

EXCLUSIVE NEGOTIATION AGREEMENT  
BY AND BETWEEN  
THE CITY OF THOUSAND OAKS  
AND  
PEOPLE'S SELF-HELP HOUSING CORPORATION  
(384 N. Erbes Road)

This EXCLUSIVE NEGOTIATION AGREEMENT ("**Agreement**") is entered into as of \_\_\_\_\_, 2023 ("**Effective Date**"), by and between the CITY OF THOUSAND OAKS, a municipal corporation of the State of California ("**City**"), and PEOPLE'S SELF-HELP HOUSING CORPORATION, a California nonprofit public benefit corporation ("**Developer**"), each a "**Party**" and collectively the "**Parties**", on the basis of the following facts:

RECITALS

A. The City is the fee title owner of certain improved real property located at 382 and 384 N. Erbes Road, Thousand Oaks, California, consisting of two parcels known as APN: 670-0250-290 and 670-0-250-210 (collectively, the "**Site**"). The Site is approximately 3.87 acres and has an existing approximately 26,500 square foot structure which was formerly used as a school.

B. The City acquired the Site for the purpose of developing affordable housing. Towards that purpose, on June 24, 2022, the City issued the Hillcrest Affordable Housing RFP/RFQ ("**RFQ**"). In response to the RFQ, Developer submitted a Proposal in August 2022, together with a subsequent addendum thereto (collectively, the "**Proposal**"), whereby Developer proposes to acquire the Site from the City and to develop the Site in accordance with the RFQ and the Proposal.

C. The City desires to cause the development of the Site with a proposed affordable for-sale housing development with not less than 78 dwelling units consistent with the RFQ and the Proposal ("**Project**"). Certain requirements that will be imposed on the proposed Project, including but not limited to the affordability restrictions, are intended to also comply with any applicable requirements of the California Surplus Land Act (set forth in California Government Code Section 54220 *et seq.*). The details and scope of the proposed Project, including, but not limited to, the total number of units (but not less than 78 units) and the affordability mix of the units, are not yet determined or agreed upon and will continue to be reviewed and analyzed by the Parties during the Term of this Agreement. The proposed Project will be subject to a regulatory agreement governing, in part, the affordability levels of the units.

D. After careful review of all submittals, the City selected Developer for negotiations, on an exclusive basis, for the potential development of the Site with the proposed Project.

E. The City and Developer wish to negotiate to reach agreement on the terms and conditions of a Disposition and Development Agreement ("**DDA**") for the proposed Project. The DDA would provide the terms and conditions for the City's disposition of the Site to Developer or Housing Trust Fund Ventura County, a California nonprofit public benefit corporation ("**HTFVC**"), if specified preconditions are satisfied, and for Developer's financing, construction, and operation of the proposed Project.

F. The purpose of this Agreement is to establish procedures and standards for the negotiation by the City and Developer of a DDA. As more fully set forth in Section 3.1 of this Agreement, Developer acknowledges and agrees that this Agreement in itself does not obligate, and shall not be construed to obligate, any party to acquire or convey any interest in real property, does not grant Developer the right to develop the Site or the proposed Project, and does not obligate the City or Developer to any activities or costs to develop the proposed Project except as expressly set forth in this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer mutually agree as follows:

### ARTICLE 1. EXCLUSIVE NEGOTIATIONS

#### Section 1.1 Good Faith Negotiations.

A. The City and Developer shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, below, the terms of a DDA providing for the terms and conditions for the City's disposition of the Site to Developer or HTFVC, if specified preconditions are satisfied, and for Developer's financing, construction, and operation of the proposed Project. The proposed Project will be consistent with the description set forth in the Recitals above, including the RFQ and the Proposal, all of which, including the Recitals, are incorporated herein by this reference, subject to changes or revisions to the proposed Project that are needed in order to comply with applicable state and federal law and other changes or revisions that are mutually agreed to by the Parties. During the Negotiating Period, the Parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2 to facilitate the negotiation of a mutually satisfactory DDA.

B. Among the issues to be addressed in the negotiations for a DDA are: (1) the disposition of the Site by the City to Developer or HTFVC; (2) the design, type, and number of units to be constructed as part of the proposed Project (but not less than 78 units); (3) the development schedule for the proposed Project; (4) financing of the proposed Project (including timing of construction and permanent funding commitments); and (5) the level of housing affordability and the nature of affordability controls.

#### Section 1.2 Negotiating Period/Term.

A. The negotiating period under this Agreement and term of this Agreement ("**Negotiating Period**" or "**Term**") is a period of one hundred eighty (180) calendar days, commencing on the Effective Date. The Negotiating Period may be extended, in each case, by mutual written agreement of the Parties, for up to three (3) additional ninety (90) calendar day periods, and on the City's behalf by the City Manager of the City ("**City Manager**") if, in the City Manager's sole discretion and determination, sufficient progress toward a mutually acceptable DDA has been made during the initial one hundred eighty

(180) day negotiating period (and first or second ninety (90) day extended period, if applicable) to merit such an extension and upon such terms and conditions as the City Manager deems reasonably appropriate.

B. If a DDA has not been approved by the City Council of the City (“**City Council**”) and executed by the City and Developer by the expiration of the Negotiating Period, including any extension that may be granted by the City Manager pursuant to the preceding Paragraph A, then this Agreement shall automatically expire and terminate without any action of the Parties, neither Party shall have any further duties, obligations, rights, or liabilities under this Agreement, except for those rights and obligations that expressly survive expiration or termination of this Agreement, and Developer will have no further rights regarding the subject matter of this Agreement or all or any part of the Site and the City will be free to negotiate with other persons or entities with regard to all or any part of the Site. If a DDA is approved by the City Council and executed by the City and Developer by the expiration of the Negotiating Period, including any extension that may be granted by the City Manager pursuant to the preceding Paragraph A, then, upon such execution of the DDA by the Parties, this Agreement shall automatically expire and terminate without any action of the Parties, all rights and obligations of the Parties shall be as set forth in the executed DDA, and neither Party shall have any further duties, obligations, rights, or liabilities under this Agreement, except for those rights and obligations that expressly survive expiration or termination of this Agreement.

Section 1.3 Exclusive Negotiations. During the Negotiating Period, including any extension granted pursuant to Section 1.2, Paragraph A, above, the City shall not negotiate with any entity, other than Developer, regarding development of the Site, or solicit or entertain bids or proposals to do so.

Section 1.4 Good Faith Deposit Alternative. In lieu of and as an alternate to requiring a good faith deposit from Developer, and as partial consideration for the City’s execution of this Agreement, Developer, pursuant to this Agreement, shall provide the City with copies of all non-proprietary reports, studies, analyses, correspondence, and similar documents prepared or commissioned by Developer with respect to the Site and the proposed Project, all as more fully set forth in Section 2.5, below.

## ARTICLE 2. NEGOTIATION TASKS

Section 2.1 Overview. To facilitate negotiation of the DDA, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period.

### Section 2.2 Financing and Costs of Project; DDA Requirements.

A. Within ninety (90) calendar days after the Effective Date, Developer shall, at its sole cost and expense, provide the City with a detailed financial analysis for the Project containing, among other matters, the development costs of the proposed Project, a detailed development budget, and proposed housing affordability levels, including proposed income restrictions and applicable affordable sales prices supported by the budget (“**Financing Proposal**”). The financial analysis along with conceptual site plan discussed in Section 2.6, shall be refined by the Parties during the Negotiating Period, as appropriate based

on due diligence findings, and will be used to evaluate the financial feasibility of the proposed Project and to assist in the negotiation of terms. The Financing Proposal shall also include the terms, scope, and schedule of financing for the proposed Project.

B. The DDA will provide that Developer will be solely responsible for all development (including site development and demolition costs) and operational costs of the proposed Project. Developer acknowledges that neither the City nor any of its officers, officials, employees, representatives, or agents has provided any direct or indirect information which in any way would indicate that the proposed Project is or is not subject to the State of California's prevailing wage requirements and/or federal prevailing wage requirements.

C. The negotiations for a DDA will address, among other items, the terms of the disposition of the property from City to Developer or HTFVC; the form, amount, and terms of financing for the proposed Project; the scope and schedule of development; Project sale and maintenance requirements; and the income and affordability restrictions to be placed on the Project, which restrictions of the City will be senior in priority to any construction and permanent financing or other liens.

D. The DDA will include a Scope of Development setting forth, without limitation, the number and size of the housing units, the total square feet of ancillary facilities, if any, the number of parking spaces, and the design parameters for the Site.

E. The DDA will include a sources and uses budget, which will be based upon a financial pro forma that has been approved by the City and a feasible method of financing, reasonably demonstrating the availability of all funds needed to complete the development of the proposed Project. The DDA will require the submittal of documentation including but not limited to, all proposed loans, subsidies, grants, tax credits, and owner equity needed to carry out the proposed financing. Developer agrees to make continuing full disclosure of its proposed methods of financing the proposed Project.

F. The City will have the right to approve Developer's selection of the general contractor, architect, construction lender, permanent lender, project manager, and other lenders, and service providers for the proposed Project. The City will also have the right to review and approve any and all contracts and agreements with such entities for the proposed Project. Such approval shall not be unreasonably withheld, delayed or conditioned.

G. The DDA will be subject to the City's insurance requirements and all other applicable and customary City policies. The DDA may require appropriate performance and payment bonds (consistent with industry standards involving public-private projects) with regard to the construction of the proposed Project or another form of assurance that is acceptable to the City.

H. The DDA will contain such other provisions as may be customary in City agreements and such other provisions as the City and Developer determine to be necessary or appropriate to implement the proposed Project.

Section 2.3 Disposition of the Site. Concurrent with Developer's development of the Financing Proposal, the City and Developer shall seek to agree upon the terms and conditions for the disposition of the Site to Developer or HTFVC.

Section 2.4 Due Diligence. During the Negotiating Period, and subject to the terms and conditions of that certain Right of Entry Agreement to be entered into by and between the City and Developer concurrently with this Agreement, Developer shall, at its sole cost and expense, conduct due diligence activities, including but not limited to, planning, survey, soils report, hazardous materials report, financial feasibility, and title adequacy.

A. Developer shall, at its sole cost and expense, determine whether the Site is suitable for development of the proposed Project, taking into account the geotechnical and soils conditions, the presence or absence of toxic or other hazardous materials, the massing of the proposed Project improvements and the parking requirements and the other environmental and regulatory factors that Developer deems relevant.

B. Developer will be solely responsible for all necessary testing of the Site for hazardous materials pursuant to all applicable laws, statutes, rules and regulations. All studies and reports generated by Developer's testing for hazardous materials will be made available to the City. For purposes of this Agreement, "hazardous materials" means asbestos; polychlorinated biphenyls (whether or not highly chlorinated); radon gas; radioactive materials; explosives; chemicals known to cause cancer or reproductive toxicity; hazardous waste, toxic substances or related materials; petroleum and petroleum product, including, but not limited to, gasoline and diesel fuel; those substances defined as a "Hazardous Substance", as defined by Section 9601 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or as "Hazardous Waste" as defined by Section 6903 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*; an "Extremely Hazardous Waste," a "Hazardous Waste" or a "Restricted Hazardous Waste," as defined by The Hazardous Waste Control Law under Section 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to Section 25140 of the California Health and Safety Code; a "Hazardous Material", "Hazardous Substance," "Hazardous Waste" or "Toxic Air Contaminant" as defined by the California Hazardous Substance Account Act, laws pertaining to the underground storage of hazardous substances, hazardous materials release response plans, or the California Clean Air Act under Sections 25316, 25281, 25501, 25501.1 or 39655 of the California Health and Safety Code; "Oil" or a "Hazardous Substance" listed or identified pursuant to 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321; a "Hazardous Waste," "Extremely Hazardous Waste" or an "Acutely Hazardous Waste" listed or defined pursuant to Chapter 11 of Title 22 of the California Code of Regulations Sections 66261.1 through 66261.126; chemicals listed by the State of California under Proposition 65 Safe Drinking Water and Toxic Enforcement Act of 1986 as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code; a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, materially damages or threatens to materially damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or government agency requires in order for the Site to be put to the purpose proposed by this Agreement; any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether

or not the presence of such material resulted from a leaking underground fuel tank; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.*; asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*; any radioactive material including, without limitation, any “source material,” “special nuclear material,” “by-product material,” “low-level wastes,” “high-level radioactive waste,” “spent nuclear fuel” or “transuranic waste” and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. 2011 *et seq.*, the Nuclear Waste Policy Act, 42 U.S.C. 10101 *et seq.*, or pursuant to the California Radiation Control Law, California Health and Safety Code, Sections 25800 *et seq.*; hazardous substances regulated under the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code, Sections 6300 *et seq.*; and/or regulated under the Clean Air Act, 42 U.S.C. 7401 *et seq.* or pursuant to The California Clean Air Act, Sections 3900 *et seq.* of the California Health and Safety Code.

C. Developer will also be responsible for making the Site suitable and usable for the proposed Project as a result of any site conditions including, without limitation, flood zones, Alquist-Priolo Earthquake Fault Zoning Act, and similar matters. Developer shall deliver to the City all reports within its possession or under its control regarding hazardous materials relating to the Site.

## Section 2.5 Reports.

A. Developer shall, at its sole cost and expense, provide the City with true and correct copies of all reports, studies, analyses, correspondence, and similar documents prepared or commissioned by Developer with respect to this Agreement and the proposed Project, promptly upon their completion.

B. The City will, without any representation or warranty, provide Developer any existing information, studies, reports, site and construction plans or other documents in the City’s possession and control which the Developer may reasonably request to facilitate the Project design and development.

C. During the negotiations, Developer agrees, at its sole cost and expense, to make full disclosure to the City of all pertinent information in its possession or under its control concerning (i) Developer, (ii) any of Developer’s affiliates which are a part of the organizational structure of Developer or will be performing any of the obligations or services with respect to the Site and/or the proposed Project, (iii) the Site, and/or (iv) the Project. Upon the City’s written request and to the extent in Developer’s possession, Developer will cooperate with the City by providing preliminary title reports, market studies, soils reports, surveys, phase I environmental report, and additional information and data relating to the Site, the proposed Project, the proposed financing, or Developer or its affiliates, as the City may reasonably request.

D. The City reserves the right, during the Term of this Agreement, to request reasonable additional information and data from Developer that it considers necessary for review and evaluation of the Site and the proposed Project, which Developer will provide in a timely manner provided that such information has been obtained by Developer pursuant to this Agreement or is otherwise in Developer’s possession and control.

Section 2.6 Planning Approvals. Developer has submitted to the City, as part of the Proposal, the conceptual site plan for the proposed Project. Developer shall, at its sole cost and expense, be responsible for submitting all site plans, preliminary designs, and plan and specifications for the proposed Project, which shall be consistent with the conceptual site plan submitted to the City by Developer as part of the Proposal. Developer acknowledges that the proposed Project may require the City's approval of various land use or other discretionary approvals and/or other entitlements (collectively, "**Entitlements**"). Developer, at its sole cost and expense, will be required to obtain all discretionary approvals and Entitlements for the proposed Project as a condition of disposition of the Site to Developer or HTFVC under the DDA. Nothing in this Agreement shall in any way impede or restrict the City's authority to review and render determinations on such matters in its sole discretion.

Section 2.7 Environmental Review.

A. Developer, at its sole cost and expense, will be responsible for compliance with the requirements of the California Environmental Quality Act ("**CEQA**") pursuant to California Public Resources Code Sections 21000 *et seq.* and California Code of Regulations Sections 15000 *et seq.*, in connection with the proposed Project. Developer will be solely responsible for paying any and all costs and expenses associated with compliance with applicable CEQA requirements (including, without limitation, any required environmental documents). Nothing in this Agreement shall be construed to compel the City to approve or make any particular findings with respect to such CEQA documentation. Developer shall provide such information about the proposed Project as may be required to enable the City to consider any CEQA-required document in conjunction with the consideration of the proposed Project and shall otherwise generally cooperate with the City to complete this task.

B. If the City, in its sole discretion, determines that any approval of the proposed Project requires non-feasible mitigation measures, or fails to yield benefits that outweigh significant unavoidable impacts, or the City otherwise determines, in its sole discretion, not to make any finding required by CEQA as a prerequisite to approval of the proposed Project, the City may terminate this Agreement, without penalty. Upon such termination, neither Party shall have any further duties, obligations, rights, or liabilities under this Agreement, except for those rights and obligations that expressly survive termination of this Agreement.

C. The proposed Project, and any disposition of the Site related thereto, shall be subject to, and contingent on, final CEQA review and approval by the appropriate body(ies) of the City. This Agreement does not constitute a legally binding commitment to a specific project, to the proposed Project, or to the disposition of the Site.

Section 2.8 Progress Reports. From time to time as reasonably requested by the City, the Developer agrees to make oral and written progress reports advising the City on all matters related to the development of the Project, including financial feasibility analyses, construction cost estimates, marketing studies, and similar due diligence matters.

Section 2.9 Community Engagement. The City and Developer shall confer and seek agreement on an appropriate strategy to obtain input from community members regarding the proposed Project.

Section 2.10 Indemnity. Developer agrees to defend, indemnify, and hold harmless City and its officers, agents, representatives, and employees (each an "Indemnified Party") from any and all losses, liabilities, damages, claims or costs arising from Developer's acts or omissions under or in connection with this Agreement; provided, however, that nothing herein shall obligate Developer to indemnify an Indemnified Party for its gross negligence or willful misconduct. This indemnity obligation shall survive the expiration or termination of this Agreement.

Section 2.11 California Surplus Land Act. Developer acknowledges the City's anticipated disposition of the Site to Developer or HTFVC for the proposed Project pursuant to a mutually negotiated DDA shall be in conformance with all applicable laws, including, without limitation, the California Surplus Land Act (set forth in California Government Code Section 54220 *et seq.*).

Section 2.12 City Cooperation. The City shall, at no cost or expense to City, reasonably cooperate with the submittal of Entitlement applications and financing source application in its role as owner of the Site.

### ARTICLE 3. GENERAL PROVISIONS

Section 3.1 Limitation on Effect of Agreement. This Agreement shall not obligate either the City or Developer to enter into a DDA or to enter into any particular DDA. This Agreement does not grant any approval of any Entitlements or approve of the proposed Project. By execution of this Agreement, the City is not committing itself to, or agreeing to, undertake disposition of the Site or any other matter with respect to the Site or the proposed Project. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City Council or other staff or appropriate body action the final discretion and approval regarding approval of the proposed Project, the Entitlements, and the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the City Council following conduct of all legally required procedures and processes, and executed by duly authorized representatives of the City and Developer. Until and unless a DDA is signed by Developer, approved by the City Council and executed by the City, no agreement drafts, actions, deliverables, or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into, or support entering into, a DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document. Each Party assumes the risk that, notwithstanding this Agreement and good faith negotiations, the City and Developer might not enter into the DDA due to their failure to agree upon essential terms of a transaction or a decision by the City Council not to authorize entering into and execution of the DDA.

Section 3.2 Notices. Formal notices, demands and communications between the City and Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail,



postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

To City: City of Thousand Oaks  
2100 E. Thousand Oaks Boulevard  
Thousand Oaks, CA 91362  
Attn: Andrew P. Powers, City Manager

With a Copy to: City of Thousand Oaks  
2100 E. Thousand Oaks Boulevard  
Thousand Oaks, CA 91362  
Attn: Noel Doran, Asst. City Attorney

To Developer: People's Self-Help Housing Corporation  
1060 Kendall Road  
San Luis Obispo, CA 93401  
Attn: Kenneth Trigueiro, CEO

With a Copy to: People's Self-Help Housing Corporation  
2901 N. Ventura Rd., Ste. 265  
Oxnard, CA 93036  
Attn: Veronica Z. Garcia, Chief Real Estate Development Officer

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused. For purposes of obligations to be performed by the City or of calculation of noticing under this Agreement, a business day on which the City of Thousand Oaks City Hall is closed will not constitute a business day under this Agreement.

Section 3.3 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no *lis pendens* may be filed against any portion of the Site with respect to this Agreement or any dispute or act arising from it.

Section 3.4 Right of Entry Agreement. The City and Developer intend on entering into that certain Right of Entry Agreement ("**Right of Entry Agreement**") concurrently with this Agreement, in which the City will grant Developer a right of entry to enter the Site.

Section 3.5 Insurance. Developer shall at all times during the Term of this Agreement keep in full force and effect all policies of insurance required under the Right of Entry Agreement described in Section 3.4, above.

Section 3.6 Assignment. Developer understands the City is entering into this Agreement based on the experience and qualifications of Developer and of the key individuals representing or employed by Developer as of the date of this Agreement. Therefore, Developer will not assign, sell, or otherwise transfer

any or all of its rights under this Agreement, or interest herein, without the prior written approval of the City, which approval may be withheld in the City's reasonable discretion, except to a special purpose entity controlled by Developer and reasonably approved by the City. Further, no voluntary or involuntary successor in interest of Developer will acquire any rights or powers under this Agreement except as expressly set forth herein. For the reasons cited herein, Developer represents and agrees for itself and any successor in interest that prior to the expiration of the Term, and without the prior written approval of the City (which approval may be withheld in the City's reasonable discretion), there will be no significant change in the management or control of Developer or with respect to the identity of the parties in control of Developer, by any method or means. Developer will promptly notify the City of all changes whatsoever in the identity of the parties in control of or exercising the management of Developer, or the degree of control or management, of which it or any of its officers have been notified or otherwise have knowledge or information. This Agreement may be terminated by the City if there is any significant change (voluntary or involuntary) in membership, management or control, of Developer, or the persons in control of Developer. For purposes of this paragraph, a significant change will mean any change in the identity of the Executive Director, CEO, or President (or similar person or persons having ultimate control over the day to day management of Developer), or the appointment of a receiver or trustee to operate or exercise direct or indirect control over any portion of or interest in Developer. Periodic, routine changes in membership that cumulatively affect less than 50% of the membership of the Developer's board of directors will not be considered a "significant change". This Agreement may not be assigned by Developer without the express prior written consent of the City, which consent may be withheld in the City's reasonable discretion except to a special purpose entity controlled by Developer and reasonably approved by the City. If there is an assignment of this Agreement, or change in the management or control of Developer which the City does not approve, the City may terminate this Agreement and exercise any other rights of the City. Notwithstanding the foregoing, it is anticipated that, to effectuate the purposes of this Agreement and the DDA, Developer may form a limited partnership or other single purpose entity approved by the City, in which case, Developer may assign this Agreement to such limited partnership or single purpose entity. This Agreement may not be assigned by Developer to any other entity without the City's prior written consent, which consent may be withheld in the City's sole and absolute discretion.

Section 3.7 Costs and Expenses. Each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each Party's obligations under this Agreement.

Section 3.8 No Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA resulting from this Agreement. The City represents that it has engaged no broker, agent or finder in connection with this transaction, and Developer shall indemnify, defend, protect, and hold the City harmless from any claims by any broker, agent or finder retained by Developer. This indemnity obligation shall survive the expiration or termination of this Agreement.

Section 3.9 Defaults and Remedies.

A. Default. If a Party defaults with regard to any of the provisions of this Agreement, then the non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30)

calendar days after receipt by the defaulting Party of such notice, the non-defaulting Party may immediately exercise the remedies set forth in Paragraph B, below.

B. Remedies. Except for a default or breach of Developer with respect to Developer's indemnification, defense and hold harmless obligations set forth in this Agreement or any amendment thereto, for which the City shall have all remedies available at law or in equity, the non-defaulting Party's sole and exclusive remedy in the event of an uncured default by the City or Developer shall be to terminate this Agreement. Following such termination, no Party shall have any further duties, obligations, rights, or liabilities under this Agreement, except that Developer's indemnification, defense and hold harmless obligations set forth in this Agreement shall survive such termination and be enforceable against Developer.

C. No Liability. Except as expressly provided in Paragraphs A and B, above, no Party shall have any liability to any other Party for damages or otherwise for any default or breach, nor shall any Party have any other claims with respect to performance under this Agreement. Each Party specifically waives and releases any such rights or claims it may otherwise have at law or in equity.

Section 3.10 Time is of Essence. Time is of the essence of every portion of this Agreement in which time is a material part.

Section 3.11 Nondiscrimination. Developer covenants and agrees that it will not discriminate against any employees or applicants for employment because of race, color, religion, creed, national origin, ancestry, sex, sexual orientation, age, disability, medical condition, or marital status.

Section 3.12 Conflicts of Interest.

A. No member, official, officer or employee of the City may have any personal interest, direct or indirect, in this Agreement, nor may any such member, official, officer or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is, directly or indirectly, interested.

B. Developer warrants that it has not paid or given, and will not pay or give, directly or indirectly, any City member, official, officer or employee any money or other consideration at all, whether or not connected in any way with the subject matter of this Agreement. Further, Developer warrants that it has no knowledge of any financial interest of any City member, official, officer or employee in Developer, directly or indirectly, or in any person or entity affiliated with Developer, or in any transaction in which Developer is or has been involved.

C. Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. The Parties understand and agree that Developer has retained legal counsel and consultants in connection with the creation and implementation of this Agreement, and that such is not a violation of this Paragraph.

Section 3.13 Heading/Captions. The headings and captions of the various sections and paragraphs of this Agreement have been inserted only for the purpose of convenience and are not a part of

this Agreement and will not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement.

Section 3.14 Severability. Every provision of this Agreement is intended to be severable. If any provision of this Agreement or the application of any provision hereof to any Party or circumstance is declared to be illegal, invalid or unenforceable for any reason whatsoever by statute or a court of competent jurisdiction, such invalidity will not affect the other terms and provisions hereof or the application of the provision in question to any other Party or circumstance, all of which will continue in full force and effect.

Section 3.15 Attorneys' Fees. If an action or court proceeding is brought by a Party against the other Party under this Agreement, whether for interpretation, enforcement or otherwise, the prevailing Party in any such action or proceeding shall be entitled to recover attorneys' fees and costs from the other Party.

Section 3.16 Governing Law. This Agreement and the legal relations between the Parties will be governed by, interpreted under, construed and enforced in accordance with, the internal laws of the State of California without reference to the rules governing the conflict of laws. This Agreement is made and entered into in the County of Ventura, California, and any legal actions or proceedings arising from or related to this Agreement will be brought in the County of Ventura.

Section 3.17 Jointly Prepared. This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein will not be interpreted against any of them. Except as expressly limited by this Section, all of the applicable rules of interpretation of contracts will govern the interpretation of any uncertainty or ambiguity of this Agreement.

Section 3.18 Signing Authority. All individuals signing this Agreement for a Party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the City that they have the necessary capacity and City to act for, sign and bind the respective entity or principal on whose behalf they are signing.

Section 3.19 Entire Agreement. This Agreement represents the entire agreement of the Parties hereto and integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements, oral or written, between the Parties with respect to acquisition and development of the Site or the proposed Project.

Section 3.20 Waivers/Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of the Parties. Except as otherwise expressly provided in this Agreement, any failure or delay by any Party in asserting any of its rights or remedies as to any default will not operate as a waiver of said default or of any rights or remedies in connection therewith or of any subsequent default or any rights or remedies in connection therewith, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 3.21 Counterparts. This Agreement may be executed in counterparts, each of which when so executed will be deemed an original, and all of which, when taken together, will constitute but one and the same instrument.

Section 3.22 No Third-Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and Developer and no other person shall have any right or cause of action under or by reason of this Agreement.

Section 3.23 Project Images. Developer hereby consents to use by the City of images of the Project, its models, plans and other graphical representations of the Project and its various elements (“**Project Images**”) in connection with marketing, public relations, and special events, websites, presentations, and other uses required by the City in connection with the Project. Such right to use the Project Images will not be assignable by the City to any other party (including, without limitation, any private party) without Developer’s prior written consent. Use by the City of Project Images, Developer’s name or the names of their affiliates will be subject to prior approval, which will not be unreasonably withheld or delayed. For any Project Images provided to the City by Developer, Developer will use reasonable efforts to obtain any rights and/or consents from any third parties necessary to provide these Project Image use rights.

Section 3.24 Actions By the City. Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the City, the approval, consent, authorization, or waiver of the City Manager or any officer or employee of the City to whom the City Manager or the City Council of the City delegates authority to perform, carry out and/or enforce this Agreement shall constitute the approval, consent, authorization or waiver of the City without further action of the City Council, unless such approval, consent, authorization, or waiver is otherwise required by applicable law to be made by the City Council or the City Manager otherwise determines such approval, consent, authorization, or waiver should be made by the City Council. Unless otherwise specified or the context requires otherwise, all references to the City’s City Manager shall mean the City Manager or his or her designee.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

**“CITY”**

CITY OF THOUSAND OAKS

By: \_\_\_\_\_  
Kevin McNamee, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Laura B. Maguire, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Andrews P. Powers, City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Tracy M. Noonan, City Attorney

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
KANE, BALLMER & BERKMAN  
Susan Apy, City Special Counsel

**“DEVELOPER”**

PEOPLE’S SELF-HELP HOUSING  
CORPORATION, a California nonprofit  
public benefit corporation  
*\*see notes below*

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*\*Notes: In accordance with California Corporations Code Section 313, this document must be executed by the Corporation’s Chief Executive Officer, President or Vice-President, on the one hand, and the Corporations’ Chief Financial Officer, Treasurer, Assistant Treasurer or Secretary on the other hand.*

FIN:430-10\jb\H:\COMMON\Council\2023\Adminstration\Attachment 1 ENA.docx