

948



**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FROM: Department of Mental Health

SUBMITTAL DATE:

SUBJECT: Approve Estoppel Certificates for The Vineyards at Menifee and Legacy Apartments.
(ALL DISTRICTS)

RECOMMENDED MOTION: Move that the Board of Supervisors ratify and:

1. Approve the Estoppel Certificates for the previously Board of Supervisors approved Legacy Apartments and The Vineyards at Menifee project cooperative agreements;
2. Authorize the Chairman of the Riverside County Board of Supervisors to sign the Estoppel Certificates as reviewed and approved by County Counsel; and
3. Authorize the Director of the Riverside County Department of Mental Health and Riverside County Purchasing Agent to administer the terms and conditions of these Estoppel Certificates and the previously Board approved cooperative agreements for Legacy Apartments and The Vineyards at Menifee projects; and
4. Authorize the Director of the Department of Mental Health and the Purchasing Agent to jointly sign future renewals and ministerial amendments to the previously Board approved cooperative agreements for Legacy Apartments and The Vineyards at Menifee projects and for the Estoppel Certificates as listed herein.

JW:TP:SL

Jerry Wengerd

Jerry Wengerd, Director
Department of Mental Health

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	NA
	Annual Net County Cost:	\$ 0	For Fiscal Year:	12/13

SOURCE OF FUNDS: 100% MHSA	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
BY: *Debra Cournoyer*
Debra Cournoyer

County Executive Office Signature

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD
FORM APPROVED COUNTY CLERK BY: *ELENA ROEVA* 12-10-12

Policy	<input checked="" type="checkbox"/>	Policy	<input checked="" type="checkbox"/>
Consent	<input type="checkbox"/>	Consent	<input type="checkbox"/>

Dep't Recomm.:
Per Exec. Ofc.:

SUBJECT: Approve Estoppel Certificates for Legacy Apartments and The Vineyards at Menifee. **(ALL DISTRICTS)**

BACKGROUND (continued):

On January 29, 2008, Agenda Item 3.35, the Board of Supervisors signed an agreement between the Riverside County Department of Mental Health (RCDMH) and the California Department of Mental Health (CalDMH) pursuant to the Mental Health Services Act (MHSA), known as the MHSA Plan.

In accordance with the previously Board approved MHSA plan, the RCDMH may apply for and receive MHSA funding held in trust by the California Housing Finance Agency for the purpose of developing permanent supportive housing for low-income individuals with severe and disabling mental illness who are also homeless or at-risk of homelessness. Such funding was requested and approved for the development of a set-aside of 15 units of permanent supportive housing within each of the affordable housing communities of Legacy Apartments (located in Thousand Palms) and The Vineyards at Menifee (located in Menifee). Construction of Legacy Apartments and The Vineyards at Menifee was completed in early 2012. All MHSA units are fully occupied.

Subsequently, the project developer has arranged for permanent financing for the aforementioned properties, which has been approved and is pending release upon receipt of the executed Estoppel Certificates as outlined herein. The permanent lender requires that an Estoppel Certificate be executed for each property as a condition of funding. The Estoppel Certificates outline the specific actions, activities and/or conditions that need to be met in order to maintain compliance for funding for both projects outlined herein.

Therefore, the RCDMH is requesting that the Board of Supervisor approve and sign the Estoppel Certificates for the Legacy Apartments and the Vineyards at Menifee to finalize the funding and project process as outlined herein.

PERIOD OF PERFORMANCE:

The Estoppel Certificates are effective upon the date of execution by the Board of Supervisors.

FINANCIAL IMPACT:

There is no exchange of funds or commitment to provide future funding associated with the Estoppel Certificates.

**ESTOPPEL CERTIFICATE
COUNTY OF RIVERSIDE
DEPARTMENT OF MENTAL HEALTH**

The undersigned, THE COUNTY OF RIVERSIDE, DEPARTMENT OF MENTAL HEALTH, a public body, corporate and politic ("**DOMH**"), hereby certifies and represents in favor of CALIFORNIA COMMUNITY REINVESTMENT CORPORATION, a California nonprofit public benefit corporation ("**Lender**") as follows:

1. DOMH has entered into that certain Cooperative Agreement dated as of March 15, 2011 (together with all amendments, modifications and exhibits thereto, the "**Cooperative Agreement**") with BARKER MANAGEMENT, INCORPORATED, a California corporation ("**Manager**"), manager of that certain affordable housing development (the "**Project**") situated on land in the County of Riverside, State of California more fully described on Exhibit A attached hereto. Thousand Palms Apartments Limited Partnership, a California limited partnership ("**Borrower**") is the owner of the Project, and has engaged Manager to perform, among other things, the operation and maintenance obligations and responsibilities under the Cooperative Agreement. Under the Cooperative Agreement, Manager will set aside fifteen (15) of the eighty one (81) units at the Project as Mental Health Services Act supportive permanent housing units for Riverside County Department of Mental Health consumers. The Cooperative Agreement is in full force and effect and has not been modified or amended in any respect. A true and correct copy of the Cooperative Agreement is attached hereto as Exhibit B.

2. DOMH is aware that Lender is funding a permanent loan in an amount not to exceed \$1,961,084.00 to Borrower (the "**Loan**") in connection with, and to be secured by, the Project. Borrower is relying upon the representations and warranties of DOMH contained herein in connection with the funding of the Loan. DOMH is also aware that Lender is securing its loan with a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, pursuant to which any interest of Borrower in the Cooperative Agreement is being collaterally assigned to Lender as security for the Loan.

3. As of this date, to DOMH's knowledge, neither Borrower nor Manager, nor DOMH, is in default under the Cooperative Agreement.

4. As of this date, DOMH has not been given any notice of any default by Manager or Borrower under the Cooperative Agreement, and has not delivered any notice of default to Manager or Borrower under the Cooperative Agreement.

5. As of this date, DOMH has not elected to cancel or terminate the Cooperative Agreement for any reason under any option or privilege reserved therein.

6. DOMH agrees that prior to terminating the Cooperative Agreement, DOMH shall give Lender written notice of its intent to do so prior to the date such event of termination is to take effect. DOMH further agrees that Lender shall be entitled to receive a copy of any notice of default of Manager or Borrower given by DOMH under the Cooperative Agreement, and that Lender shall have the right to cure any defaults of Manager or Borrower in the manner and within the time periods set forth in the Cooperative Agreement. In the event the County fails to provide such notice

to Lender, Lender agrees that it will not initiate any legal action against the County, its departments, Board of Supervisors, employees and agents.

7. DOMH is required to comply with all the terms and conditions of the MHSA Housing Fund Application placed upon the County of Riverside, on behalf of DOMH. In the event that any terms contained herein are in conflict with the terms of the MHSA Housing Fund Application, the MHSA Housing Fund Application shall control and prevail.

8. DOMH acknowledges that Lender's address for purposes of receiving notices to which it is entitled under the Cooperative Agreement or this certificate is as follows:

California Community Reinvestment Corporation
225 West Broadway, Suite 120
Glendale, California 91204
Attention: Mary Kaiser, President

Lender may change this address from time to time by written notice to DOMH thereof.

9. DOMH and Lender agree that Lender will provide DOMH with sixty (60) days' advance notice in the event Lender or its successor in interest shall become the owner of the Project. DOMH agrees, upon receipt of notice, that it will recognize Lender or successor as the successor in interest to Borrower under the Cooperative Agreement and will perform its obligations thereunder for the benefit of Lender or such successor, and Lender or such successor shall perform the obligations of Borrower under the Cooperative Agreement.

10. DOMH acknowledges that Lender is extending credit to Borrower in reliance on matters set forth in this Certificate.

DATED as of November 15, 2012

[Signature Pages To Follow]

“DOMH”

THE COUNTY OF RIVERSIDE, ACTING
THROUGH ITS DEPARTMENT OF
MENTAL HEALTH

By: _____
Bob Buster, Chairman of the Riverside County
Board of Supervisors for the Department
of Mental Health

ATTEST:

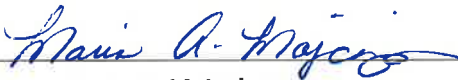
By: _____
Clerk of the Board
County of Riverside

FORM APPROVED:

By:  _____
County Counsel

“Lender”

CALIFORNIA COMMUNITY REINVESTMENT CORPORATION,
a California nonprofit public benefit corporation

By: 
 Maria A. Majczing
Its: Senior Vice President

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20__, before me, _____, a 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)

STATE OF CALIFORNIA)
) ss.
COUNTY OF Los Angeles)

On Nov. 20, 2012, before me, Christine Wong Lew, a Notary Public, personally appeared MARIA A. MAJCZINGER, 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 Christine Wong Lew (Seal)



EXHIBIT A

Description of the Land

All that certain real property located in the City of Thousand Palms, County of Riverside, State of California more fully described as follows:

PARCELS 2 AND 4 OF PARCEL MAP NO. 36217, AS SHOWN BY PARCEL MAP ON FILE IN BOOK 232, PAGES 33 THROUGH 37, INCLUSIVE, OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM 1/16TH OF ALL COAL, OIL, GAS, AND OTHER MINERAL DEPOSITS IN SAID LAND AS RESERVED IN PATENT FROM THE STATE OF CALIFORNIA, RECORDED AUGUST 12, 1935 IN BOOK 9, PAGE 106 OF PATENTS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; ALSO EXCEPTING THEREFROM 15/32NDS OF ALL COAL, OIL, GAS, AND MINERAL DEPOSITS AS RESERVED IN DEED FROM DELLA S LINDLEY, A WIDOW, FILED FOR RECORD JULY 19, 1960 AS INSTRUMENT NO. 64050 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 650-020-008-1

New APN: 650-390-002 and 650-390-004 (Not yet assessed)

EXHIBIT B

COPY OF COOPERATIVE AGREEMENT

COOPERATIVE AGREEMENT

PARTIES:

COUNTY OF RIVERSIDE,
DEPARTMENT OF MENTAL HEALTH

AND

BARKER MANAGEMENT INCORPORATED &
THOUSAND PALMS APARTMENTS LIMITED
PARTNERSHIP

TYPE OF SERVICE:

MANAGEMENT OF FIFTEEN UNITS OF
SUPPORTIVE PERMANENT HOUSING WITHIN
AN AFFORDABLE HOUSING PROJECT KNOWN
AS LEGACY

THIS COOPERATIVE AGREEMENT, herein after referred to as AGREEMENT, is entered into by and between the County of Riverside (hereinafter "COUNTY"), on behalf of its Department of Mental Health (hereinafter "RCDMH"), and Barker Management Incorporated (hereinafter "BMI") and is concurred to by Thousand Palms Apartments Limited Partnership (hereinafter "TPALP") for the management of fifteen units of supportive housing within an 81 unit affordable housing project known as Legacy, hereinafter referred to as the PROJECT; and is based on the following representations and statements of purpose:

WHEREAS, the California State Department of Mental Health ("State DMH") has allocated \$133,333,700 in Mental Health Services Act (MHSA) funds statewide to develop supportive permanent housing for extremely low-income people with psychiatric disabilities or serious emotional disturbance; and

WHEREAS, the State of California Department of Mental Health has allocated a maximum of \$19,077,100 of MHSA Funding to Riverside County to invest in housing development for adults, transition age youth, and children and families who are eligible to be served in DOMH designated Full Service Partnership type programs due to experiencing serious psychiatric disabilities and/or emotional disturbance and are homeless, at risk of homelessness and/or have been inadequately or ineffectively served in traditional treatment which has resulted in repeated psychiatric hospitalizations or incarcerations related to ineffectively treated illness(es); and

WHEREAS, the RCDMH seeks to expand the supply of acceptable, affordable housing for eligible adults, transition age youth, and children and families with low and very-low qualifying incomes through an agreement with TPALP; and

WHEREAS, TPALP will agree under a separate AGREEMENT to receive construction funding to perform construction and related activities as described herein; and

WHEREAS, TPALP has entered into an AGREEMENT with BMI to manage the development and carry out the performance of TPALP's responsibilities described herein as it

relates to the maintenance of the PROJECT and leasing of the MHSA supportive permanent housing units;

NOW, THEREFORE, the COUNTY, TPALP and BMI mutually agree as follows:

I. **GENERAL STATEMENT OF INTENT:**

The PROJECT to be developed will be located on Robert Road, between Del Norte Way and El Centro Way in the unincorporated area of Thousand Palms in the County of Riverside, California.

The PROJECT shall consist of a total of eighty one (81) multi-family affordable housing units, of which sixty six (66) will be affordable general population units, and fifteen (15) shall be set-aside for RCDMH consumers certified to be eligible for MHSA supportive permanent housing units. During the affordability period of not less than 20 years, the initial, qualifying income of eligible MHSA tenants shall be equal to or less than thirty percent (30%) of the area median income as specified by the RCDMH.

The PROJECT shall include the following: one (1), two (2) and three (3) bedroom rental units, tot lots, a swimming pool and splash pad, picnic areas and low-impact cardio walking circuit, a 5,358 square foot community center that will include a computer room, ample meeting space, a kitchen and restrooms. In addition, the units will have assigned carports and there will be coin operated laundry facilities on-site. There will also be confidential office space for supportive services staff to meet with project residents that are participants in the supportive housing program.

TPALP and RCDMH have mutually agreed to jointly develop and submit to State DMH and California Housing Finance Agency the MHSA Housing Fund Application for capital development and operating subsidy funding in a total grant award amount not to exceed \$3,000,000, which includes a categorical maximum of \$ 1,622,400 for capital development and up to \$1,377,600 to provide operating subsidies for the MHSA units in the PROJECT.

II. **DUTIES AND RESPONSIBILITIES:**

A. **TPALP RESPONSIBILITIES.** The responsibility of constructing, operating and maintaining the PROJECT will be the sole responsibility of TPALP and shall be carried out through the services of BMI.

- I. TPALP, through the services of BMI, will maintain and operate all units of the PROJECT, a total eighty one (81) multi-family affordable housing units, of which sixty six (66) will be affordable general population units, and fifteen (15) shall be set-aside for RCDMH consumers certified to be eligible for MHSA supportive permanent housing units. During the affordability period of not less than 20 years as defined herein, the RCDMH, BMI and TPALP all mutually agree that the initial qualifying income of eligible MHSA tenants shall be equal to or less than thirty percent (30%) of the area median income.

2. BMI will maintain all common grounds of the PROJECT. This includes outside and inside fixtures, walls and other such common areas that are not regarded as part of or under the control of the occupant's possession.
3. BMI is responsible for general housekeeping of the common grounds.
4. BMI will comply with all applicable licensing regulations.
5. TPALP will dedicate fifteen undesignated units that will be located throughout the PROJECT for pre-certified candidates of RCDMH.
6. All candidates seeking MHSA set-aside occupancy into the PROJECT who are not directly referred by RCDMH will be sent to RCDMH by BMI for screening. This includes candidates applying directly to TPALP, BMI or at the PROJECT.
7. BMI will be responsible for developing and conducting PROJECT marketing in accordance with funding and Fair Housing access provisions.
8. BMI will be responsible for consistent application of Tenant Selection criteria that is in accordance with all applicable Fair Housing provisions and/or applicable project funder(s) requirements when considering tenancy for all MHSA housing unit applicants.
9. BMI will develop Tenant Selection criteria in partnership with RCDMH that are consistent with applicable Fair Housing provisions. This includes a notification, appeal and reasonable accommodation process for candidates denied tenancy.
10. BMI will immediately notify RCDMH in the event of an MHSA unit occupant leaving the PROJECT for any reason.
11. BMI will provide assistance needed by applicants who have been screened by RCDMH. Such assistance will include, but not be limited to, arrival or first day orientation and coordination with RCDMH supportive services staff to facilitate the move in.
12. TPALP will provide on-site office space for RCDMH supportive services staff to conduct individual and confidential meetings with MHSA unit occupants.
13. TPALP and BMI together will actively collaborate with RCDMH programs, including the Homeless/Housing Opportunity, Partnership and Education (hereinafter "HHOPE") and supportive service provider(s) to support tenants, resolve issues as they emerge and at quarterly monitoring meetings to insure that services and supports consistent with the provisions of the AGREEMENT are provided.

B. RCDMH RESPONSIBILITIES.

1. RCDMH will screen for MHSA housing eligibility for all candidates referred for housing from RCDMH programs or by TPALP to RCDMH, through the services of BMI.
2. RCDMH program provider(s) will provide on-site full-service supportive services to PROJECT MHSA tenants for the duration that TPALP provides MHSA affordable supportive housing units; one full-time equivalent (FTE) provider (40 hours a week) shall be dedicated to support MHSA unit tenants. Services will include intensive case management, education, training and support of life skills development, direct provision or linkage to vocational and educational services, active linkage to medical care, mental health treatment that includes psychiatric and medication services, transportation, social and community building activities, peer support, 24/7 tenant support and community based activities and supports that will promote tenant self-sufficiency and community integration.
3. RCDMH program provider shall be affiliated with RCDMH full-service programs designed to meet the need of the MHSA consumer/tenant age group: transition age youth (ages 16 – 24 and emancipated minors), adult (ages 25-59) and older adult (age 60 and over).
4. RCDMH HHOPE will establish and maintain a centralized certification of eligibility for MHSA housing process and waiting list of certified applicants.
5. RCDMH HHOPE will be responsible for insuring that coordination and implementation of provisions of the AGREEMENT are achieved and maintained. This includes coordinating quarterly meetings and collaborating with TPALP and BMI to develop PROJECT policies and procedures as issues emerge. HHOPE shall provide 24/7 support to PROJECT property manager to facilitate timely resolution of tenant issues and to insure effective coordination with RCDMH program provider(s).
6. RCDMH shall be responsible for recording, tracking and reporting all PROJECT performance outcome data to State Department of Mental Health as required.

III. PRIOR RCDMH APPROVAL

TPALP shall keep RCDMH fully informed of all items (i.e. services, schedules, etc.) related to the construction process. RCDMH shall be able to review and approve all special needs and accommodation plans relevant to the needs of MHSA tenants.

IV. TERM OF AGREEMENT

The term of this AGREEMENT shall be for a period of 20 years commencing upon the date of Certificate of Occupancy and/or the execution by the Riverside County Board of Supervisors, all of documents relating to PROJECT, including this AGREEMENT, and all other related documents with attachments between RCDMH and TPALP, whichever is later. For the 20- year period of this AGREEMENT, all applicable Parties agree that this document will be renewed annually by mutual, written consent and signatures by all Parties involved.

V. REIMBURSEMENT/PAYMENT

TPALP and the RCDMH agree that there will be no exchange and/or receipt of payment from or to TPALP, BMI or the RCDMH associated with or for the fulfillment and performance of the duties and responsibilities specifically and expressly outlined in this AGREEMENT. However, MHSA funds expressly mentioned and/or outlined in this AGREEMENT will be utilized by TPALP, on behalf of RCDMH, as operating subsidies for the PROJECT.

VI. TERMINATION OF THE AGREEMENT

Either party may terminate this Agreement immediately upon breach of the Agreement by the other party, provided written notice of such breach is given and the notified party fails to cure such breach to the reasonable satisfaction of the noticing party within thirty (30) days of delivery of the notice of breach, or such extended period as is necessary to cure the breach. Such termination by the noticing party shall be effective at the end of the cure period if no cure has been affected. In addition, the following occurrences will give RCDMH the right to terminate this Agreement:

- A. In the event a petition for the adjudication of TPALP is filed for voluntary or involuntary bankruptcy, which is not dismissed within sixty (60) days.
- B. In the event that TPALP makes a general assignment or TPALP interest hereunder is assigned involuntarily or by operation of law, for the benefit of creditors.
- C. In the event of abandonment of the PROPERTY by TPALP.
- D. In the event project is terminated and terms of the agreement are not met after expiration of the applicable cure period.

VII. FINANCIAL RECORDS

- A. The TPALP shall maintain financial, programmatic, statistical and other supporting records of its operations and financial activities in accordance with State and Federal requirements. All records shall be open to inspection and may be audited by the authorized representatives of RCDMH, and any State and/or Federal governing agencies.

- B. All financial records, supporting documents, statistical records, and all other records pertaining to the use of the funds provided under this AGREEMENT shall be retained collectively by RCDMH, TPALP and BMI for a period of twenty five (25) years, at a minimum, and shall be made available for audit by County, State or Federal representatives as necessary. In the event of litigation, claim or audit, the records shall be retained until all litigation, claims and audit findings involving the records, have been fully resolved. The twenty five (25) year period commences upon issuance of certificate of occupancy to TPALP. Exceptions to the twenty five (25) year retention period will be made if County, State, and/or Federal laws mandate a longer retention period.

VIII. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

- A. TPALP and BMI in this AGREEMENT are subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, enacted August 21, 1996, and the laws and regulations promulgated subsequent thereto. TPALP and BMI hereto agree to cooperate in accordance with the terms and intent of this AGREEMENT for implementation of relevant law(s) and/or regulation(s) promulgated under this Law. The TPALP and BMI further agrees that it shall be in compliance, and shall remain in compliance with the requirements of HIPAA, and the laws and regulations promulgated subsequent hereto, as may be amended from time to time.

All privacy complaints should be referred to:
Riverside County Dept. of Mental Health
Attn: HIPAA Compliance Officer
4060A County Circle Drive
Riverside, CA 92503
(951) 358-4521

B. CONFIDENTIALITY

TPALP and BMI agrees to maintain the confidentiality of all mental health and/or substance abuse client information in accordance with all applicable Federal, State and local laws and regulations. TPALP and BMI will ensure that names, addresses, phone numbers, and any other individually identifiable information concerning mental health and/or substance abuse clients and the services they may be receiving are kept confidential. Applicable confidentiality laws include, but may not be limited to, California Welfare & Institution Code, Section 5328 through 5330, inclusive, 45 CFR Section 205.50, 42 CFR-Chapter 1-Part 2. The RCDMH will notify the RCDMH Compliance Officer of any breach of applicable confidential laws referenced herein.

IX. ALTERATION OF TERMS AND ENTIRE AGREEMENT

- A. The body of this AGREEMENT along with all incorporated Attachments fully

expresses all understandings of the parties concerning all matters covered and shall constitute the total AGREEMENT. No addition to, or alteration of, the terms of this AGREEMENT, whether by written or verbal understanding of the parties, their officers, agents, or employees, shall be valid unless made in the form of a written amendment to this AGREEMENT, which is formally approved and executed by RCDMH, TPALP and BMI.

- B. All notices pertaining to this AGREEMENT shall be sent to the following:

Department of Mental Health
Maria Marquez, Mental Health Services Administrator
HHOPE Program
769 West Blaine, Suite B
Riverside, CA 92507
Tel: (951) 358 - 4523 Fax: (951) 538 - 5850
e-mail: mimarquez@rcmhd.org

Barker Management Incorporated
1101 East Orangewood Avenue, Suite 200
Anaheim, CA 92805 - 6809
Tel: (714) 533 - 3450 Fax: (714) 533 - 8608
e-mail: pbarker@barkermgt.com

Palm Desert Development Company, Administrative General Partner
for Thousand Palms Apartments Limited Partnership
44139 Monterey Avenue
Palm Desert, CA 92260 - 8700
Tel: (760) 568 - 1048 Fax: (760) 568 - 9761
e-mail: dhorn@pddc.net

Western Community Housing, Inc.
151 Kalmus Drive, Suite J-5
Costa Mesa, CA 92626
Tel: (714) 549 - 4100 Fax: (714) 549 - 4600
e-mail: graham@wchousing.org

X. **MISCELLANEOUS PROVISIONS**

- A. ASSIGNMENT: This AGREEMENT shall not be assigned by TPALP and BMI, either in whole or in part, without prior written consent for RCDMH. Any assignment or purported assignment of this AGREEMENT by TPALP and BMI without the prior written consent of RCDMH will be deemed void and of no force or effect.
- B. LICENSE AND CERTIFICATION: TPALP AND BMI verifies upon execution of this AGREEMENT, possession of a current and valid license in compliance with any local, State, and Federal laws and will be performed by properly trained and licensed staff.

- C. SEVERABILITY: If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- D. COMPLIANCE: TPALP and BMI warrants and certifies that, in the performance of this AGREEMENT, they shall comply with all applicable laws, rules, regulations and orders of the United States, the State of California, and the County of Riverside, including the laws and regulations pertaining to labor, wages, hours and other conditions of employment. TPALP and BMI further warrants and certifies that it shall comply with new, amended, or revised laws, regulations and/or procedures that apply to the performance of this AGREEMENT.
- E. HOLD HARMLESS-INDEPENDENT TPALP AND BMI: Each party (indemnitor) shall defend, indemnify and hold the other parties (indemnitees), its governing board, its officers, its administrators, its agents, its employees, its independent contractors, its subcontractors, consultants, other representatives and employees, free and harmless from any and all liability, claims, demands, costs, losses, damages, or expenses whatsoever, including wrongful death, and also including, but not limited to, consequential damages, loss of use, extra expense, cost of facilities, death, sickness, or injury to any person(s) or damage to any property, based or asserted upon any acts or omission of the indemnitor, relating to or in any way connected with or arising from the accomplishment of the work in whole or in part, the negligent, wrongful or willful acts or omissions of the by the indemnitor, its employees, agents, subcontractors, independent contractors, consultants, or other representatives. Each party further agrees to protect, indemnify and defend at its expense including attorney fees, the indemnitee, its governing board, its officers, its administrators, its agents, its employees, its independent contractors, its subcontractors, consultants, other representatives and employees, in any legal action(s) or claim(s) based upon such alleged acts or omissions whether the subject action(s) or claim(s) are well-founded, properly filed or pleaded, or not commenced in a court of competent jurisdiction. It is understood and agreed by both parties that TPALP AND BMI are both independent entities and that no relationship of employer-employee exists between the parties hereto outside or what is explicitly declared and outlined in this AGREEMENT. TPALP and BMI shall not be entitled to any benefits payable to employees of RCDMH, including County Workers' Compensation Benefits. RCDMH is not required to make any deductions from the compensation payable to TPALP and BMI under the provisions of this AGREEMENT; and as an independent entity, TPALP and BMI hereby hold RCDMH harmless from any and all claims that may be made against RCDMH, its governing board, its officers, its administrators, its agents, its employees, its independent contractors, its subcontractors, consultants, and other representatives based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

XI. INSURANCE-INDEMNIFICATION

- A. TPALP and BMI shall indemnify and hold RCDMH, its officers, agents and employees, free and harmless from any liability whatsoever, including wrongful death, based or asserted upon any acts or omission of TPALP and/or BMI, relating to or in any way connected with or arising from the accomplishment of the work by TPALP and/or BMI.
- B. Without limiting the BMI/TPALP's indemnification of the County, BMI and TPALP shall maintain in force at all times during the per during the performance of this AGREEMENT, insurance policies or a program of self-insurance evidencing coverage during the entire term of the AGREEMENT as follows:
1. General Liability insurance in the amount of not less than \$1,000,000 per occurrence and aggregate, when TPALP/BMI performs any professional services;
 2. Workers' Compensation insurance in accordance with statutory requirements; and
 3. If motor vehicles are used pursuant to this AGREEMENT, no less than \$1,000,000 combined single limit for damage to property and injury to persons.

XII. JURISDICTION, VENUE, ATTORNEY'S FEES

Should a dispute arise pertaining to this AGREEMENT, it is to be construed under the laws of the State of California. The all parties agree to the jurisdiction and venue of the appropriate courts in the County of Riverside, State of California. Should action be brought to enforce or interpret the provisions of the AGREEMENT, the prevailing party shall be entitled to attorney's fees in addition to whatever other relief is granted.

XIII. SIGNATORIES

TPALP, BMI and RCDMH mutually agree to fully and faithfully perform all applications set forth in this AGREEMENT. All parties agree to have their duly authorized signatories sign this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT in the County of Riverside, State of California.


THOUSAND PALMS APARTMENTS LIMITED PARTNERSHIP, a California limited partnership

By: Palm Desert Development Company, a California corporation, its administrative general partner


By:  01/26/11
Danavon L. Horn, President Date

By: WCH Affordable IV, LLC, a California limited liability company, its managing general partner


By: Western Community Housing, Inc. its Sole Member and Manager

By:  1/27/11
Graham P. Espley-Jones, President Date


BARKER MANAGEMENT, INCORPORATED, a California corporation

By:  01/27/2011
Peter Barker, President Date

COUNTY OF RIVERSIDE

By:  MAR 15 2011
Bob Buster, Chairman Date
Riverside County Board of Supervisors
for the Department of Mental Health

Attest:  MAR 15 2011
Kecia Harper-Ihem, Clerk of the Board Date
County of Riverside

FORM APPROVED COUNTY COUNSEL
BY:  MAR 15 2011 3.31
NEAL R. KIPNIS DATE