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THIRD AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

THIS THIRD AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (the “Amendment”) is dated as of November 29, 2022 and is entered into by and between the CITY OF TEMECULA, as successor of the housing assets of the former Temecula Redevelopment Agency (the “City”), and TEMECULA PACIFIC ASSOCIATES, a California limited partnership (“Developer”).

RECITALS

A. City and Developer entered into that certain Disposition and Development Agreement as of June 25, 2019, which was amended by a First Amendment to Disposition and Development Agreement dated November 10, 2020 and a Second Amendment to Disposition and Development Agreement dated February 22, 2022 (“Agreement”). Capitalized terms used but not defined herein shall be defined as set forth in the Agreement.

B. City and Developer desire to further amend the Agreement in order to accommodate other public financing for the Project described in the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants contained in this Amendment, the parties hereto agree as to amend the Agreement as follows:

1. Adjustment of City’s Percentage Share of Residual Receipts. The City’s share of Residual Receipts shall be decreased to seventy percent (70%), provided that the Developer gives the County of Riverside (which is also making a permanent secured loan to Developer for the Project), thirty percent (30%) of such Residual Receipts as payments on its loan, such that the City and said County, as permanent lenders, share in fifty percent (50%) of the Residual Receipts in proportion to the principal amounts of their respective permanent loans.

Developer shall deliver copies of the County loan documents to City as a condition to closing, and City’s confirmation of the percentage of percentage of Residual Receipts allocated to the County in the County loan documents shall also be a condition to closing.

Subject to the closing of such County loan at the Close of Escrow and Section 2 below, the form of the Promissory Note to City attached as Exhibit “C” to the Agreement is hereby replaced with the revised Promissory Note attached hereto as “New Exhibit C”.

2. Subordination of County Loan Deed of Trust. The deed of trust securing the County loan shall be recorded after the City Loan Deed of Trust and the City Regulatory Agreements and Notice, and shall be subordinate to the City Loan Deed of Trust, Regulatory Agreements and Notice. It shall be a condition to the Close of Escrow that the Title Company issue to City, at Developer’s cost, a lender’s title policy in the amount of the City loan showing the County deed of trust as being subordinate to the City Loan Deed of Trust, Regulatory Agreements and Notice, and otherwise in form and substance reasonably satisfactory to City, and

DRAFT

that the County execute and deliver to the Title Company any documents required by the Title Company to effectuate or confirm such subordination.

3. **Conflict.** Except as amended herein, the Agreement remains in full force and effect. To the extent of any conflict between this Amendment and the Agreement, this Amendment shall govern.

4. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed as original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the day and year first above written.

DEVELOPER:

TEMECULA PACIFIC ASSOCIATES

By: TPC Holdings IX, LLC
an Idaho limited liability company

By: Pacific West Communities, Inc.,
an Idaho corporation, its manager

By: _____
Caleb Roope, President and CEO

CITY:

CITY OF TEMECULA

By: _____
Matt Rahn, Mayor

ATTEST:

By: _____
Randi Johl, City Clerk

APPROVED AS TO FORM:

By: _____
Peter M. Thorson, City Attorney

NEW EXHIBIT "C"

SECURED PROMISSORY NOTE

_____, 2022

\$_____

Temecula, California

FOR VALUE RECEIVED, the undersigned [TEMECULA PACIFIC ASSOCIATES, a California limited partnership][?] (“Maker” or “Developer”), having its principal place of business at _____, promises to pay to the order of the CITY OF TEMECULA, a municipal corporation (“Payee” or “City”), at 41000 Main Street, Temecula, CA 92590, or at such other place as the holder of this Note from time to time may designate in writing, the principal sum of _____ (\$_____) [PURCHASE PRICE AMOUNT, BASED ON UPDATED APPRAISAL; PLUS \$698,281 OF DEFERRED CITY FEES; **PLUS PERM. LOAN OF \$5,301,719**] (the “Original City Principal Amount”), together with interest on the unpaid principal amount of this promissory note (the “City Loan Note”) from time to time outstanding at the “Applicable Interest Rate,” as defined below, in lawful money of the United States of America. This City Loan Note is being delivered, and the loans evidenced hereby are being made, pursuant to the terms of a Disposition and Development Agreement between Developer and City (“DDA”). All capitalized terms used herein which are not separately defined herein shall have the meanings set forth therefor in the DDA.

As of the date of this City Loan Note, the sum of \$_____ [PURCHASE PRICE PLUS DEFERRED FEES] of principal is outstanding; the remainder of the loan shall be disbursed by City upon or after completion of the project described in the DDA, upon the written request of Developer, as permanent financing to repay then-existing construction financing, subject to the terms and conditions in Section 2.2 of the DDA. “Applicable Interest Rate” means three percent (3%) per annum, simple interest, except that amounts not paid when due shall accrue interest from the date due until the date paid at the lesser of: (i) seven percent (7%) per annum, simple interest, or (ii) the maximum rate permitted by applicable law.

1. Payments. Payments under this City Loan Note shall be due and payable as follow: Payments of _____ percent (____.00%) of all Residual Receipts (“City Portion”) payable on April 15 after the first anniversary of completion of construction of the Project pursuant to the DDA, and each anniversary thereafter until this City Loan Note has been satisfied in full. Payments shall first be applied to accrued interest, then to the first \$698,281.00 of principal (representing deferred City fees), then to remaining outstanding principal. In addition, the entire amount of outstanding principal and accrued interest and any additional amounts which become owing hereunder shall be paid by Maker to Payee as of the earliest of (i) a default under the DDA, the Regulatory Agreement entered pursuant to the DDA, or the deed of trust securing this City Loan Note not cured within the applicable cure period after delivery of required notice; (ii) as provided in Section 4 below; (iii) with respect to the first \$698,281.00 of principal, thirty (30) years after the date of this City Loan Note; and (iv) fifty-five (55) years after the date of this City Loan Note (the “City Maturity Date”).

DRAFT

2. Secured by Deed of Trust. Repayment of this City Loan Note is secured by a deed of trust (the “City Loan Deed of Trust”) of this date executed by Maker for the benefit of Payee encumbering the property described in the City Loan Deed of Trust (the “Property” or “Site”).

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

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

5. Miscellaneous.

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

(b) Binding on Successors. This City Loan Note shall inure to the benefit of, and shall be binding upon, the successors and assigns of each of the parties to this City Loan Note.

(c) Attorneys’ Fees.

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

DRAFT

expenses incurred by Payee in connection with any of the out-of-court, or state, federal or bankruptcy proceedings referred to above, including, without limitation, the fees and expenses of any appraisers, consultants and expert witnesses retained or consulted by Payee in connection with any such proceeding.

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

(d) Entire Agreement. This City Loan Note and the relevant provisions of the DDA constitute the entire agreement and understanding between and among the parties in respect of the subject matter of such agreements and supersede all prior agreements and understandings with respect to such subject matter, whether oral or written.

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

(f) Waivers by Maker. Except as otherwise provided in any agreement executed in connection with this City Loan Note, Maker waives: presentment; demand; notice of dishonor; notice of default or delinquency; notice of acceleration; notice of protest and nonpayment; notice of costs, expenses or losses and interest thereon; and diligence in taking any action to collect any sums arising under this City Loan Note or in any proceeding against any of the rights or interests in or to properties securing payment of this City Loan Note.

(g) Non-waivers. No previous waiver and no failure or delay by Maker in acting with respect to the terms of this City Loan Note or the City Loan Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this City Loan Note, the City Loan Deed of Trust or the obligations secured thereby. A waiver of any term of this City Loan Note, the City Loan Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this City Loan Note and the terms of any other document related to the loan evidenced by this City Loan Note, the terms of this City Loan Note shall prevail.

(h) Non-Recourse. Repayment of this Note and all other obligations of Borrower hereunder, under the DDA, Regulatory Agreement or Deed of Trust shall be a non-recourse obligation of Borrower, such that neither Borrower nor any partner of Borrower shall have any personal obligation to make any payments or perform any other obligations of Borrower.

(i) Cure by Limited Partners. City hereby agrees that any cure of any default made or tendered by Developer's limited partners who shall have been identified in writing by Developer to City and shall be deemed to be a cure by Developer and shall be accepted or rejected on the same basis as if made or tendered by Developer; provided City shall have received written notice by Developer of the identity of, and address for notices for, such limited

DRAFT

partners and a copy of the applicable limited partnership agreement and amendments showing they are limited partners.

MAKER:

TEMECULA PACIFIC ASSOCIATES

By: TPC Holdings IX, LLC
an Idaho limited liability company
general partner

By: _____
Caleb Roope, President and CEO