

AFFORDABLE HOUSING LOAN AGREEMENT
(TRIPOLI)

By and between

THE CITY OF COACHELLA

and

TRIPOLI CIC, LP

AFFORDABLE HOUSING LOAN AGREEMENT

This Loan Agreement (“Agreement”) is made this _____ day of 2023, by and between the CITY OF COACHELLA, a California municipal corporation (“City” or “Lender”) and TRIPOLI CIC, LP, a California Limited Partnership (Borrower”) (collectively, the “Parties”).

RECITALS

- A. WHEREAS, Borrower represents that it is an experienced developer of affordable multifamily housing;
- B. WHEREAS, Borrower desires to construct, develop and operate a one-hundred eight (108) unit affordable multifamily development, with 4,325 square feet of commercial space, a community room, parking spaces, a playground, and related improvements (the “Project”) in the City of Coachella, Riverside County, California, as more particularly described in the attached Exhibit A (the “Property”);
- C. WHEREAS, the City Council of the City of Coachella, by Resolution No. 2005-93, authorized the creation of the City of Coachella Community Facilities District 2005-1 (the “CFD”) and by Resolution No. 2005-94, authorized the levy of a special tax for properties within the CFD (the “Special Assessment”), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, to finance a portion of the cost of providing law enforcement, fire and paramedic services within the CFD;
- D. WHEREAS, on April 19, 2023 the City Council of the City of Coachella, California (the “Council”) conducted proceedings pertaining to the intention to annex the Property, consisting of [Parcel 2 of Lot Line Adjustment 2018-02] (“Annexation Area No. [31]”), into the City of Coachella Community Facilities District No. 2005-1 (Law Enforcement, Fire and Paramedic Services) (the “District”), including the rate and method of apportionment of a special tax to finance a portion of the cost of providing certain public services, and the calling of an election in regard to the foregoing; and,
- E. WHEREAS, on May 24, 2023 an election was held within Annexation Area No. [31] regarding the rate and method of apportionment of the proposed special tax; and,
- F. WHEREAS, the Property is located within the CFD requiring Borrower to pay each fiscal year a Special Assessment in the amount of One Thousand Three Hundred Forty-Eight and 10/100 Dollars (\$1,348.10) per certified dwelling unit per year increasing annually since 2015 based on the annual adjustment of the Consumer Price Index; and,
- G. WHEREAS, substantial public welfare benefits to the City will be derived from the development of the Project as affordable housing and the City acknowledges

that compliance with the Resolutions may cause undue financial hardship on the Borrower and the Project; and,

- H. WHEREAS, notwithstanding the terms of the Resolutions, the City desires to permit the Borrower to prepay fifty-five years of Special Assessments, commencing on the date that the Borrower acquires the Property (collectively, the “Prepaid Special Assessments”); and
- I. WHEREAS, in order to finance the Prepaid Special Assessments, the Borrower desires to obtain from Lender a loan (the “Loan”) in the amount of Thirteen Million Five Hundred Sixty Eight Thousand Eight Hundred and Fifty Dollars (\$13,568,850) as described herein, and Lender desires to lend to Borrower such funds, according to the terms and conditions described herein.

NOW, THEREFORE, Borrower and Lender hereby agree as follows:

AGREEMENT

1. DEFINITIONS.

The following terms have the meanings set forth below wherever used in this Agreement, attached exhibits, or documents incorporated into this Agreement by reference.

- 1.1 “BORROWER”** means TRIPOLI CIC, LP, a California limited partnership, along with any permitted assigns, transferees, or successors-in-interest. Borrower will also be the owner of the Property and the developer of the Project.
- 1.2 “CERTIFICATE OF OCCUPANCY”** means the final Certificate of Occupancy issued by the City to Borrower for the Project.
- 1.3 “CFD”** means the City of Coachella Community Facilities District 2005-1 (Law Enforcement, Fire and Paramedic Services), as described in the Resolutions.
- 1.4 “CITY”** means the City of Coachella, California.
- 1.5 “COMMENCEMENT OF CONSTRUCTION”** means obtaining the first building permit necessary to undertake the Construction.
- 1.6 “CONSTRUCTION”** and **“CONSTRUCTION WORK”** shall mean the construction of the Project.
- 1.7 “DAYS”** shall mean calendar days unless otherwise specifically provided.
- 1.8 “DEED OF TRUST”** means the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing encumbering the Property as security for the Loan in the form attached hereto as Exhibit C and incorporated herein, executed and delivered by Borrower as trustor with Lender as beneficiary, as well as any amendments to and

modifications and restatements of the Deed of Trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

- 1.9** “LENDER” means the City.
- 1.10** “LOAN” means the loan provided by Lender to Borrower pursuant to this Agreement in the original principal amount of Thirteen Million Five Hundred Sixty Eight Thousand Eight Hundred and Fifty Dollars (\$13,568,850).
- 1.11** “LOAN DOCUMENTS” means collectively this Agreement, the Regulatory Agreement, the Deed of Trust, and the Note.
- 1.12** “NOTE” means that Promissory Note Secured by Deed of Trust to be executed by Borrower in favor of Lender evidencing the Loan in the form attached hereto as Exhibit B and incorporated herein, which is to be secured by the Deed of Trust, as well as any amendments to and modifications or restatements of the Note. The terms of the Note are hereby incorporated into this Agreement by this reference.
- 1.13** “OPERATING EXPENSES” shall mean actual, reasonable, customary costs, fees and expenses directly attributable to the operation, maintenance, taxes and management of the Project, expressly including, without limitation: mandatory debt service on Senior Loans; onsite administrative costs; maintenance costs (including materials and labor); payments to the operating reserve account; reasonable and customary payments to a replacement reserve account; utilities; permits and licenses; sewer charges; real and personal property taxes and assessments; insurance; security; advertising, promotion and publicity; a reasonable property management fee; fees and expenses of accountants, attorneys, consultants and other professionals, to the extent directly related to the Project, including annual audits and tax return preparation costs payable to a third party; any partnership or asset management fees paid to the investor limited partner or general partners of Borrower, which fees shall not exceed \$6,600 during any annual period; deferred development fees; and incentive leasing fees.
- 1.14** “PREPAID SPECIAL ASSESSMENTS” shall have the meaning set forth in Recital C.
- 1.15** “PROJECT” means the development and construction of a one-hundred and eight (108) unit affordable multifamily development, including one (1) manager’s unit (the “Project”) on the Property. One-hundred and seven (107) of the units in the Project shall be Regulated Units.
- 1.16** “PROPERTY” means the real property described in the attached Exhibit A, which is incorporated into this Agreement by this reference.
- 1.17** “REGULATED UNITS” means One-hundred and seven (107) of the one-hundred and eight (108) rental dwelling units constructed for the Project.
- 1.18** “REGULATORY AGREEMENT” means the Affordable Housing Regulatory Agreement described in the attached Exhibit D, which is incorporated into this Agreement by this reference.

- 1.19** “**RESIDUAL CASH FLOW**” means Revenues less Operating Expenses, calculated on a calendar year basis.
- 1.20** “**RESOLUTIONS**” means collectively, Resolution No. 2005-93, and Resolution No. 2005-94, each authorized by the City Council of the City of Coachella, as provided for in Ordinance No. 932 of the City Council of the City of Coachella dated September 28, 2005.
- 1.21** “**REVENUE**” means with respect to any period all revenue, income, receipts, and other consideration actually received from the operation or leasing of the Project. Revenue shall include: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines, and amounts released from reserves. Revenue shall not include tenants’ security deposits, interest on security deposits, loan proceeds, capital contributions or similar advances, or interest on reserves.
- 1.22** “**SENIOR LENDER**” means any lender with a loan secured by the Property whose lien on the Property is senior in priority to the Lender’s Deed of Trust; provided that the Lender’s written consent to the incurrence of any Senior Loan shall be required, except with the respect to (i) one construction loan incurred for the purpose of constructing the Project, and (ii) one refinancing of the construction loan into a term loan or “permanent” loan (which such refinancing shall include any conversion of the construction loan to a term loan pursuant to the terms of the construction loan documents).
- 1.23** “**SENIOR LOAN**” means the loan of any Senior Lender to the Borrower in connection with the construction, development, operation or permanent financing of the Project.
- 1.24** “**SPECIAL ASSESSMENT**” shall have the meaning set forth in Recital F.
- 1.25** “**TITLE COMPANY**” means First American Title Insurance Company.
- 1.26** “**TITLE INSURANCE POLICY**” shall mean a title insurance policy in the form of an American Land Title Association Loan Policy 2006 extended coverage (without revision, modification or amendment) issued by the Title Company, with such endorsements, with a liability equal to the amount of the Loan, and in form and substance satisfactory to Lender, subject only to those exceptions as Lender may approve in writing.

2. TERMS OF LOAN.

- 2.1** **LOAN.** Lender agrees to provide a loan of funds to Borrower under the terms and conditions of the Loan Documents. The proceeds of this Loan shall be used only to pay for the Prepaid Special Assessments. The Borrower hereby irrevocably authorizes, upon disbursement of the loan proceeds, all such proceeds shall be disbursed directly to the City for the payment of the Prepaid Special Assessments.

- 2.2 AMOUNT OF LOAN.** Subject to the terms and conditions of the Loan Documents, Lender agrees to make and Borrower agrees to accept a Loan in the amount Thirteen Million Five Hundred Sixty Eight Thousand Eight Hundred and Fifty Dollars (\$13,568,850) evidenced by the Note in this amount.
- 2.3 INTEREST.** The Note shall bear simple interest at a fixed interest rate of three percent (3.0%) per annum on the principal amount outstanding commencing on the date of disbursement of the Loan, or portion thereof, and is subject to the terms and conditions set forth in this Agreement and the Note. In an Event of Default, as described herein, the Loan shall, at the election of the Lender upon written notice to Borrower, become immediately due and payable in full, and interest on the Loan shall begin to accrue as of the date of default and continuing until such time as the Loan funds are repaid in full or the default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate of interest provided by law.
- 2.4 TERM OF LOAN.** Payments of principal and interest shall be made as required by the Note. Unless due sooner under the Note, the Loan principal balance and all accrued interest shall be due and payable on the earliest of (a) fifty-five (55) years from the date of the issuance of the final Certificate of Occupancy for the Project or (b) an Event of Default by Borrower which has not been cured as provided for in this Agreement.
- 2.5 REPAYMENT OF LOAN.** The Borrower shall make annual payments on the Loan from 50% of Residual Cash Flow as more fully set forth in the Note. Any and all amounts of principal or interest outstanding upon the maturity of the Loan shall be then due and payable.
- 2.6 REPAYMENT UPON SALE OR REFINANCE.** In the event that the Borrower desires to sell or refinance the Project, concurrently with any such sale or refinance of the Project (excluding the onetime refinance of the construction loan for the Project into a term loan or “permanent loan” (which such refinancing shall include any conversion of the construction loan to a term loan pursuant to the terms of the construction loan documents)), Borrower shall pay to Lender the entire Loan amount then outstanding, including any accrued interest thereon and any other amounts owing under the Loan Documents.
- 2.7 ACCELERATION BY REASON OF TRANSFER.** The Lender may declare due and payable the entire Loan amount then outstanding, including any accrued interest thereon, upon the sale, encumbrance or other transfer of the Property as set forth in the Note and the Deed of Trust.
- 3. PREPAYMENT OF LOAN.** No prepayment penalty will be charged to Borrower for prepayment of any portion of the Loan amount prior to the end of the Loan term.
- 4. RESERVED.**
- 5. LOAN DISBURSEMENT.**

5.1 GENERAL. The Loan proceeds of Thirteen Million Five Hundred Sixty Eight Thousand Eight Hundred and Fifty Dollars (\$13,568,850) shall be disbursed as provided herein upon satisfaction or waiver of each and all of the conditions precedent to disbursement set forth in this Section 5.2.

5.2 CONDITIONS PRECEDENT TO DISBURSEMENT. Lender shall disburse the full amount of the Loan in the form of indemnity to Borrower's liability to the City of Coachella -Community Facilities District 2005-01 pre-payment assessments, for the term of this Agreement, upon the satisfaction or waiver of the conditions precedent set forth in this Section.

5.2.1 Borrower has acquired, or shall concurrently acquire, fee title to the Property;

5.2.2 Borrower has executed and delivered to Lender each of the Loan Documents to be executed by Borrower in form and substance satisfactory to Lender;

5.2.3 As of the date of proposed disbursement, there exists no Event of Default by Borrower nor any act, failure, omission or condition that with the passage of time would constitute an Event of Default under the Loan Documents or any the documents related to any other financing for the Project;

5.2.4 The Title Company's unconditional commitment to issue the Title Insurance Policy;

5.2.5 Lender shall have received evidence satisfactory to Lender of Borrower's authorization to enter into the Loan Documents;

5.2.6 The representations and warranties of the Borrower as set forth in Section 9 shall be true and correct as of the date of disbursement of the Loan;

5.2.7 Borrower shall have paid to Lender all of Lender's costs incurred in connection with the underwriting and processing of the Loan, not to exceed \$5,500, and all legal fees and costs of Lender's attorneys relating to the preparation, review and negotiation of the Loan Documents which are estimated to be \$7,500, and all costs incurred in connection with the Title Insurance Policy.

6. DEVELOPMENT AND OPERATION OF PROJECT.

6.1 CONFIGURATION OF THE PROJECT. Borrower shall develop the Project in conformance with the plans and specifications as approved by the City, as an affordable housing project consisting of a total of One-hundred eight (108) residential units (including one (1) manager's unit), One-hundred seven (107) of which shall be Regulated Units rented at rents which are in compliance with Section 9.3 hereof, and related community and common space. Nothing herein shall be construed to limit or impair the City's discretion in the consideration, approval, and/or disapproval of any necessary entitlements required from the City for the construction of the Project.

- 6.2 COMPLETION OF CONSTRUCTION.** Borrower shall commence Construction within ninety (90) days following the initial funding of the Loan and complete the Construction not later than twenty four (24) months thereafter.
- 7. INSURANCE.** Borrower shall have in full force and effect during the Construction and operation of the Project the insurance coverage specified in Exhibit D to this Agreement. In addition, Borrower shall ensure that the general contractor for the Project maintains the insurance coverage specified in Exhibit D for the duration of the Construction. All required insurance shall be in effect prior to commencement of work. The City's insurance policies shall not be contributing.
- 8. DEFAULT AND REMEDIES.**
- 8.1 EVENTS OF DEFAULT.** The occurrence of any of the following events (after the expiration of the cure period set forth in Section 8.2) shall be an "Event of Default" under this Loan:
- 8.1.1** Borrower's failure to pay when due any sums payable under the Note, including failure to reimburse Lender for any advances made by Lender under the Deed of Trust;
- 8.1.2** Borrower's failure to complete the Project Construction within the time required by this Agreement, as such time may be extended pursuant to Section 9.5 hereof;
- 8.1.3** Any breach by Borrower of any material obligations of Borrower imposed in the Loan Documents;
- 8.1.4** Any representation or warranty by Borrower in any Loan Document is materially false, incorrect, or misleading as of the date made;
- 8.1.5** The occurrence of any default or event of default under any Senior Loan;
- 8.1.6** Any litigation or proceeding which could reasonably be expected to materially and adversely affect the ability of Borrower to perform its obligations under the Loan Documents is commenced against Borrower, or the Property, or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower; or
- 8.1.7** Borrower's filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or one hundred twenty (120) days after the filing; making a general assignment for the benefit of creditors; applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or one hundred twenty (120) days after the filing; or failure, inability or admission in writing of its inability to pay its debts as they become due.

8.2 NOTICE OF BORROWER'S OR OWNER'S DEFAULT AND OPPORTUNITY TO CURE.

Lender shall give written notice to Borrower (and Borrower's limited partner) of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Event of Default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall not be less than thirty (30) days from the mailing of the notice with respect to a monetary default, or sixty (60) days from the mailing of the notice with respect to a non-monetary default, by which such action to cure must be taken, or the Event of Default otherwise resolved to Lender's reasonable satisfaction; provided, however, with respect to non-monetary defaults, if such failure is not reasonably susceptible to cure within sixty (60) days from receipt of the said notice and provided that (i) Borrower (or Borrower's limited partner) shall have in good faith undertaken such cure within said sixty (60) day period and (ii) Borrower (or Borrower's limited partner) shall have diligently prosecuted such cure thereafter, Borrower (and Borrower's limited partner) shall have additional time to prosecute such cure, such additional time not to exceed ninety (90) days, from receipt by Borrower (and Borrower's limited partner) of the said notice.

8.3 LENDER'S REMEDIES. Upon the occurrence of an Event of Default (after expiration of all cure periods set forth in Section 8.2): (i) prior to disbursement of all Loan proceeds, Lender's obligation to disburse the remaining Loan proceeds shall cease; (ii) Lender may, in addition to other rights and remedies permitted by the Loan Documents or applicable law proceed with any or all of the following remedies in any order or combination Lender may choose in its sole discretion:

8.3.1 Bring an action in equitable relief (a) seeking the specific performance by Borrower of the terms and conditions of the Loan Documents, and/or (b) enjoining, abating, or preventing any violation of the terms and conditions, and/or (c) seeking declaratory relief;

8.3.2 Accelerate the Loan, and demand immediate full payment of the principal amount outstanding and all accrued interest under the Note, as well as any other funds advanced to Borrower by Lender under the Loan Documents; or

8.3.3 Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust.

9. GENERAL PROVISIONS

9.1 BORROWER'S REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants:

9.1.1 that Borrower is duly organized, validly existing and in good standing under the laws of the State of California and is qualified to do business in California;

9.1.2 that Borrower has the full power and authority to undertake the Project and to execute and deliver the Loan Documents and perform its obligations under the Loan Documents;

9.1.3 that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of Borrower;

9.1.4 the Loan Documents have been duly executed by Borrower, and are legally valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;

9.1.5 The execution, delivery and performance of the Loan Documents by Borrower will not violate (i) Borrower's formation documents; (ii) any legal requirement affecting Borrower or any of its properties (including, without limitation, the Property); or (iii) any agreement to which Borrower is bound or to which it is a party and will not result in or require the creation (except as provided in or contemplated by this Agreement) of any lien upon any of such properties (including, without limitation, the Property);

9.1.6 There exists no material violation of or material default by Borrower and, to the best knowledge of Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default by Borrower with respect to (a) the terms of any instrument evidencing or securing any indebtedness secured by the Property, (b) any material lease or other agreement affecting the Property to which Borrower is a party, (c) any material license, permit, statute, ordinance, law, judgment, order, writ, injunction, decree, rule or regulation of any governmental authority, or any determination or award of any arbitrator to which Borrower or the Property may be bound, or (d) any mortgage, instrument, agreement or document by which Borrower, or any of its properties is bound: (i) which involves the Property and is not adequately covered by insurance, (ii) which could be reasonably expected to materially and adversely affect the ability of Borrower to perform its obligations under any of the Loan Documents, or (iii) which could be reasonably expected to adversely affect the priority of the liens created by this Agreement or any of the Loan Documents;

9.1.7 There is no action, suit, investigation, proceeding or arbitration (whether or not purportedly on behalf of the Borrower) at law or in equity or before or by any foreign or domestic court or other governmental entity (a "Legal Action"), pending or, to the knowledge of Borrower, threatened against or affecting Borrower or any of their assets which could reasonably be expected to result in any material adverse change in the business, operations, assets (including the Property) or condition (financial or otherwise) of Borrower or would materially and adversely affect Borrower's ability to perform its obligations under the Loan Documents. Borrower is not (a) in violation of any applicable law which violation materially and adversely affects or could reasonably be expected to materially and adversely affect the business, operations, assets (including the Property) or condition (financial or otherwise) of Borrower, (b) subject to, or in default with respect to any other legal requirement that would have a materially adverse effect on the business,

operations, assets (including the Property) or condition (financial or otherwise) of Borrower, or (c) in default with respect to any agreement to which Borrower is a party or to which it is bound which could reasonably be expected to materially and adversely affect the business, operations, assets (including the Property) or condition (financial or otherwise) of Borrower. There is no Legal Action pending or, to the knowledge of Borrower, threatened against or affecting Borrower questioning the validity or the enforceability of this Agreement or any of the other Loan Documents;

9.1.8 The financial statements and all financial data previously delivered to Lender by Borrower in connection with the Loan and/or relating to Borrower are true, correct and complete in all material respects. Such financial statements fairly present the financial position of the parties who are the subject thereof as of the date thereof. No material adverse change has occurred in such financial position and, except for this Loan, no borrowings have been made by Borrower since the date thereof which are secured by, or might give rise to, a lien or claim against the Property or the proceeds of this Loan (excluding any Senior Loan).

9.2 LENDER'S REPRESENTATIONS AND WARRANTIES. Lender represents and warrants:

9.2.1 that Lender is duly organized and validly existing;

9.2.2 that Lender has the full power and authority to make the Loan and execute the Loan Documents; and

9.2.3 that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of Lender.

9.3 AFFORDABLE HOUSING REGULATORY AGREEMENT. During the term of the Loan, Borrower shall comply with all applicable laws and regulations relating to the construction and operation of a housing project which qualifies as a low income housing tax credit project pursuant to the rules and regulations of the U.S. Department of Housing and Urban Development as agreed to in Affordable Housing Regulatory Agreement described in the attached Exhibit D, which is incorporated into this Agreement by this reference.

9.4 POLITICAL ACTIVITY. None of the funds, materials, property or services loaned by Lender to Borrower under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

9.5 TERM OF THIS AGREEMENT. This Agreement shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan and until the Loan, together with all other amounts due under the Loan Documents, has been paid in full.

9.6 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by

war, insurrection, terrorism, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by third parties concerning or arising out of this Agreement, or unusually severe weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within thirty (30) working days from the commencement of the cause. In any event, Construction of the Project must be completed no later than ninety (90) days after the scheduled completion date specified herein, any unavoidable delay notwithstanding. Times of performance under this Agreement may also be extended for any cause for any period of time by the mutual written agreement of Lender and Borrower.

- 9.7 GOVERNING LAW.** The Loan Documents shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law.
- 9.8 ATTORNEYS' FEES AND COSTS.** In the event any legal or administrative action is brought to interpret or enforce the terms of the Loan Documents, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.
- 9.9 TIME.** Time is of the essence in these Loan Documents.
- 9.10 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No member, official, director, employee, or agent of Lender shall be personally liable to Borrower for any obligation created under the terms of these Loan Documents.
- 9.11 NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between Borrower and Lender shall be given by registered or certified mail, postage prepaid, return receipt requested, or shall be delivered personally, to the principal offices of Borrower and Lender as follows, or if any such office is relocated, to the new address specified by the relocated party:

LENDER:

City of Coachella
53-990 Enterprise Way
Coachella, CA 92236
Attention: City Manager

BORROWER:

Tripoli CIC, LP
c/o Chelsea Investment Corporation
6339 Paseo Del Lago
Carlsbad, CA 92011
Attention: Cheri Hoffman, President

With copy to:

Winthrop & Weinstine, PA
225 South Sixth Street, Suite 3500
Minneapolis, MN 55426
Attn: Jon L. Peterson, Esq.

If to Borrower, with a copy to Borrower's limited partner:

USA Institutional Tripoli LLC
777 West Putnam Avenue
Greenwich, CT 06830
Attn: Joanne D. Flanagan, Esq.

- 9.12 BINDING UPON SUCCESSORS.** All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the Parties; provided, however, that this Section 9.12 does not waive the prohibition on assignment of this Agreement by Borrower without Lender's written consent. The term "Borrower" as used in these Loan Documents shall include all permitted assigns, successors-in-interest, and transferees of Borrower.
- 9.13 RELATIONSHIP OF PARTIES.** The relationship of Borrower with Lender for this Project is and shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Lender neither undertakes nor assumes any responsibility or duty to Borrower (except as provided for herein) or any third party with respect to the Project, the Property, or the Loan. Borrower shall have no authority to act as an agent of Lender or to bind Lender to any obligation.
- 9.14 INTEGRATION.** The Loan Documents, including exhibits, contain the entire agreement of the Parties and supersede any prior negotiations.
- 9.15 OTHER AGREEMENTS.** Borrower represents that Borrower has not entered into any agreements that are inconsistent with the terms of the Loan Documents. Borrower shall not enter into any agreements that are inconsistent with terms of the Loan Documents without an express waiver in writing by Lender.
- 9.16 OTHER EXEMPTIONS.** This Agreement shall not limit or restrict the Borrower's right to apply for or obtain any other real property tax exemption to which it might be entitled, including, without limitation, the State of California welfare tax exemption.
- 9.17 AMENDMENTS AND MODIFICATION.** Any amendments or modifications to the Loan Documents must be in writing, and shall be effective only if executed by Borrower and Lender.
- 9.18 SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of

competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

- 9.19 INDEMNIFICATION.** To the fullest extent permitted by law, Borrower agrees to protect, indemnify, defend and save harmless Lender, its councilmembers, directors, officers, agents and employees for, from and against any and all liability, expense or damage of any kind or nature and for, from and against any suits, claims or demands, including reasonable legal fees and expenses on account of any matter or thing or action or failure to act by Lender, whether in suit or not, arising out of this Agreement or in connection herewith, including, without limitation, any suit, claim or demand arising out of any default which may occur in connection with the Project (collectively, "Claims"), provided, however, that the foregoing shall not apply to any Claim arising as a result of or to the extent of (i) Lender's gross negligence or willful misconduct, or (ii) a material breach of Lender's obligations contained within the Loan Documents. A breach by Lender shall be deemed to have occurred only after the following: (a) should Borrower claim a material breach by Lender, it shall give Lender written notice of such claimed breach, which notice shall set forth with reasonable specificity the nature of said breach; and (b) Lender shall not be deemed in breach of any Loan Documents unless said breach is not cured within sixty (60) days from receipt of said notice, or if said breach cannot be cured within said sixty (60) day period, the time for Lender to cure said breach shall be extended, so long as Lender is pursuing the cure thereof with all reasonable due diligence. Upon receiving knowledge of any suit, claim or demand asserted by a third party that Lender believes is covered by this indemnity, Lender shall give Borrower notice of the matter and an opportunity to defend it, at Borrower's sole cost and expense, with legal counsel reasonably satisfactory to Lender. Lender may also require Borrower to so defend the matter. The obligations on the part of Borrower under this Section 9.18 shall survive the repayment of the Loan.
- 9.20 NONRECOURSE.** Subject to Section 9.20 below, anything contained in any provision of the Loan Agreement, the Deed of Trust, or the Note notwithstanding, the Loan shall be a nonrecourse obligation of Borrower. Neither Borrower nor any of its officers, directors or general and limited partners shall have any personal liability for repaying the principal or interest of the Loan or for any other obligation set forth in the Loan Documents. The sole recourse of Lender for repayment of the principal and interest and other amounts due hereunder shall be the exercise of Lender's rights against the Project under the Deed of Trust, including, without limitation, the right of Lender to bring a foreclosure action or other appropriate action or proceeding to enable Lender to enforce its rights and remedies to realize upon the collateral given to secure the obligations owing to Lender under the Loan Documents.
- 9.21 EXCEPTIONS TO NON-RECOURSE.** To the fullest extent permitted by law, and notwithstanding anything to the contrary herein or in any of the Loan Documents, Borrower agrees to protect, indemnify, defend and save harmless Lender, its directors, officers, agents and employees for, from and against any and all losses, liabilities, costs, expenses or damages of any kind, including reasonable legal fees and expenses, incurred by Lender, whether in suit or not, arising out of or due to (i) fraud or intentional misrepresentation of a material fact by Borrower or any other person or entity in

connection with the execution and delivery of the Loan Documents; (ii) Borrower's misappropriation or misapplication of rents received by Borrower after the occurrence and during the continuance of an Event of Default; (iii) Borrower's misappropriation or misapplication of tenant security deposits or rents collected in advance; (iv) Borrower's misappropriation or misapplication of any condemnation or insurance proceeds relating to any portion of the Property; (v) Borrower's failure to comply with applicable environmental laws relating to the Property or the designation of the Property as "environmentally impaired" as provided in Section 24 of the Deed of Trust; (vi) any gross negligence, or criminal act perpetrated (including, without limitation, any act of waste or arson), by the Borrower or any principal, trustee, officer or agent of Borrower; or (vii) the commencement of a voluntary bankruptcy or other similar proceeding under any federal, state, or foreign law by the Borrower.

9.22 CURE BY LIMITED PARTNER. The cure of any default under this Loan Agreement or any other Loan Document made or tendered by or on behalf of the Borrower's limited partner shall be deemed a cure by the Borrower and shall be accepted or rejected on the same basis as if made by the Borrower.

[Remainder of page intentionally left blank]

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

LENDER:

CITY OF COACHELLA

a California municipal corporation

By: _____

Name: Gabriel Martin, City Manager

Approved as to form:

By: _____

Name: Carlos Campos, City Attorney

OWNER:

TRIPOLI CIC, LP,

a California limited partnership

By: Pacific Southwest Community Development Corporation,
a California nonprofit public benefit corporation,
its Managing General Partner

By: _____
Juan P. Arroyo, Executive Vice President

By: CIC Tripoli, LLC,
a California limited liability company,
its Administrative General Partner

By: Chelsea Investment Corporation,
a California corporation,
its Manager

By: _____
Cheri Hoffman, President

All signatures must be acknowledged.

ADD NOTARY ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

Exhibit A

Property Description

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

PARCEL A:

PARCEL 1:

A PORTION OF LOT 11, SECTION 5, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP OF LANDS OF COACHELLA LAND AND WATER COMPANY ON FILE IN BOOK 4 PAGE 53 OF MAPS, RIVERSIDE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINES OF BAGDAD AVENUE, AND TRIPOLI WAY;

THENCE SOUTH 89° 54' WEST, 272 FEET ALONG THE CENTER LINE OF BAGDAD AVENUE TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89° 54' WEST ALONG THE CENTER LINE OF BAGDAD AVENUE, 356.67 FEET, MORE OR LESS, TO THE EASTERLY LINE OF HIGHWAY 99 AS SHOWN BY RECORD OF SURVEY ON FILE IN BOOK 7 PAGE 38 OF RECORDS OF SURVEY, RIVERSIDE COUNTY RECORDS;

THENCE NORTHERLY ALONG SAID EASTERLY LINE OF HIGHWAY 86, 102.88 FEET;

THENCE NORTH 89° 54' EAST, 356.67 FEET;

THENCE SOUTH 00° 06' EAST, 102.88 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM THE SOUTH 30 FEET FOR ROAD PURPOSES;

ALSO EXCEPTING THEREFROM THE WESTERLY 17.00 FEET AS CONVEYED TO THE CITY OF COACHELLA BY DEED RECORDED MARCH 18, 1971 AS INSTRUMENT NO. 26947 OF OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF LOT 11 IN SECTION 5, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP OF LANDS OF COACHELLA LAND AND WATER COMPANY ON FILE IN BOOK 4 PAGE 53 OF MAPS, RIVERSIDE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE STATE HIGHWAY, AS SHOWN ON LICENSED LAND SURVEYOR'S MAP ON FILE IN BOOK 7 PAGE 38 OF RECORD OF SURVEY, RIVERSIDE COUNTY RECORDS, 102.88 FEET NORTH OF THE SOUTHWEST CORNER OF LOT 11;

THENCE CONTINUING NORTHERLY ON SAID EAST LINE OF 140.20 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO JENNY JEFFERY, ET AL, BY DEED RECORDED APRIL 12, 1929 IN BOOK 804 PAGE 423 OF DEEDS;

THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID PARCEL AND PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 11, 229 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL CONVEYED TO JEFFERY;

THENCE NORTH 36° 04' WEST ALONG THE NORTHEASTERLY LINE OF THE JEFFERY PARCEL, 75 FEET TO THE MOST SOUTHERLY CORNER OF THAT PARCEL CONVEYED TO ROBERT J. FERRAUD BY DEED RECORDED DECEMBER 6, 1972 AS INSTRUMENT NO. 161111;

THENCE NORTH 53° 36' EAST ON THE SOUTHEAST LINE OF SAID PARCEL CONVEYED TO FERRAUD AND ITS NORTHEASTERLY EXTENSION, 159.77 FEET TO THE SOUTHWESTERLY LINE OF TRIPOLI WAY;

THENCE SOUTH 36° 04' EAST ON SAID SOUTHWESTERLY LINE, 313.43 FEET MORE OR LESS, TO A POINT 142.88 FEET NORTH OF THE SOUTH LINE OF SAID LOT 11, SAID POINT BEING ON THE NORTH LINE OF THAT CENTER PARCEL CONVEYED TO LEONHARDT SWINGLE AND LEE J. ANDERSON BY DEED RECORDED NOVEMBER 22, 1934 IN BOOK 201 PAGE 555 OF OFFICIAL RECORDS;

THENCE NORTH 89° 54' EAST ON SAID NORTH LINE OF THE LEONHARDT-ANDERSON PARCEL, 40 FEET, MORE OR LESS, TO THE NORTHEAST CORNER BEING A POINT ON THE CENTER LINE OF TRIPOLI WAY;

THENCE SOUTH 36° 04' EAST TO A POINT WHICH IS 102.88 FEET NORTH OF THE SOUTH LINE OF SAID LOT 11;

THENCE SOUTH 89° 54' WEST, 566.78 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE WESTERLY 20 FEET AS CONVEYED TO THE CITY OF COACHELLA BY DEED RECORDED MARCH 18, 1971 AS INSTRUMENT NO. 26942 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF INCLUDED WITHIN THE WELL SITE DESCRIBED AS;

THAT PORTION OF LOT 11 IN SECTION 5, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP OF LANDS OF COACHELLA LAND AND WATER COMPANY ON FILE IN BOOK 4 PAGE 53 OF MAPS, RIVERSIDE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHERLY LINE OF SAID LOT 11, 216 FEET EASTERLY FROM THE POINT OF INTERSECTION OF THE WESTERLY PROLONGATION OF SAID SOUTHERLY LINE AND THE CENTER LINE OF THE STATE HIGHWAY AS SHOWN ON RECORDS OF SURVEY ON FILE IN BOOK 7 PAGE 38 OF RECORDS OF SURVEY, RIVERSIDE COUNTY RECORDS;

THENCE NORTH 102.88 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 40 FEET;
THENCE EAST 43 FEET;
THENCE SOUTH 40 FEET;
THENCE WEST 43 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

THAT PORTION OF LOT 11 IN SECTION 5, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP OF LANDS OF COACHELLA LAND AND WATER COMPANY ON FILE IN BOOK 4 PAGE 53 OF MAPS, RIVERSIDE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHERLY LINE OF SAID LOT 11, 216 FEET EASTERLY FROM THE POINT OF INTERSECTION OF THE WESTERLY PROLONGATION OF SAID SOUTHERLY LINE AND THE CENTER LINE OF THE STATE HIGHWAY AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 7 PAGE 38 OF RECORDS OF SURVEY, RIVERSIDE COUNTY RECORDS;

THENCE NORTH 102.88 FEET TO THE POINT OF BEGINNING;
THENCE NORTH 40 FEET;
THENCE EAST 43 FEET;
THENCE SOUTH 40 FEET;
THENCE WEST 43 FEET TO THE POINT OF BEGINNING.

PARCEL B:

THAT PORTION OF LOT 11 IN SECTION 5, T. 6 S., R. 8 E., S.B.B.& M. AS SHOWN BY MAP OF LANDS OF COACHELLA LAND AND WATER COMPANY, ON FILE IN BOOK 4, PAGE 53 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THAT CERTAIN REAL PROPERTY DESCRIBED IN DEED TO ROBERT J. FERRAUD RECORDED ON DECEMBER 6, 1972 AS INSTRUMENT NO. 161111, OF OFFICIAL RECORDS IN SAID COUNTY RECORDER'S OFFICE;

THENCE ALONG THE NORTHEASTERLY BOUNDARY OF SAID REAL PROPERTY OF ROBERT J. FERRAUD, SOUTH 36° 04' 00" EAST, 122.89 FEET TO THE MOST EASTERLY CORNER OF SAID REAL PROPERTY OF ROBERT J. FERRAUD;

THENCE NORTH 53° 56' 00" EAST, PARALLEL WITH THE SOUTHEASTERLY LINE OF SIXTH STREET,

97.77 FEET TO THE SOUTHWESTERLY LINE OF TRIPOLI WAY;

THENCE NORTH 36° 04' 00" WEST, ALONG SAID SOUTHWESTERLY LINE OF TRIPOLI WAY,
122.89 FEET TO SAID SOUTHEASTERLY LINE OF SIXTH STREET;

THENCE SOUTH 53° 56' 00" WEST, ALONG SAID SOUTHEASTERLY LINE OF SIXTH STREET,
97.77 FEET TO THE POINT OF BEGINNING.

APN: 778-081-003 (Affects Parcel A) and 778-081-001 (Affects Parcel B)

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