiction over the Project requires for construction of the Project. Without waiver or limitation, Owner will secure and pay all costs, charges and fees associated with, the following:

4.1.1 All permits and fees that the City, County of Riverside, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.

4.1.2 ADA/Barriers to the Disabled. The Project shall comply with all applicable federal, state and local accessibility requirements. For purposes of this Agreement the number of accessible dwelling units shall be [zero (0)] unless a greater number of units shall be

required by law, whereupon such greater number of units shall apply.

- 4.2 Basic Design. Owner has submitted a general or basic concept drawing to Agency, which Agency has approved, and a copy of which is attached as Exhibit "E" (the "Basic Design"). Owner will complete the Improvements on the Property in one phase, according to the Basic Design, and the plans, drawings, and documents that Owner submits to Agency. Owner shall carry out construction of the Project including the Improvements in accordance with all applicable local, state and federal laws, codes, ordinances and regulations, including without limitation all applicable state and federal labor standards.
- 4.3 Books and Records. Owner shall make available for examination at reasonable intervals and during normal business hours, all books, accounts, reports, files and other papers or property with respect to all matters covered by this Agreement, and shall permit Agency to audit, examine and make excerpts or transcripts from such records. Agency may audit any conditions relating to this Agreement at Agency's expense, unless such audit shows a materially significant discrepancy in information reported by Owner to Agency in which case Owner shall bear the cost of such audit. Owner shall also reasonably cooperate with and assist the Agency in Agency's compliance with any applicable audit requirements of the California Redevelopment Law including California Health and Safety Code Sections 33080 and 33080.1. This section shall survive for a period of four years after the expiration or termination of this Agreement.
- 4.4 Audit. Owner shall be accountable to Agency for all Loan funds disbursed to Owner pursuant to this Agreement. Owner will cooperate fully with Agency and the State in connection with any interim or final audit relating to the Project that may be performed. Owner will maintain accurate and current books and records for the Project using generally accepted accounting principles. Owner agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with Loan funds and to keep all invoices, receipts and other documents related to expenditures financed with Loan funds for not less than four (4) years after the fiscal year in which such expenditures are incurred. For purposes of this section, "books, records and documents" include, without limitation, plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda and electronically stored versions of the foregoing. This section shall survive for a period of four years after the expiration or termination of this Agreement.

- 4.5 Owner shall cause the issuance of all necessary discretionary governmental permits, approvals and entitlements, close any implicated funding or other escrow and begin/complete construction of the Improvements according to the Performance and Payment Schedule.

4.5.1 Project Completion. Agency, acting through and in the discretion of its Director, may extend the completion date of the Project for that period of time that Agency, in its reasonable discretion, determines necessary to overcome any delay if and to the extent such delay is due to a cause which is beyond Owner's reasonable control, and if Owner could not, with reasonable diligence, have foreseen and avoided such cause for delay. Such causes include, without limitation, acts of God, unusually severe weather or flood, war, terrorism, riot or act of the public enemy, labor disputes, unavoidable inability to secure labor, materials, supplies, tools or transportation, or acts or omissions of any governmental authority having jurisdiction. Agency will not extend the completion date for acts or omissions occurring through the fault of Owner, or for acts of Agency permitted or contemplated by this Agreement. An extension of time as provided in this subsection will be Owner's sole remedy for any delays in the Performance and Payment Schedule the Project completion date.

As a condition precedent to any extension requested by Owner, Owner will give the Agency notice within ten (10) days after any cause for delay occurs, stating the cause and the additional time Owner anticipates needed to complete the Project. Any extension by Agency must be in writing and signed by the Director or the Director's designee, which approval shall not be unreasonably withheld, delayed or conditioned.

- 4.6 Subject to the terms of this Agreement, the Loan shall be disbursed to Owner according to the Performance and Payment Schedule. All Loan funds shall be used solely for costs of the Project and Improvements.
- 4.7 Certificate of Completion. Owner will notify Agency when Owner deems the Project complete. Within ten (10) business days after such notice, Agency will inspect the Improvements. When Agency reasonably determines Owner has completed the Improvements as required in this Agreement, the Plan, and the Law, Agency will furnish Owner with the Certificate of Completion. Agency will not unreasonably delay, condition or refuse to issue the Certificate of Completion. The recorded Certificate of Completion will be a conclusive determination that Owner has satisfactorily completed the Improvements required under this Agreement. Any parties then owning or subsequently purchasing, leasing or otherwise acquiring any interest in the Property will not (because of that ownership,



purchase, lease or acquisition) after the recording, incur any obligation or liability under this Agreement for constructing the Improvements, but will take such interest in the Property subject to the continuing covenants set forth in this Agreement.

4.7.1 If Agency determines not to furnish the Certificate of Completion, in accordance with Section 4.7 above, Agency will give Owner a written notice stating why Agency has decided not to issue the Certificate of Completion, or why it is delaying the issuance, and the reasonable actions that, in Agency's opinion, Owner must take before Agency can issue the Certificate of Completion. Agency's failure to give the notice within ten (10) days, however, will not cause the Owner to be entitled to the Certificate of Completion. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

4.7.2 The following are conditions precedent to Agency issuing the Certificate of Completion, and each submission will be in form and substance satisfactory to the Director: Evidence that the time to file all mechanics' liens or material men's liens has expired and any such liens recorded against the Property or Improvements have been released or, if not released, sufficiently bonded (i.e. 150%) against as required by law.

- 4.8 To the extent economically feasible, consistent with the requirements of any permitted encumbrance, or as otherwise approved by Agency or provided in the Agreement, if any building or improvement on the Property is damaged or destroyed by an insurable cause, Owner shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the Basic Design for the Project. Such work or repair shall commence within ninety (90) days after the insurance proceeds are made available to Owner and shall be complete within one (1) year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Owner shall make up the deficiency.
- 4.9 Inspections. Owner shall permit, facilitate and require its contractors to permit and facilitate observation and inspection of the Project by Agency during reasonable business hours and upon reasonable notice for the purpose of determining compliance with this Agreement.
- 4.10 If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners or businesses, Owner shall comply with all applicable local, state and

federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. Owner shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws. For purposes of this Section 4.10 the parties acknowledge that as of the Effective Date the Project Property is vacant and unoccupied.

4.11 Reporting Requirements. Owner shall submit to Agency the following reports:

4.11.1 Annual Reports. Annually, beginning in the year following Agency's issuance of the Certificate of Completion, and continuing until the expiration of this Agreement, on such dates as are agreeable between the parties and consistent with all federal and state reporting requirements applicable to the Project, Owner shall submit an annual report to Agency, in a form approved by Agency. Such annual report shall include for each of the Affordable Units: the rent, the annual income and the family size of the Household occupying the Affordable Unit. Such annual report shall also state the date the tenancy commenced for each Affordable Unit, certification from an officer of Owner that the Affordable Unit is in compliance with the Affordable Rental Housing requirements, and such other information the Agency may be required by Law to obtain. Owner shall provide any additional information reasonably requested by the Agency provided such information is directly related to Owner's compliance with this Agreement.

4.11.2 Annual Proof of Insurance. Annually, beginning in the year following Agency's issuance of the Certificate of Completion, and continuing until the expiration of the Agreement, Owner shall submit proof of insurance as required by this Agreement.

4.12 All Leases used to rent the Affordable Units are subject to the following:

4.12.1 Annual Income Certification and Reporting. Owner shall include in leases for all Affordable Units provisions which authorize Owner to immediately terminate the tenancy of any Household one or more of whose members misrepresented any fact material to the Household's qualification as a Household for low to moderate income family. Each such lease shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for low to moderate income family such Household's rent may be subject to increase to the amount

payable by tenant under federal, state or local law, except that, consonant with the Law, tenants of the Affordable Units that have been allocated to low income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42.

4.12.2 The leases for the Affordable Units shall provide that if the Project is subject to state or federal rules governing low income housing tax credits, the provision of those rules regarding continued occupancy by, and increases in rent for, Households whose incomes exceed the eligible income limitation shall apply in place of the provisions set forth in subsection 4.11.1 above.

4.13 With respect to the Project, Owner shall comply with the following:

4.13.1 Except to any extent otherwise provided in this Agreement, Owner is specifically responsible for all management functions with respect to the Affordable Units including, without limitation, the selection of tenants, certification and re-certification of Household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. Agency shall have no responsibility for management of the Affordable Units of the Project.

4.14 Owner covenants and agrees the Affordable Units shall constitute Affordable Rental Housing during the entire Affordability Period. If Owner fails to comply the requirement to lease the Affordable Units only to qualified Households during the Affordability period, Agency shall be entitled to enjoin Owner from leasing the Affordable Units in the Project, as Owner acknowledges that damages are not an adequate remedy at law for such breach.

## 5. INDEMNITY; INSURANCE

5.1 Owner shall indemnify, hold harmless and defend Agency, City and each of their officers, officials, employees, agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by Agency, City, Owner, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Owner's performance of this Agreement. Owner's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages

caused solely by the gross negligence, or caused by the willful misconduct, of Agency, City or any of their officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

Throughout the life of this Agreement, the Owner shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with (an) insurance company(ies) either (1) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (2) authorized by the Agency's Risk Manager or his/her designee. The following policies of insurance are required:

5.2.1 Until the Certificate of Completion is recorded, Builders Risk (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

5.2.2. Following the recording of the Certificate of Completion, Fire and Extended Coverage Insurance against loss or damage to the project by fire and lightning, with extended coverage for vandalism and malicious mischief and sprinkler system leakage. Such extended coverage insurance will, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the replacement cost (without deduction for depreciation) of the project with no coinsurance penalty provisions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to Agency. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Owner shall furnish Agency with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the term of this Agreement, Owner shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The Builders Risk (Course of Construction) and Fire and Extended Coverage insurance policies shall be endorsed to name Agency as a loss payee.

Owner shall furnish Agency with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the Agency's Risk Manager or his/her designee prior to Agency's execution of this Agreement.

If at any time Owner fails to maintain the required insurance in full force and effect, Owner shall immediately discontinue all work under this Agreement until Agency receives notice that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the Agency. Owner's failure to maintain any required insurance shall be sufficient cause for Agency to terminate this Agreement.

The fact that insurance is obtained by Owner shall not be deemed to release or diminish the liability of Owner, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify Agency, City and each of their officials, officers, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Owner. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Owner.

Upon request of Agency, Owner shall immediately furnish Agency with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

- 5.3 Owner will obtain and deliver payment and performance bonds issued by an insurance company admitted in California in good standing as a surety and meeting the criteria for Owner's other insurance under this Agreement, each bond in an amount at least equal to 100% of Owner's estimated construction costs, provided that the Agency hereby waives any requirement for said bonds at all time during which Owner is in full compliance with this Agreement and the Project remains fully funded.
- 5.4 Until Agency issues the Certificate of Completion Agency will have access to the Property, after reasonable notice to the Owner (except in emergencies), without charge or fee, during normal construction hours, for purposes of assuring compliance with this Agreement. Agency representatives will comply with all safety rules while on the Project or the Property.
- 5.5 Owner will design and construct the Improvements, and after that, prior to any allowable transfer or sale thereof, Owner will maintain the Property

according to all applicable laws including, without limitation, all applicable state labor standards, Agency zoning and development standards, building, plumbing, mechanical and electrical codes, all provisions of the Palm Springs Municipal Code and all applicable access requirements. Agency makes no representation about which, if any, of such laws, ordinances, regulations or standards apply to development of the Project.

Owner acknowledges that Owner, not Agency, is responsible for determining applicability of and compliance with all local, state, and federal laws including, but not limited to, any applicable provisions of the California Labor Code, Public Contract Code, and Government Code. Agency makes no express or implied representation as to the applicability or inapplicability of any such laws to this Agreement or to the parties' respective rights or obligations hereunder including, but not limited to, payment of prevailing wages, competitive bidding, subcontractor listing, or similar or different matters. Owner further acknowledges that Agency shall not be liable or responsible at law or in equity for any failure by Owner to comply with any such laws, regardless of whether Agency knew or should have known of the need for such compliance, or whether Agency failed to notify Owner of the need for such compliance.

5.6 Owner will take reasonable efforts to not permit any lien or stop notice to be filed against the Property, provided Owner may reasonably determine to contest any such lien or stop notice. If a claim of lien or stop notice is recorded against the Property or Improvements, Owner, within 30 days after recordation of a claim of lien or stop notice or within 5 days after Agency's demand, whichever first occurs, will do the following:

5.6.1 Pay and discharge the same; or

5.6.2 Effect the release of such lien by recording and delivering to Agency a surety bond in sufficient form and amount (i.e. 150%), or otherwise; or

5.6.3 Give Agency other assurance which Agency, in its sole discretion, deems satisfactory to protect the Agency from the effect of the lien or bonded stop notice.

## 6. SECURITY FINANCING AND RIGHTS OF HOLDERS.

6.1 Notwithstanding any other provision of this Agreement, Owner may not grant a security interest in the Property before the Agency issues and records a Certificate of Completion, without the written consent of Agency, provided that Agency hereby approves the recommended security interest of Owner's financial institutions, including their respective successors or assigns, as described in the Financing Plan.

## 7. CONTINUING OWNER OBLIGATIONS

7.1 In its performance of this Agreement, Owner covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person, including contractors, subcontractors, bidders and vendors, on account of race, color, religion, ancestry, national origin, sex, sexual preference, age, pregnancy, childbirth or related medical condition, medical condition (e.g., cancer related) or physical or mental disability, and in compliance with all applicable federal, state and local laws, regulations and rules including without limitation Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Owner will allow Agency representatives access to its employment records related to this Agreement during regular business hours and upon reasonable notice to verify compliance with these provisions when so requested by the Agency.

7.2 Owner will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Owner's right to contest in good faith any such taxes. Owner will remove any levy or attachment on the Property or any part of it, or assure the satisfaction of the levy or attachment within a reasonable time. Owner will notify Agency prior to applying for or receiving any exemption from the payment of property taxes or assessments on any interest in or to the Property or the Improvements. Owner further agrees that the prior consent of Agency shall be required if the basis for such exemption is other than for qualified property held by a nonprofit entity that has been determined to be exempt from federal and state income taxation, which consent shall not be unreasonably withheld.

8. **COVENANTS AND RESTRICTIONS RUNNING WITH THE LAND.** The following covenants shall run with the land and shall bind Owner, and Owner's successors in interest to the Property for the periods stated, and shall be fully binding for the benefit of the Plan community and Agency without regard to technical classification or designation, legal or otherwise.

- 8.1 Owner covenants for itself, its successors, assigns, and every successor in interest to the Property or any part of it that, after closing of any applicable escrow, during construction, and after completing the Improvements, the Owner shall devote the Affordable Units on the Property to the uses specified in this Agreement for the Affordability Period. All uses of the Affordable Units including, without limitation, all activities Owner undertakes pursuant to this Agreement, shall conform with this Agreement and the Law. Without waiver or limitation, each of the Affordable Units to be constructed pursuant to this Agreement shall be maintained as Affordable Rental Housing pursuant to this Agreement and the Restrictions.
- 8.2 Owner and those taking under Owner will maintain the Property and all Improvements on site in reasonably good-condition and repair (and, as to landscaping, if any, in a healthy condition), all according to the Basic Design and related plans, as-amended from time to time. Owner and those taking under Owner shall: (i) maintain all on-site Improvements according to all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the Improvements free from graffiti, (iii) keep the Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to the on-site Improvements; and (v) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials.

Agency will give Owner written notice of any breach of this Section 8.2. Within 10 days from receipt of such notice, Agency and Owner will meet and confer, and agree to corrective actions and a schedule of performance for such corrective actions. Owner must cure the default within the agreed schedule or within (a) 10 days after the Agency's notice for any default involving landscaping, graffiti, debris, waste material, or general maintenance on the Property, (b) 30 days after Agency's notice for any default involving the Improvements. If Owner does not cure the default within the agreed schedule, Agency, without obligation to, may enter the Property, cure the default, and protect, maintain, and preserve the Improvements and landscaping.

Agency may lien or assess the Property for the Agency's expenses in protecting, maintaining, and preserving the on-site Improvements and aesthetics of the Property, including any lawful administrative charge in the manner used by the Agency in the abatement of public nuisances. The notice and opportunity to cure provided for herein will substitute for the noticing, hearing, and nuisance abatement order used by Agency. Owner will promptly pay all such amounts to Agency upon demand.



- 8.3 During the Affordability Period Owner covenants to use and operate the Affordable Units on the Property as Affordable Rental Housing pursuant to this Agreement.
- 8.4 Owner covenants for itself and any successors in interest and all persons claiming by, through or under them, in perpetuity, that there shall be no discrimination against or segregation of any person or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Affordable Units, nor shall Owner itself or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Affordable Units.
- 8.5 All deeds, leases, or contracts concerning the Affordable Units shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein, conveyed. The foregoing covenants shall run with the land."

In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, because of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of

discrimination or segregation concerning the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants: sublessees or vendees of the premises."

- 8.6 Agency is the beneficiary of the covenants running with the land for itself and for protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants are provided, without regard to whether Agency has been, remains, or is an owner of any land or interest in the Affordable Units on the Property. Agency may exercise all rights and remedies, and maintain any actions or suits at law or in equity or other proceedings to enforce the covenants for itself or any other beneficiaries.

## 9. DEFAULTS AND REMEDIES

- 9.1 Subject to the extensions of time permitted under this Agreement, either party's failure to perform any material action or material covenant as required by this Agreement, following notice and failure to cure, is a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of, and the cure demanded. Except as otherwise expressly provided in this Agreement, the noticing party shall not begin any proceeding against the other party until the other party is given an opportunity to cure the Default. The other party will have 30 calendar days after receiving the notice to cure the Default, or, if the party cannot reasonably cure the Default within such 30 days, the other party must begin to cure within the 30 days and diligently pursue the cure to completion, whereupon there shall be no event of Default.
- 9.2 Subject to first giving the notice and opportunity to cure, a party may begin an action at law to enforce, or in equity to seek specific performance of, the terms of this Agreement, or to cure, correct, or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent

with the purpose of this Agreement. A party must bring any legal action in the Superior Court of the County of Riverside, State of California, in an appropriate municipal court in Riverside County, or in the District of the United States District Court serving Riverside County.

- 9.3 If Owner begins any legal action against Agency, it shall serve process on the Agency by personal service on the Director, or in any other manner the law permits. If Agency begins any legal action against the Owner, it will serve process on the Owner by personal service on Owner, Owner's Agent or in any other manner the law permits.
- 9.4 Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and a party's exercise of one or more rights or remedies will not preclude the party's exercise, at the same or different times, of any other rights or remedies for the same or any other Default of the other party.
- 9.5 A party's failure or delay in asserting any right or remedy will not be a waiver of any Default or of any right or remedy, and will not deprive the party of its right to begin and maintain any action or proceeding to protect, assert or enforce any right or remedy.
- 9.6 The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

## 10. GENERAL PROVISIONS

- 10.1 Any notice, demand, or other communication permitted or required under this Agreement will be in writing and given by personal delivery, or by first-class U.S. mail, postage prepaid, to a party at its respective address below:

To Agency:

Executive Director  
Community Redevelopment Agency of the City of Palm Springs  
3200 Tahquitz Canyon Way  
P.O. Box 2743  
Palm Springs, CA 92263

With a Copy to:

WOODRUFF, SPRADLIN & SMART, APC  
555 Anton Boulevard, Suite 1200  
Costa Mesa, California 92626  
Attention: Douglas C. Holland, Esq.

To Owner:

Global Premier Development, Inc.  
2010 Main St. Suite 1250  
Irvine, Ca. 92614  
Andrew Hanna, President

A party may change its address for notices, demands and communications by giving notice of the new address as provided in this section. Any written notice, demand or communication shall be deemed received immediately if delivered personally, and shall be deemed received on the third day after it is postmarked if delivered by regular, registered or certified mail, or on the date of receipt, if return receipt is requested and available to confirm the date.

- 10.2 All of the terms, covenants and conditions of this Agreement shall be binding upon the Owner and its permitted successors and assigns. Whenever the term "Owner" is used in this Agreement, such term shall include Owner's successors and assigns as permitted under this Agreement.
- 10.3 The Agency may assign or transfer any of its interests, rights, or obligations hereunder at any time to any public agency without the consent of the Owner.
- 10.4 No member, official or employee of the Agency shall be personally liable to the Owner, or any successor in interest to Owner, for any Default or breach by the Agency.
- 10.5 The relationship between the Agency and the Owner is that of redevelopment agency and redeveloper respectively, as permitted by law, and not that of a partnership or joint venture. Agency and Owner shall not be deemed or construed for any purpose to be the agent of the other.
- 10.6 Whenever this Agreement references an action or approval required or permitted by the Agency, the Director or his or her designee is authorized to act for the Agency as agent of the Agency unless this Agreement, the Law, Constitutional and/or local law provide otherwise, or the context otherwise requires.
- 10.7 This Agreement may be signed in multiple counterparts which, when signed by all parties, will be one binding agreement. The parties will sign three copies of this Agreement, each of which is deemed to be original.
- 10.8 This Agreement, includes the exhibits and attachments referenced and incorporated in it. This Agreement contains the entire agreement between the parties relating to the transaction contemplated by this Agreement and

supersedes all prior or contemporaneous agreements, understanding, representation and statements, whether oral or written.

- 10.9 If either party begins a lawsuit or arbitration proceeding, in law or equity, to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees, court costs, and legal expenses as determined by the court or tribunal having jurisdiction.
- 10.10 Any waiver, alteration, change or modification of or to this Agreement, to be effective, must be in writing, and signed by each party.
- 10.11 If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances is held invalid or unenforceable, the remainder of this Agreement and its application to persons or circumstances, other than those about whom or which it is held invalid or unenforceable, shall not be affected, and shall remain valid and enforceable to the fullest extent permitted by law.
- 10.12 Each party represents and warrants to the other that (a) each has read this Agreement, and (b) is signing this Agreement with full knowledge of any rights and obligations each may have, and (c) each has received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel, and (d) has signed this Agreement without relying on any agreement, promise, statement or representation by or for the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.
- 10.13 No member, official or employee of Agency has or shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. Owner represents and warrants that it has not paid or given, and will not pay or give, to any third party any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys.
- 10.14 The parties will execute such other and further documents, and will take any other steps, necessary, helpful, or appropriate to carry out the provisions of this Agreement.

- 10.15 No contractor, subcontractor, mechanic, material man, laborer, vendor, or other person hired or retained by with Owner shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, rather each such person shall be deemed to have agreed (a) that they shall look to Owner as their sole source of recovery if not paid, and (b) except as otherwise agreed to by Agency and any such person in writing, they may not enter any claim or bring any such action against Agency under any circumstances. Except as provided by law, or as otherwise agreed to in writing between Agency and such person, each such person shall be deemed to have waived in writing all right to seek redress from Agency under any circumstances whatsoever.
- 10.16 Owner hereby covenants and warrants that it is a duly authorized and existing California limited liability company, in good standing; that it shall remain in good standing; that it has the full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement; that the execution and delivery of this Agreement were duly authorized by proper action of the Owner and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions of the Owner's part contemplated by this Agreement, except as have been obtained and are in full force and effect; and that this Agreement constitutes the valid, binding and enforceable obligation of the Owner.
- 10.17 In the event of any conflict between the body of this Agreement and any exhibit or attachment to it, the terms and conditions of the body of this Agreement will control.

///  
///  
///

IN WITNESS WHEREOF, Agency and Developer have signed this Amendment on the respective dates set forth below.

**"Agency"**

Dated: \_\_\_\_\_

Community Redevelopment Agency of the City of Palm Springs, a public body, corporate and politic

By: \_\_\_\_\_  
David Ready, Executive Director

APPROVED AS TO FORM:

ATTEST:

By: \_\_\_\_\_  
Douglas Holland  
Agency Counsel

By: \_\_\_\_\_  
James Thompson  
Agency Secretary

**"Owner"**

Global Premier Development, Inc.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Its  
\_\_\_\_\_

**Attachments:**

- Exhibit A: Legal Description of Property
- Exhibit B: Performance and Payment Schedule
- Exhibit C: Budget/Financial Plan
- Exhibit D: Certificate of Completion
- Exhibit E: Basic Design
- Exhibit F: Affordability Restrictions Running with Land.
- Exhibit G: [Specimen] Promissory Note

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, CITY OF PALM SPRINGS, AND IS DESCRIBED AS FOLLOWS:

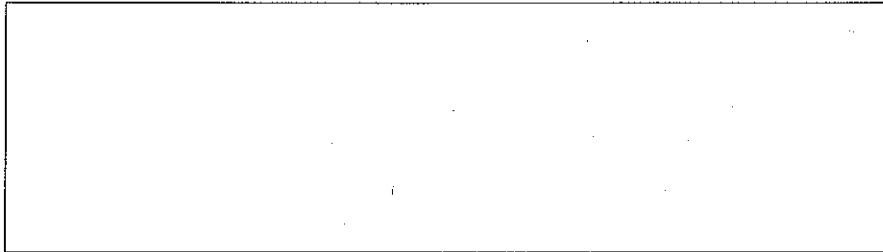


**EXHIBIT "B"**  
**Performance and Payment Schedule**  
**SCHEDULE OF PERFORMANCE**

<u>Items Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>
Developer executes and delivers Agreement to Agency	On or before August 19, 2011	August 19, 2011
Agency executes Agreement	On or before August 20, 2011	August 20, 2011
<u>Submission – Certificates of Insurance.</u> The Developer furnishes to the Agency appropriate certificates of bodily injury and property damage insurance policies.	Within 15 days after execution of this Agreement by the Agency.	September 5, 2011.
<u>Approval – Certificates of Insurance.</u> Agency approves or disapproves Developer's submission of appropriate certificates of bodily injury and property damage insurance policies.	Within 15 days after receipt thereof by the Agency.	September 20, 2011.
<u>Loan Disbursement.</u> The Agency shall make the first disbursement of loan proceeds in the amount of \$300,000 and record a Deed of Trust.	Within 15 days after approval of Certificates of Insurance by the Agency.	October 5, 2011.
<u>Loan Disbursement.</u> The Agency shall make the second disbursement of loan proceeds in the amount of \$300,000.	Within 15 days after Notice that work on the residential units is substantially complete and the units are ready to occupy.	December 15, 2011.
<u>Completion of Construction of Developer's Improvements</u> The Developer shall complete construction of the improvements to be constructed on the Project Site.	Within the specified months after commencement thereof by the Developer 8 months after commencement of construction	February 28, 2010
<u>Issuance – Certificate of Completion.</u> The Agency shall furnish the Developer with a Certificate of Completion on the Project.	Promptly after completion of all construction and upon written request thereof by the Developer.	March 31, 2010



**EXHIBIT "C"**  
**Budget/Financial Plan**



**Unit Mix and Rents**

<u>Residential</u>			
Total Units			23
Affordable - 60% of AMI			8
Affordable - Moderate 110% of AMI			31
<u>Affordable - Moderate 110% of AMI</u>	<u>#</u>	<u>SF</u>	<u>Rent</u>
1 BD	8	636	\$575
1 BD	3	533	\$575
1 BD	8	639	\$575
2 BD	1	1228	\$625
2 BD	1	1125	\$625
Studio	2	375	\$550
Studio	8	388	\$550
Total Market Rate			31
<u>Affordable Units - up to 60% AMI</u>	<u>#</u>	<u>SF</u>	<u>Rent</u>
1 BD	4	700	\$500
Studio	4	386	\$500
	8		
Monthly Gross Rent	19	1 BD	\$10,925
	2	2 BD	\$1,250
	10	Studio	\$5,500
	4	1 BD	\$2,000
	4	Studio	\$2,000
			\$21,675
Annual Gross Rent		\$	260,100
Vacancy Allowance (5%)		\$	(13,005)
Effective Residential Rent		\$	247,095

**Total Development Cost**

Property Acquisition		\$	805,000
<i>Hard Cost</i>			
Direct Construction per Tyco Contract		\$	559,000
Construction Change Orders (Tyco Contract)		\$	40,000
Retail Space Remodel		\$	90,000
Courtyard Landscaping/Hardscape		\$	160,000
Off Sites		\$	150,000
	<i>Subtotal Hard</i>	\$	999,000
Construction Contingency @	5%	\$	49,950
Total Hard Cost		\$	1,048,950
<b>TOTAL DEVELOPMENT COST (TDC)</b>		\$	1,853,950

FMV based on Capitalization Rate	9.0%	1,043,222
LTV	63%	
Conventional Loan		\$ 657,230

**Assistance Calculations**

Total Development Cost	\$	1,848,950
Agency Loan	\$	(600,000)
Developer Equity or Permanent Financing	\$	1,248,950
Annual Debt Service (20 years, 8%)		<u>(\$52,578.40)</u>
ROI After Debt Service		\$146,468.40

Annual Debt Service on Agency Loan	(\$26,789.95)
Monthly Debt service on Agency Loan	\$ (2,232.50)

**EXHIBIT "D"**  
**Certificate of Completion**

**CERTIFICATE OF COMPLETION**

**RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:**

Community Redevelopment Agency of City of Palm Springs  
3200 Tahquitz Canyon Way  
P.O. Box 2743  
Palm Springs, CA 92263  
Attention: Executive Director

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Certificate of Completion is recorded at the request and for the benefit of the Community Redevelopment Agency of the City of Palm Springs and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

Community Redevelopment Agency of the City  
of Palm Springs, a public body, corporate and  
politic

By: \_\_\_\_\_

David H. Ready, Esq., Ph.D.

Its: Executive Director

Dated: \_\_\_\_\_

Certificate of Completion

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RECITALS:

A. By an Owner Participation Agreement (the "Agreement") dated [\_\_\_\_], 2011 between Global Premier Development, Inc., a California Corporation ("Owner") and the Community Redevelopment Agency of the City of Palm Springs, a public body corporate and politic ("Agency"), Owner agreed to rehabilitate certain residential units on the premises legally described in Attachment "A" hereto (the "Property") and preserve the Affordable Units, as defined in the Agreement as rental housing for Low-Income Households with the assistance of Agency housing set aside funds while meeting the Affordable Housing, income targeting and other requirements of the Community Redevelopment Law set forth at California Health and Safety Code Sections 33000 et seq. for a fifty-five (55) year Affordability Period according to the terms and conditions of the Agreement.

B. The Agreement was recorded on [\_\_\_\_], 2011 in the Official Records of Riverside County, California as Instrument No. \_\_\_\_\_.

C. Under the terms of the Agreement, after Owner completes the construction on the Property, Owner may ask Agency to record a Certificate of Completion.

D. Owner has asked Agency to furnish Owner with a recordable Certificate of Completion.

E. Agency's issuance of this Certificate of Completion is conclusive evidence that Owner has completed the construction on the Property as set forth in the Agreement.

NOW THEREFORE:

1. Agency certifies that Owner commenced the construction work on the Project on [\_\_\_\_], 20\_\_, and completed the construction work on the Project on \_\_\_\_\_, 20\_\_, and has done so in full compliance with the Agreement.

2. This Certificate of Completion is not evidence of Owner's compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project.

3. This Certificate of Completion is not a notice of completion as referred to in California Civil Code section 3093.

4. Nothing contained herein modifies any provision of the Agreement.

IN WITNESS WHEREOF, the Agency has executed this Certificate of Completion as of this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Community Redevelopment Agency  
of the City of Palm Springs, a public body,  
corporate and politic

By: \_\_\_\_\_  
David H. Ready, Esq., Ph.D.  
Executive Director

Owner hereby consents to recording this Certificate of Completion against the Property described herein.

Dated: \_\_\_\_\_, 200\_

PS Housing Partners, LP, by  
Global Premier Development, Inc., its managing general partner

By: \_\_\_\_\_  
Andrew Hanna, President  
Global Premier Development, Inc.

THE ABOVE PARTIES ARE TO SIGN THIS INSTRUMENT BEFORE A NOTARY PUBLIC.

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY

By: \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION**

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

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, CITY OF PALM SPRINGS, AND IS DESCRIBED AS FOLLOWS:

**EXHIBIT "E"**  
**BASIC DESIGN/INTERIOR**

**BASIC DESIGN/EXTERIOR**

**EXHIBIT "F"**

**REGULATORY AGREEMENT AND  
DECLARATION OF COVENANTS AND RESTRICTIONS**

FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

COMMUNITY REDEVELOPMENT AGENCY  
OF THE CITY OF PALM SPRINGS  
3200 Tahquitz Canyon Way, P.O. Box 2743  
Palm Springs, CA 92263  
Attn: Executive Director

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(Space Above This Line for Recorder's Office Use Only)

**REGULATORY AGREEMENT AND  
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Community Redevelopment Agency of THE CITY OF PALM SPRINGS, a public body, corporate and politic ("Agency"), and PS HOUSING PARTNERS, LP, a California Limited Partnership ("Owner").

**RECITALS:**

A. Pursuant to an Owner Participation Agreement by and between Agency and Owner dated \_\_\_\_\_, 2011 (the "OPA"), Agency has provided to Owner financial assistance in the amount of approximately One Million Dollars (\$1,000,000.00) in loan funds (the "Agency Assistance"), for the purpose of assisting Owner in the acquisition of real property and the rehabilitation of a mixed use residential apartment complex thereon wherein twenty percent of the units shall be rented to low income households and eighty percent of the units shall be rented to moderate income households, on that certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Site").

B. Pursuant to the OPA, Owner has agreed to rehabilitate and maintain a rental apartment housing project consisting of twenty-three (23) total residential units (hereinafter referred to collectively as the "Project") on the Site. The Project is also

referred to in the OPA as the "Project," and is further described in the Scope of Development attached to the OPA.

C. The Agency and the City of Palm Springs have fee or easement interests in various streets, sidewalks and other property within the City and are responsible for the planning and development of land within the City in such a manner so as to provide for the health, safety and welfare of the residents of the City. That portion of the Agency's and City's interest in real property most directly affected by this Agreement is depicted in Exhibit "B" attached hereto and incorporated herein by reference ("Public Parcel").

D. Agency, City, and Owner now desire to place restrictions upon the use and operation of the Project, in order to ensure that the Project shall be operated continuously as a rental apartment housing project with the units available for rental by low income persons for the term of this Agreement.

#### A G R E E M E N T:

NOW, THEREFORE, the Owner and Agency declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of the Agency, the residents of the City of Palm Springs, and every person renting a dwelling unit on the Site.

#### AFFORDABILITY RESTRICTIONS RUNNING WITH LAND

In addition to the covenants and conditions contained in the Agreement, the following California Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.) affordability requirements shall be imposed upon the 23 Affordable Units on the Property funded under the Agreement and shall bind the Owner and all purchasers of the Property and their successors for a fifty-five (55) year period.

The Affordable Units on the Property are held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Exhibit, all of which are in furtherance of the Project, the Agency's Community Redevelopment Law and Plan Area obligations including

Agency's obligations set forth at California Health & Safety Code sections 33334.2 et seq and 33413 (a) with respect to Housing Set Aside Funds and replacement dwelling units at affordable rent within the jurisdiction of the Agency. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Affordable Units upon the Property or any part thereof, will inure to the benefit of the Agency, and will be enforceable by it. Any purchaser under a contract of sale or other transferee of an interest covering any right, title or interest in any part of the Affordable Units upon the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenants, and limitations set forth in this Exhibit for the period of fifty-five (55) years running from and after recordation of Agency's Certificate of Completion constituting the Affordability Period.

1. Restrictions. The following covenants and restrictions ("Restrictions") on the use and enjoyment of the Affordable Units upon the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of the Agency and shall run with the Affordable Units upon the Property and be binding on any future owners of the Property and inure to the benefit of and be enforceable by Agency. These covenants and restrictions are as follows:

a. From the date of recordation of Agency's Certificate of Completion until the expiration of the Affordability Period the twenty three (23) Affordable Units funded under the Agreement are to be used as Low Income Affordable Rental Housing as provided for in the Agreement. Owner agrees to file a recordable document setting forth the project Completion Date and the Affordability Period as and when determined by the Agency. Unless otherwise provided in the Agreement, the term "Affordable Rental Housing" shall include without limitation compliance with the following requirements:

Nondiscrimination. There shall be no discrimination against nor segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or handicap in the sale, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall Owner or any person claiming under the Owner, establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Property.

Principal Residence. Each of the Affordable Units upon the Property shall be leased only to natural persons, who shall occupy such as a principal residence.

Income Requirements. Each of the 23 Units constituting Low Income Affordable Rental Housing upon the Property may be leased only to (a) natural person(s) whose annual household income at the time of initial occupancy is not greater than sixty percent (60%) of the most recent annual median income calculated and published by HUD for the Riverside-San Bernardino Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent with the applicable California Redevelopment Law.

Injunctive Relief and Recapture. Should any of the 23 Affordable Units constituting Low Income Affordable Rental Housing upon the Property not continue to be, at the time of initial occupancy, the principal residence of a Household that qualifies as a low-income household, during the period of Affordability, such Unit(s) shall be made available for subsequent lease only to Households that qualify as a very low-income for use as the Household's principal residence.

2. Enforcement of Restrictions. Without waiver or limitation, the Agency shall be entitled to injunctive or other equitable relief against any violation or attempted violation of the Restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof.

3. Acceptance and Ratification. All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the above Restrictions. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Restrictions, as such may be amended or supplemented from time to time, is accepted and ratified by such future owners, tenant or occupant, and such Restrictions shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

4. Benefit. This Exhibit and the Restrictions therein shall run with and bind the Property for a term commencing on the date the Agreement to which this Exhibit is attached is recorded in the Office of the Recorder of the County of Riverside, State of

California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of Agency and/or any other person entitled to enforce these Restrictions shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

5. Costs and Attorney's Fees. In any proceeding arising because of failure of Owner or any future owner of the Property to comply with the Restrictions required by this Exhibit, as may be amended from time to time, Agency shall be entitled to recover its respective costs and reasonable attorney's fees incurred in connection with such default or failure.

6. Waiver. Neither Owner nor any future owner of the Property may exempt itself from liability for failure to comply with the Restrictions required in this Exhibit.

7. Severability. The invalidity of the Restrictions or any other covenant, restriction, condition, limitation, or other provision of this Exhibit shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Exhibit and each shall be enforceable to the greatest extent permitted by law.

8. Pronouns. Any reference in this Exhibit and the Restrictions therein to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

9.. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Exhibit are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Exhibit or any provision hereof.

10.. Capitalized Terms. All capitalized terms used in this Exhibit, unless otherwise defined herein, shall have the meanings assigned to such terms in the Agreement.

11. Amendments. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Riverside.

12. Notice. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return

receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

Agency: Community Redevelopment Agency  
of the City of Palm Springs  
3200 Tahquitz Canyon Way

P.O. Box 2743  
Palm Springs, CA 92263  
Attn: Executive Director

Copy to: WOODRUFF, SPRADLIN & SMART, APC  
555 Anton Boulevard, Suite 1200  
Costa Mesa, California 92626  
Attention: Douglas C. Holland, Esq.

Owner: PS Housing Partners, LP  
c/o GLOBAL PREMIER DEVELOPMENT,  
INC., its managing general partner  
2010 Main St. Suite 1250  
Irvine, Ca. 92614  
Attn: Andrew Hanna, President

Copy to:

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

13. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California.

14. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

[END -- SIGNATURES ON NEXT PAGE]



IN WITNESS WHEREOF, the Agency and Owner have executed this Regulatory Agreement and Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

"AGENCY"

COMMUNITY REDEVELOPMENT  
AGENCY OF THE CITY OF PALM  
SPRINGS, a public body, corporate and  
politic

By: \_\_\_\_\_  
David H. Ready, Esq., Ph.D.  
Executive Director

ATTEST:  
JAMES THOMPSON

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

DOUGLAS C. HOLLAND

\_\_\_\_\_  
AGENCY COUNSEL

"OWNER"

PS Housing Partners, LP, a California  
Limited Partnership

By: \_\_\_\_\_  
GLOBAL PREMIER DEVELOPMENT,  
INC., its managing general partner  
ANDREW HANNA, President

[END OF SIGNATURES]

Attachments:

Exhibit A: Legal Description of Property

STATE OF CALIFORNIA )

) ss.

COUNTY OF )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared

\_\_\_\_\_ personally known to me (or 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 signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

STATE OF CALIFORNIA )

) ss.

COUNTY OF )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared

\_\_\_\_\_ personally known to me (or 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 signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

///

**EXHIBIT A**

**LEGAL DESCRIPTION**

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

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, CITY OF PALM SPRINGS, AND IS DESCRIBED AS FOLLOWS:

**EXHIBIT "G"**

**PROMISSORY NOTE**

**DO NOT DESTROY THIS NOTE: When paid, this note must be surrendered to Borrower for cancellation.**

\$1,000,000.00  
[\_\_\_\_\_] , 2011

Palm Springs, California

For value received, the undersigned, Global Premier Development, Inc., a \_\_\_\_\_, ("Borrower"), promises to pay to the order of the Redevelopment of the City of Palm Springs ("Lender"), the sum of \$1,000,000.00, to the extent that such funds are loaned to Borrower, without interest on the unpaid principal balance (i.e. 2% per annum), payable periodically as described herein. This Promissory Note ("Note") is made and entered into in accordance with the terms of the Owner Participation Agreement dated [\_\_\_\_\_] 2011, entered into between Borrower and Lender ("Agreement")

Commencing on the date which is five (5) years after the "Certificate of Completion" for the "Project" as described in the Agreement is recorded in the Official Records of Riverside County, California (the "Payment Commencement Date") , and continuing on the same date of each month thereafter until the date which is thirty (30) years after the date of the recordation of the Certificate of Completion ("Maturity Date"), Borrower shall pay the principal in monthly installments equal to \$2,232.50 (if the principal balance of this Note on the Payment Commencement Date is \$600,000.00). Such monthly payments shall continue until the Maturity Date at which time the entire remaining unpaid balance of principal shall be all due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws.

All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the Agreement.

This Note, and any extensions or renewals hereof, is secured by a [Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents] on real estate in Riverside County, California (the "Property"), dated as of the same date as this Note, and executed in favor of and delivered to the Lender ("Deed of Trust"). The Deed of Trust provides for acceleration upon stated events.

Time is of the essence. It will be a default under this Note if Borrower defaults under the Agreement or other Project Loan Documents, and if Borrower fails to pay when due any sum payable under this Note. In the event of a default by Borrower, the Borrower shall pay a late charge equal to 2% of any outstanding payment. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other project loan documents then to the interest and then to

principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the project loan documents give rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind.

The indebtedness evidenced by this Note may, at the option of the Borrower, be prepaid in whole or in part, at any time, without penalty. Lender will apply all the prepayments first to the payment of any costs, fees, late charges, or other charges due under this Note or under any of the other Loan Documents and then to the interest and then to the principal balance.

All payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate, and in the absence of that designation, then to Lender at its address of record provided in the Agreement.

Borrower agrees to pay all costs including, without limitation, attorney fees, incurred by the holder of this Note in enforcing payment, whether or not suit is filed, and including, without limitation, all costs, attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by the holder of this Note of its rights and remedies under this Note. All costs incurred by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Borrower. Borrower will pay to Lender all attorney fees and other costs referred to in this paragraph on demand.

Any notice, demand, or request relating to any matter set forth herein shall be in writing and shall be given as provided in the Agreement.

No delay or omission of Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as an acquiescence, nor will any single or partial exercise preclude any further exercise. Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note and not in modification. No waiver of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

The Deed of Trust provides as follows:

**DUE ON SALE-CONSENT BY BENEFICIARY.** Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Land, or any interest in the Land.

A "sale or transfer" means the conveyance of Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of Property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

Lender may transfer this Note and deliver to the transferee all or any part of the Property then held by it as security under this Note, and the transferee will then become vested with all the powers and rights given to Lender; and Lender will then be forever relieved from any liability or responsibility in the matter, but Lender will retain all rights and powers given by this Note with respect to Property not transferred.

If any one or more of the provisions in this Note is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. This Note will be binding on and inure to the benefit of Borrower, Lender, and their respective successors and assigns.

Borrower agrees that this Note will be deemed to have been made under and will be governed by the laws of California in all respects, including matters of construction, validity, and performance, and that none of its terms or provisions may be waived, altered, modified, or amended except as Lender may consent to in a writing duly signed by Lender or its authorized agents.

The Loan shall be non-recourse to the Borrower and all constituent members of the Borrower.

**IN WITNESS WHEREOF**, Borrower has caused this Note to be executed by Borrower or Borrower's authorized agent(s) as of the date and year first above written.

**Borrower:**

By: \_\_\_\_\_  
PS Housing Partners, LP

**EXHIBIT "H"**

**DEED OF TRUST**

**Recording requested by,  
and when recorded mail to:**

Community Redevelopment Agency of the City of Palm Springs  
3200 Tahquitz Canyon Way  
P.O. Box 2743  
Palm Springs, Ca. 92263  
Attention: Executive Director

**INSTRUCTIONS TO COUNTY RECORDER:**

Index this instrument as  
(i) a Deed of Trust, and  
(ii) a Fixture Filing

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Space above for Recorder's Use

**DEED OF TRUST AND ASSIGNMENT OF RENTS**

This DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is entered into between PS Housing Partners, LP, a California Limited Partnership, whose principal executive office is at \_\_\_\_\_ (the "Trustor"), in favor of \_\_\_\_\_ TITLE COMPANY, whose address is \_\_\_\_\_, Palm Springs, CA 92262 (the "Trustee"), for the benefit of the Community Redevelopment Agency of THE CITY OF PALM SPRINGS (the "Beneficiary"), with offices at 3200 Tahquitz Canyon Way, P.O. Box 2743, Palm Springs, California 92263.

THE TRUSTOR IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO THE TRUSTEE, in trust, with the power of sale, the real property in the City of Palm Springs, Riverside County, California, more particularly described in **Exhibit A** attached hereto and made part hereof by reference (the "Property"), together with:

- (i) All tenements, hereditaments and appurtenances of or to the Property, including without limitation all easements and rights used in connection therewith or as a means of access thereto, all right, title and interest of the Trustor, now owned or hereafter acquired, in any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, strips and other areas of land adjacent to or used in connection with the Property;
- (ii) All oil and gas or other mineral rights in or pertaining to the Property and all royalty, leasehold and other rights of the Trustor pertaining thereto;



(iii) All water rights pertaining to the Property and shares of stock evidencing the same, and all deposits made with or other security given to utility companies by the Trustor with respect to the Property;

(iv) The rents, issues and profits thereof, subject, however, to the right, power and authority of Trustor to collect and apply such rents, issues and profits and set forth in this Deed of Trust;

(v) All buildings and improvements of every kind and description now or hereafter erected or placed on the Property, and all fixtures thereon, 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, refrigeration 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 permanently affixed to and a part of the realty;

(vi) All building materials and equipment now or hereafter delivered to the Property and intended to be installed thereon; and

(vii) All articles of personal property owned by the Trustor and now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property 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, and all other goods, chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the ones 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; subject, however, to (and only to) any purchase money security interests in such personal property.

Said real property and personal property described above, together with appurtenances, are referred to collectively in this Deed of Trust as the "Collateral."

**FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS:**

(a) Payment to the Beneficiary of an indebtedness in the principal amount of One Million Dollars (\$1,000,000.00), evidenced by a promissory note executed by the Trustor and payable to the order of the Beneficiary, bearing the same date as this Deed of Trust, and any and all modifications, extensions or renewals thereof or substitutions therefor (the "Note"), and performance and satisfaction of each and all other obligations of the Trustor under the Note;

(b) Performance of every obligation of Trustor in this Deed of Trust, the Note, the Owner Participation Agreement between Beneficiary and Trustor related to the Property (the "Participation Agreement") contemplating the improvement of the "Project" (as that term is defined in the Participation Agreement); and

(c) Payment of all sums, if any, and interest thereon that may hereafter be loaned or advanced by the Beneficiary to or for the benefit of the Trustor or to its successors, transferees and assigns, made to the Trustor while the Trustor is the owner of record of fee title to the Property, or any portion thereof, or to the successors, transferees or assigns of the Trustor while they are the owners of record of such fee title, and evidenced by one or more notes or written instruments which recite that they are secured by this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, THE TRUSTOR COVENANTS AND AGREES AS FOLLOWS:

1. The Trustor shall not use or permit the use of any of the Collateral for any purpose other than the use for which it was intended at the time this Deed of Trust was executed, as provided in the Participation Agreement.

2. Upon default under this Deed of Trust or the Note (following delivery of notice and expiration of the cure period, if any, provided therein), the Beneficiary, at its option, may declare the whole of the obligations and sums secured hereby to be immediately due and payable.

3. The person(s) or entity(ies) who have executed this Deed of Trust are fully authorized, and have obtained any and all written authorizations, approvals or consents necessary, to bind the Trustor to this Deed of Trust.

4. All rents, profits and income from the Collateral covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the obligations hereby secured. However, the Trustor shall be permitted, so long as no default exists hereunder or under the Note, to collect such rents, profits and income for use consistent with the provisions of the Agreement.

5. Upon default hereunder or under the Note (following delivery of notice and expiration of the cure period, if any, provided herein or therein), for the purpose of protecting its interests hereunder, the Beneficiary will be entitled to the appointment by a court having jurisdiction, without further notice and without regard to adequacy of any security for the indebtedness secured hereby, of a receiver to take possession of and protect the Collateral described herein and operate same and collect the rents, profits and income therefrom. The entering upon and taking possession of the Property or other Collateral by such receiver, the collection of such rents, profits and income and the application thereof shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. The Trustor, at its sole cost and expense, shall provide and maintain on the entire Property, including all buildings and improvements thereon: (i) a policy of broad-form builder's risk insurance sufficient to cover 100 percent of the replacement value of all buildings and improvements on the Property including; without limitation, labor and materials in place or to be used as part of the permanent construction (including, without limitation, surplus miscellaneous materials and supplies incidental to the work, and scaffolding, staging, towers, forms and equipment not owned or rented by the Beneficiary, the cost of which is not included in the cost of work), insuring against loss or damage by fire, extended coverage perils and such other hazards, casualties or other contingencies as from time to time may be reasonably required by the Beneficiary; (ii) a policy of commercial general liability insurance that includes contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence; and (iii) such other insurance as may be reasonably required by the Beneficiary, in each case in such amounts, in such manner and with such companies as the Beneficiary and Trustor may reasonably approve. The foregoing minimum insurance coverage limits shall be subject to reasonable adjustment from time to time by the Beneficiary. Each such policy shall be endorsed with a standard mortgage clause with loss payable to the Beneficiary and the Trustor, and shall provide that the policy shall not be canceled or materially changed without at least thirty (30) days' prior notice to the Beneficiary. Upon request by the Beneficiary, the Trustor immediately shall deposit with the Beneficiary certificates evidencing such policies.

7. The Trustor shall pay: (i) at least ten days before delinquency, all taxes and assessments affecting the Collateral, including assessments on appurtenant water stock; (ii) when due, all encumbrances, charges and liens, with interest, on the Collateral or any part thereof which appear to be prior or superior hereto; and (iii) all costs, fees and expenses of the Trustee or the Beneficiary reasonably incurred in connection with the trusts created under this Deed of Trust.

8. The Trustor shall: (i) keep the Collateral in good condition and repair and not remove or demolish any buildings on the Property; to the extent insurance or condemnation proceeds are available; (ii) complete or restore promptly and in good and workmanlike manner the buildings and improvements and any other building or improvement which may be constructed, damaged or destroyed thereon; (iii) pay when due all claims for labor performed and materials furnished therefore; (iv) comply in all material respects with all laws affecting the Collateral or requiring any alterations or improvements to be made thereon; (v) not commit or permit waste of or on the Collateral; and (vi) not commit, suffer or permit any act upon the Property in violation of law and/or any covenants, conditions or restrictions affecting the Collateral.

9. The Trustor shall appear in, and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee, and shall pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which the Beneficiary or

the Trustee may appear, or in any suit brought by the Beneficiary to foreclose this Deed of Trust.

10. Should the Trustor fail to make any payment or do any act as herein provided, then the Beneficiary or the Trustee, without obligation to do so, and following notice to or demand on the Trustor, and without releasing the Trustor from any obligation hereof: (i) may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, the Beneficiary or the Trustee being authorized to enter on the Property for such purposes; (ii) may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee; (iii) may pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto (except for the deeds of trust, encumbrances and liens securing the Construction/Permanent Financing Loan(s) and the Agency Loan, as such terms are defined below); and (iv) in exercising any such powers, may pay necessary expenses, employ legal counsel and pay such counsel's reasonable fees. All such amounts paid by the Beneficiary or the Trustee hereunder shall be added to the obligations secured by this Deed of Trust.

The term "Construction/Permanent Financing Loan" means, collectively, the construction financing and take-out financing, and any refinancing or replacement of that financing from time to time, to be provided by a commercial or other lender(s); provided, however, that (i) before entering into any Construction/Permanent Financing Loan, the Trustor shall give the Beneficiary notice of the Construction/Permanent Financing Loan and copies of the loan agreement and all other loan documents evidencing the Construction/Permanent Financing Loan; (ii) the funds disbursed from each Construction/Permanent Financing Loan shall be used only for costs and charges associated with the loan and for the operation, maintenance and/or improvement of the Project or the Property as provided in the Agreement or to refinance existing indebtedness; (iii) the interest on each Construction/Permanent Financing Loan shall be at a reasonable rate based on all the facts and circumstances; and (iv) the combined amounts of all Construction/Permanent Financing Loans or any re-financing thereof and the Note secured by this Deed of Trust shall not exceed one hundred percent (100%) of the fair market value of the Property as improved by the Project under the Agreement (such value to be determined by a qualified appraiser reasonably acceptable to Trustor and Beneficiary. Notwithstanding any limitations set forth above, in the event of any subsequent refinancing of a Construction/Permanent Financing Loan, Trustor may use funds from any refinancing that are in excess of the original principal of the initial Construction/Permanent Financing Loan to compensate Trustor for any negative cash flow of the Project or to fund other projects by Trustor or a related entity in the urban core of the City of Palm Springs. (By way of illustration only, and without limiting the foregoing, if the initial Construction/Permanent Financing Loan for the Project is \$4,000,000 and, while satisfying the rate and loan-to-value limits set forth in subparagraphs (iii) and (iv), Trustor subsequently obtains refinancing in the amount of \$5,000,000, Trustor may use the additional \$1,000,000 in excess of the original Construction/Permanent Financing Loan to compensate Trustor for negative cash flow

or for another project in the urban core without making any prepayment on the Note secured by this Deed of Trust.)

11. The Beneficiary shall have the right, but not the obligation, to pay when due fire or other insurance premiums required hereunder if the Trustor fails to make such payments. All such amounts paid by the Beneficiary hereunder shall be added to the obligations secured by this Deed of Trust.

12. The Trustor shall pay immediately upon demand all sums so expended by the Beneficiary or the Trustee under this Deed of Trust, with interest from date of expenditure at the legal rate.

13. If the Trustor fails to pay any amount required by the Note or this Deed of Trust when due and payable, or fails to perform all other covenants, conditions and agreements of the Note, this Deed of Trust or the Participation Agreement (following delivery of notice and expiration of the cure period, if any, provided therein), the amount of the Note, including unpaid principal and late charges, and all other charges and amounts required by the Note and this Deed of Trust shall, at the option of the Beneficiary, become immediately due and payable. This shall be in addition to and without limitation on any other remedy or right available to the Beneficiary for such failure.

14. The Trustor shall not voluntarily create or permit to be created against the Collateral any lien or liens except as specifically permitted by this Deed of Trust or otherwise authorized by the Beneficiary. The Trustor shall keep and maintain the Collateral free from the claims of all persons supplying labor or materials who will enter into the construction, rehabilitation, renovation or repair of any and all buildings or improvements now existing or to be erected on the Property.

15. By accepting payment of any sum secured by this Deed of Trust after its due date or by accepting partial payment of any such sum, the Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for the Trustor's failure to pay.

16. If the Trustor, without the prior written consent of the Beneficiary: (i) agrees to or actually sells, conveys, transfers or disposes of the Collateral or any interest therein or portion thereof, or (ii) assigns or delegates any right or obligation under the Agreement, the Note or this Deed of Trust, then all amounts secured by this Deed of Trust may be declared immediately due and payable, at the option of the Beneficiary. The Beneficiary shall not unreasonably withhold its consent to any such transaction. The Beneficiary's consent to one transaction of this type shall not be a waiver of the right to require consent to future or successive transactions.

17. As further security for the full and complete performance of each and every obligation, covenant, agreement and duty of the Trustor contained herein or in the Note, the Trustor hereby grants and conveys to the Beneficiary a security interest in and

lien on all of the Collateral. This Deed of Trust shall serve as a security agreement and financing statement created pursuant to the California *Commercial Code*, and the Beneficiary will have and may exercise all rights, remedies and powers of a secured party under the California *Commercial Code*. Further, this Deed of Trust is filed as a fixture filing pursuant to the California *Commercial Code* and other applicable law, and covers goods which are or are to become fixtures.

18. Should the Property, the buildings or improvements thereon, or any part of any of them be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire or earthquake or in any other manner, the Beneficiary will be entitled, subject to the rights of the holder of any senior deed of trust securing a Construction/Permanent Financing Loan, to all of the Trustor's interest in compensation, awards and other payments or relief therefor; and, following the occurrence of a default as defined in the Note, the Beneficiary shall be entitled, jointly with the Trustor, at the Beneficiary's option, to commence, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any fire and other insurance affecting the Property or the buildings or improvements thereon, are hereby assigned to the Beneficiary, subject to the rights of the holder of any senior deed of trust securing a Construction/Permanent Financing Loan. After deducting therefrom all its expenses, including reasonable attorneys' fees, and if there has not occurred a default under the Note, the Beneficiary shall apply all such proceeds to restoring the Property or the buildings or improvements thereon, or if there has been such default, or if the Trustor determines not to rebuild, the Beneficiary shall retain the proceeds to the extent of the amount due under the Note and any amounts due under this Deed of Trust. Any balance of such proceeds still remaining shall be disbursed by the Beneficiary to the Trustor.

19. If the Trustor fails to perform any covenant or agreement in this Deed of Trust or the Participation Agreement, or if a default occurs under the Note, the Beneficiary may declare all obligations and sums secured hereby immediately due and payable by delivery to the Trustee of written declaration of default and demand for sale and written notice of default and of election to cause the Collateral to be sold, which notice the Trustee shall cause to be duly filed for record, and the Beneficiary may foreclose this Deed of Trust; provided, however that the Trustor shall not be deemed to be in default hereunder for failure to make any payment when due or for failure to perform any other covenant or agreement contained herein until thirty (30) days after written notice of such failure is given to the Trustor and Trustor is afforded a reasonable opportunity to cure the default. The Beneficiary shall also deposit with the Trustee this Deed of Trust, the Note and all other documents evidencing the obligations or sums secured hereby.

20. 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, the Trustee, without demand on the Trustor, shall sell the Property at

the time and place fixed by the Trustee 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. The Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may further postpone the sale by public announcement at the time fixed by the preceding postponement. The Trustee shall deliver to the purchaser its deed conveying fee title to the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Trustor, the Trustee and the Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of the sale to payment of: (i) the expenses of the sale, together with the reasonable expenses of the trust created by this Deed of Trust, including reasonable Trustee's fees and attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (ii) the cost of any search and/or other evidence of title procedure in connection with the sale and of revenue stamps on the Trustee's deed; (iii) all sums expended under the terms hereof not then repaid, with accrued interest at the legal rate; (iv) all other sums then secured hereby; and (v) the remainder, if any, to the person or persons legally entitled thereto.

21. The Beneficiary may from time to time substitute a successor or successors to the Trustee named herein or acting hereunder to execute the trusts under this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by the Beneficiary, containing reference to this Deed of Trust and its place of record, which instrument, when duly recorded in Riverside County, California, shall be conclusive proof of proper appointment of the successor trustee.

22. Upon written request of the Beneficiary stating that all obligations secured hereby have been satisfied and all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to the Trustee for cancellation and retention, and upon payment of its fees, the Trustee shall reconvey, without warranty, the Collateral 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."

23. The trusts created by this Deed of Trust are irrevocable by the Trustor.

24. This Deed of Trust applies to, inures to the benefit of, and binds of the Trustor, the Beneficiary and the Trustee and their respective administrators, executors, officers, directors, transferees, successors and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder, including pledges, of the Note secured hereby. In this Deed of Trust, whenever the

context so requires, the masculine gender includes the feminine and/or neuter, and the singular includes the plural.

25. In addition to and without limitation on any other rights or remedies of the Trustee or the Beneficiary, if the Trustee or the Beneficiary commences any legal action or proceeding to enforce or interpret any provision of this Deed of Trust or the Note, the Trustor shall pay all costs and expenses incurred by the Trustee or the Beneficiary in connection with such action or proceeding, including legal expenses and reasonable attorneys' fees and court costs.

26. The Trustee accepts the trusts hereunder when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which the Trustor, the Beneficiary or the Trustee is a party, unless brought by the Trustee.

27. The Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at 2010 Main St. Suite 1250, Irvine, Ca. 92614.

28. The Trustor shall cause a copy of each deed of trust securing a Construction/ Permanent Financing Loan to be provided to the Beneficiary immediately upon its recordation, so that the Beneficiary may prepare and record a request for notice of default and notice of sale thereunder pursuant to California *Civil Code* Section 2924b.

**29. PROVIDED THAT NO NOTICE OF DEFAULT HEREUNDER THEN APPEARS OF RECORD AND SUBJECT TO THE CONDITIONS IN SECTION 10 ABOVE AND/OR IN THE PARTICIPATION AGREEMENT, THIS DEED OF TRUST SHALL BE SUBORDINATE AND SUBJECT TO ANY DEED OR DEEDS OF TRUST SECURING A CONSTRUCTION/PERMANENT FINANCING LOAN. TRUSTOR SHALL, UPON REQUEST OF BENEFICIARY, EXECUTE SUCH SUBORDINATION AGREEMENT OR OTHER DOCUMENTATION REASONABLY NECESSARY TO SUBORDINATE THE LIEN AND CHARGE OF THIS DEED OF TRUST TO LIEN OF ANY DEED OR DEEDS OF TRUST SECURING A CONSTRUCTION/PERMANENT FINANCING LOAN.**

30. This Deed of Trust shall be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties hereunder shall be determined, according to California law.

31. Capitalized terms not otherwise defined herein shall have the meanings given them in the Agreement or the Note.

\* \* \* \* \*

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date set forth above.



TRUSTOR:

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ACKNOWLEDGMENTS

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF RIVERSIDE        )

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(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.

\_\_\_\_\_

(SEAL)

**EXHIBIT A**

**LEGAL DESCRIPTION**

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

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, CITY OF PALM SPRINGS, AND IS DESCRIBED AS FOLLOWS:

Certificate of Completion

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RECITALS:

A. By an Owner Participation Agreement (the "Agreement") dated [\_\_\_\_], 2011 between PS Housing Partners, LLP., a California Limited Partnership ("Owner") and the Community Redevelopment Agency of the City of Palm Springs, a public body corporate and politic ("Agency"), Owner agreed to rehabilitate certain residential units on the premises legally described in Attachment "A" hereto (the "Property") and preserve the Affordable Units, as defined in the Agreement as rental housing for Low-Income Households with the assistance of Agency housing set aside funds while meeting the Affordable Housing, income targeting and other requirements of the Community Redevelopment Law set forth at California Health and Safety Code Sections 33000 et seq. for a fifty-five (55) year Affordability Period according to the terms and conditions of the Agreement.

B. The Agreement was recorded on [\_\_\_\_], 2011 in the Official Records of Riverside County, California as Instrument No. \_\_\_\_\_.

C. Under the terms of the Agreement, after Owner completes the construction on the Property, Owner may ask Agency to record a Certificate of Completion.

D. Owner has asked Agency to furnish Owner with a recordable Certificate of Completion.

E. Agency's issuance of this Certificate of Completion is conclusive evidence that Owner has completed the construction on the Property as set forth in the Agreement.

NOW THEREFORE:

1. Agency certifies that Owner commenced the construction work on the Project on [\_\_\_\_], 20\_\_, and completed the construction work on the Project on \_\_\_\_\_, 20\_\_, and has done so in full compliance with the Agreement.