

**AFFORDABLE HOUSING
PROPERTY ACQUISITION
FUNDING AGREEMENT**

THIS AFFORDABLE HOUSING PROPERTY ACQUISITION FUNDING AGREEMENT (“**Agreement**”), dated November 28, 2022, for reference purposes only, is between the HOUSING AUTHORITY OF THE CITY OF INDIAN WELLS (“**Authority**”) and the CITY OF INDIAN WELLS (“**City**”). The Authority and the City enter into this Agreement with reference to the following recited facts (each a “**Recital**”):

RECITALS

- A. The Authority was created to promote and encourage the retention, rehabilitation, and development of affordable housing.
- B. The Authority and the City are both authorized to acquire interests in property to promote the development of affordable housing in accordance with law.
- C. The Authority and City are interested in the acquisition of certain real property located on the northeast corner of Miles Avenue and Warner Trail in the City of Indian Wells, more particularly described as Assessor Parcel No. 633-360-002, in Riverside County, California (the “**Property**”), for affordable housing and supporting public park, recreation, open space, and parking.
- D. The Authority has money in its Low and Moderate Income Housing Asset Fund (“**Fund**”). The Fund was established under Health & Safety Code section 34176. Money from the Fund may be used for the development of affordable housing in accordance with the Community Redevelopment Law (Health & Safety Code §§33000 *et seq.*), except as set forth in Health & Safety Code Section 34176.1.
- E. Under Health and Safety Code section 33334.2(e)(2), the Authority may utilize money from the Fund to acquire real property to construct affordable housing.
- F. In accordance with Health and Safety Code section 33334.2(e)(2), the Authority proposes to allocate money from the Fund for the City to acquire the Property and develop it for affordable housing and supporting uses.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE PROMISES AND COVENANTS SET FORTH IN THIS AGREEMENT, THE AUTHORITY AND THE CITY AGREE AS FOLLOWS:

ARTICLE I DEFINITIONS

Section 1.1 **Defined Terms.** In addition to the usage of certain words, terms, or phrases that are defined in the initial paragraph or Recitals of this Agreement, the following words, terms, and phrases are used in this Agreement, as follows, unless the particular context of usage of a word, term or phrase requires another interpretation:

(a) **“Agreement”** means this Affordable Housing Property Acquisition Funding Agreement, dated as of _____, 2022, for reference purposes only, entered into by and between the Authority and the City.

(b) **“Authority”** means the Housing Authority of the City of Indian Wells.

(c) **“City”** means the City of Indian Wells.

(d) **“City Manager”** means the City Manager of the City or his or her designee or successor in function.

(e) **“CRL”** means the Community Redevelopment Law, California Health and Safety Code sections 33000, et seq.

(f) **“Effective Date”** means the first date on which all the following have occurred:

(1) This Agreement has been approved by the City Council and executed by the authorized representative(s) of the City and delivered to the Authority; and

(2) This Agreement has been approved by the Authority governing body, and this Agreement has been executed by the authorized representative(s) of the Authority and delivered to the City.

(g) **“Event of Default”** has the meaning ascribed to the term in Section 3.1.

(h) **“Executive Director”** means the Executive Director of the Authority or his designee or successor in function.

(i) **“Fund”** means the Authority’s Low and Moderate Income Housing Asset Fund.

(j) **“Funding Amount”** means the total amount of funds provided by the Authority to the City under this Agreement.

(k) **“Maximum Funding Amount”** means an amount not to exceed \$12,140,000.00.

(l) **“Party”** means and refers, individually, to either the Authority or the City, as applicable.

(m) **“Parties”** means and refers, collectively, to the Authority and the City.

(n) **“Person”** means any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

(o) **“Property”** means that certain real property located on the Northeast corner of Miles Avenue and Warner Trail in the City of Indian Wells, more particularly described as Assessor Parcel No. 633-360-002, and which is specifically described in Exhibit A attached to this Agreement and incorporated into this Agreement by this reference.

(p) **“Unavoidable Delay”** means a delay in a Party performing any of its obligations under this Agreement, except payment of money, arising from any cause beyond the Party’s reasonable control, despite such Party’s reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities, casualty, war, pandemics, acts of terrorism or riots.

ARTICLE II FUNDING AMOUNT; PROPERTY ACQUISITION

Section 2.1 **Distribution of Funding Amount.** The Authority will, within 15 calendar days following the request by the City, disburse to the City all or such portion of the Maximum Funding Amount as the City may request for the Property acquisition.

Section 2.2 **City Use of the Funding Amount.** The City will use the proceeds from the Funding Amount exclusively for paying for or reimbursing itself for the costs and expenses incurred by the City in the acquisition of the Property.

Section 2.3 **Repayment.** Within five years after final acquisition of the Property by the City, the City will repay to the Authority that portion of the Funding Amount that is not used for or committed to the development of affordable housing or another legally permissible use of the Fund on or in connection with the Property. Repayment must include an interest payment equal to what would have been earned on the repaid portion of the Funding Amount if it had been invested in the Local Agency Investment Fund on the date that it was disbursed to the City.

Section 2.4 **Funding Amount Limited to Fund Assets.** Notwithstanding any other provision of this Agreement, the Authority’s obligations under this Agreement do not constitute

a formal pledge of any revenues of the Authority. The Authority's payment obligations under this Agreement are a special, limited fund obligation of the Authority, payable solely from the Fund and no other source.

ARTICLE III DEFAULTS AND REMEDIES

Section 3.1 **Events of Default.** In addition to other acts or omissions of the Parties that legally or equitably constitute a default or breach of this Agreement, the occurrence of any of the following specific events constitutes an “**Event of Default**” under this Agreement:

(a) Any non-monetary default by a Party under this Agreement that is not cured within 30 days following the receipt by the defaulting Party of notice of such default from the other Party.

(b) A Party fails to make any payment or deposit required in accordance with the terms of this Agreement or to pay any other charge or amount set forth in this Agreement within seven days after the defaulting Party's receipt of written notice of the failure from the other Party.

Section 3.2 **Governing Laws.** The laws of the State of California govern the interpretation and enforcement of this Agreement, without regard to conflicts of laws principles.

Section 3.3 **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative, and the exercise by any Party of one or more of such rights or remedies does not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

ARTICLE IV GENERAL PROVISIONS

Section 4.1 **Incorporation of Recitals.** The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

Section 4.2 **Non-liability of Officials, Employees, or Consultants.** No elected official, officer, employee, consultant, attorney, or agent of any Party is personally liable to any other Party, or to any successor in interest of any other Party, in the event of any default or breach by a Party under this Agreement or for any amount that may become due to another Party or to its successor, or on any obligations under the terms or conditions of this Agreement.

Section 4.3 **Calculation of Time Periods.** Unless otherwise specified, all references to time periods in this Agreement measured in days are to consecutive calendar days, all references to time periods in this Agreement measured in months are to consecutive calendar months, and all references to time periods in this Agreement measured in years are to consecutive calendar years. Any reference to business days in this Agreement means business days of the City.

Section 4.4 **Amendment.** No amendment or modification of this Agreement is effective unless it is made in writing and signed by both Parties. The Party benefited by any condition or obligation may waive the same, but such waiver is not enforceable by the other Party unless it is made in writing and signed by the waiving Party. No waiver of any default or breach of any term or condition contained in this Agreement may be deemed a waiver of any preceding or succeeding default or breach of such term or condition or of any other term or condition contained in this Agreement.

Section 4.5 **Severability.** If any provision of this Agreement as applied to any Party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact in no way affects (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under the circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

Section 4.6 **Construction.** Unless otherwise indicated, all article and section references are to the articles and sections of this Agreement. The headings used in this Agreement are provided for the convenience of reference only, and this Agreement must be interpreted without reference to any headings. Whenever required by the context of this Agreement, the singular includes the plural, and the masculine includes the feminine, and vice versa. This Agreement may not be construed as if it had been prepared by one of the Parties, but rather as if all Parties had prepared this Agreement. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to this Agreement. If the date on which a Party is required to take any action under the terms of this Agreement is not a business day, the action must take place by the next succeeding business day. The use of the word “or” in this Agreement shall also include the word “and.” The use of the word “including” in this Agreement shall be interpreted as though followed by the phrase “without limitation.”

Section 4.7 **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third Person to any Party or give any third Person any right of subrogation or action over against any Party.

Section 4.8 **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 4.9 **Unavoidable Delay; Extension of Time of Performance.** Subject to specific provisions of this Agreement, performance by any Party under this Agreement shall not be deemed or considered to be in default, where any such default is due to an Unavoidable Delay. Any Party claiming Unavoidable Delay shall notify each other Party: (a) within ten (10) days after the Party claiming Unavoidable Delay knows of any such Unavoidable Delay; and (b) within five (5) days after the condition causing such Unavoidable Delay ceases to exist. To be effective, any notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay shall commence on the date of receipt of written notice of the occurrence of the Unavoidable Delay by each Party not requesting an extension of time to perform due to such Unavoidable Delay and shall continue until the end of the condition causing the Unavoidable Delay. The Party seeking to be excused from performance shall exercise its best efforts to cure the condition causing the Unavoidable Delay within a reasonable time. Each Party expressly agrees that adverse changes in economic conditions, of any Party specifically or the economy generally, or changes in market conditions or demand or changes in the economic assumptions of either of them that may have provided a basis for entering into this Agreement shall not operate to excuse or delay the performance of each and every one of each Party's obligations and covenants arising under this Agreement. All Parties expressly assume the risk of such adverse economic or market changes, whether or not foreseeable, as of the Effective Date.

Section 4.10 **Binding on Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

Section 4.11 **Entire Agreement.**

(a) This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement and supersedes all negotiations or previous agreements between the Parties with respect to the subjects addressed in this Agreement.

[Signatures on the following page.]

SIGNATURE PAGE

TO

AFFORDABLE HOUSING
PROPERTY ACQUISITION
FUNDING AGREEMENT

IN WITNESS WHEREOF, the Authority and the City have executed this Agreement by and through the signatures of their duly authorized representative(s) set forth below:

AUTHORITY:
HOUSING AUTHORITY OF THE
CITY OF INDIAN WELLS, a public body,
corporate and politic

By: _____
Christopher Freeland
Executive Director

Date: _____

ATTEST

By: _____
Angelica Avila
Authority Secretary

APPROVED AS TO LEGAL FORM:
BEST BEST & KRIEGER LLP

By: _____
Todd Leishman
Authority Counsel

CITY:
CITY OF INDIAN WELLS, a California
municipal corporation

By: _____
Christopher Freeland
City Manager

Date: _____

ATTEST

By: _____
Angelica Avila
City Clerk

APPROVED AS TO FORM:
BEST BEST & KRIEGER LLP

By: _____
Todd Leishman
City Attorney

EXHIBIT A

Legal Description of Real Property

[To be inserted behind this page.]