

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



ITEM
3.16
(ID # 4184)

MEETING DATE:

Tuesday, July 25, 2017

FROM : ECONOMIC DEVELOPMENT AGENCY (EDA):

SUBJECT: ECONOMIC DEVELOPMENT AGENCY (EDA): Approval of First Amendment to Lease and Subordination, Non-Disturbance and Attornment Agreement, Department of Public Social Services, Coachella, 10-year lease, CEQA Exempt, District 4 [\$5,438,201Total] Federal 65.13%, State 28.51%, County DPSS 6.36% (Clerk to File Notice of Exemption)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3);
2. Approve the attached First Amendment to Lease and authorize the Chairman of the Board to execute the same on behalf of the County;
3. Approve the attached Subordination, Non-Disturbance, and Attornment Agreement and authorize the Chairman of the Board to execute the same on behalf of the County; and
4. Direct the Clerk of the Board to file the Notice of Exemption with the County Clerk within 5 days of approval by the Board.

ACTION: Policy, CIP

Robert Field, Assistant County Executive Officer/EDA

6/27/2017

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: July 25, 2017
xc: EDA, Recorder

Kecia Harper-Ihem
Clerk of the Board

By:

Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$0	\$1,985,671	\$ 5,438,201	\$0
NET COUNTY COST	\$0	\$126,289	\$ 345,870	\$0
SOURCE OF FUNDS Federal 65.13%, State 28.51%, County DPSS 6.36%			Budget Adjustment:	No
			For Fiscal Year:	2018/19-2028/29

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Riverside County Board of Supervisors, on behalf of the Department of Public Social Services (DPSS) approved that certain Lease Agreement with CP Coachella DPSS, LLC for the premises at 51-258 Harrison Street, Coachella on February 9, 2016. The terms of the Lease provided that the Lessor would commence construction of a free-standing, two story building with a targeted completion and occupancy date of October 2017. This First Amendment to Lease extends the completion date to November 30, 2018 due primarily to a change in the DPSS project facilities budgets. The First Amendment to Lease also requires that the Developer be responsible for the purchase and installation of furniture, fixtures, and equipment (FF&E).

In addition, Lessor has requested a loan to be secured by a deed-of-trust and Lender has requested execution of the attached Subordination, Non-Disturbance and Attornment Agreement by the County. By execution of these agreements, the County agrees to subordinate its leasehold estate to the liens in favor of the Lender which shall have no effect on prospective rights and obligations of the County or the Lender as set forth in the Lease. In addition, in the event the Lender or its successor becomes the Lessor, the County will recognize (attorn) the Lender or its successor as Lessor and the County's rights and obligations shall remain the same (not disturbed) as set forth in the Lease for the remainder of the Lease term.

After completion, DPSS will have an updated facility with improved processes, providing all temporary assistance programs, including CalWORKs, Food Stamps and Medi-Cal, as well as Welfare-to-Work (GAIN) services to facilitate individuals and families to become self-sufficient. A summary of the lease and changes to the completion date, FF&E responsibility, and SNDA requirement are as follows:

Lessor:	CP Coachella DPSS, LLC c/o Capital Partners Development Co. 2890 Kilgore Road, Suite 115
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**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

Rancho Cordova, CA 95670-6152

Premises Location: 51-258 Harrison Street, Coachella, CA

Size: 52,520 square feet / 4.51 acre portion

Completion Date
Adjustment: From October 2017 to November 2018

FF&E: County to pay Lessor an amount not to exceed \$2,000,000.00 for reimbursement of the actual costs of the Furniture, Fixtures and Equipment.

SNDA: County to execute SNDA to facilitate Developer's project financing.

The proposed discretionary action is an Amendment to an existing ten-year lease agreement requiring the developer to purchase furniture, fixtures, and equipment, extending the completion date and requiring an executed SNDA to be executed by the County. The First Amendment to Lease places full responsibility on the Lessor to comply with and provide full CEQA review with the appropriate lead agency once the actual project and design parameters are established and to submit the necessary CEQA documentation to the lead agency overseeing the approval process.

The Notice of Exemption is included as Attachment A.

The attached First Amendment to Lease and Subordination, Non-Disturbance and Attornment Agreement have been reviewed and approved by County Counsel as to legal form.

Impact on Citizens and Businesses

The construction phase will provide construction jobs through the period of construction and the County's long-term tenancy in this region will benefit the region as a whole by providing an important and positive economic impact for both citizens and local business through the creation of jobs and sales tax revenue.

SUPPLEMENTAL:
Additional Fiscal Information

See attached Exhibits A, B, & C.

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

DPSS will budget these costs in FY2018/19 thru FY 2028/29 and will reimburse the Economic Development Agency for all lease costs on a monthly basis. No budget adjustment is necessary at this time.

Contract History and Price Reasonableness

The FF&E budget is deemed competitive based on comparable transactions.

The attached Subordination, Non-Disturbance and Attornment Agreement supports the original lease and does not require modification of the financial terms of the contract.

Attachments:

Exhibits A, B & C


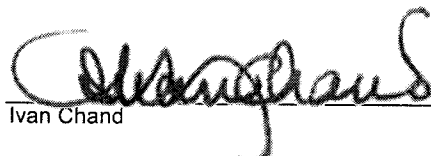
Amendment

Subordination, Non-Disturbance and Attornment Agreement

Notice of Exemption

RF:JWW:VC:VY:YK:ra CO013 18.904 13563

MinuteTrak: 4184

 _____ Rohini Dasika, Principal Management Analyst	7/17/2017	 _____ Ivan Chand	7/17/2017
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 _____ Gregory L. Priamos, Director County Counsel	6/27/2017
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Exhibit A

FY 2017/18 DPSS Lease Cost Analysis Harrison St, Coachella

ESTIMATED AMOUNTS

Total Square Footage to be Leased:

Current Office: - SQFT

Approximate Cost per SQFT July-Jun \$ -

Lease Cost per Month (July - June) \$ -

Total Lease Cost July-Jun 0.00

Total Estimated Lease Cost for FY 2017/18 \$ -

Estimated Additional Costs:

TOTAL ESTIMATED COST FOR FY 2017/18 \$ -

Amount Previously approved in Lease Agreement \$ 3,193,285.39

Amount of FY for 1st Amendment \$ (3,193,285.39)

Amount of FY17/18 \$ -

TOTAL COUNTY COST 6.36% - 1st Amendment \$ -

Exhibit B

FY 2018/19 DPSS Lease Cost Analysis Harrison St, Coachella

ESTIMATED AMOUNTS

Total Square Footage to be Leased:

Current Office:	52,520 SQFT	
Approximate Cost per SQFT (Nov-Jun)		\$ 2.14
Lease Cost per Month (Nov - Jun)		\$ 112,392.80
Total Lease Cost (July-Oct)		0.00
Total Lease Cost (Nov-Jun)		\$ 899,142.40
Total Estimated Lease Cost for FY 2018/19		\$ 899,142.40

Estimated Additional Costs:

Utility Cost per Square Foot	0.12	
Estimated Utility Costs per Month (July-Oct)	\$ -	
Estimated Utility Costs per Month (Nov-June)	\$ 6,302.40	
TOTAL Estimated Utility Costs		\$ 50,419.20
RCIT		\$ 440,000.00
Tenant Improvements		\$ 1,222,989.33
TOTAL Furniture, Fixtures and Equipment		\$ 2,000,000.00
EDA Lease Management Fee - 4.92%		\$ 202,808.88
TOTAL ESTIMATED COST FOR FY 2018/19		\$ 4,815,359.81
Amount Previously approved in Lease Agreement		\$ 2,829,688.48
Amount of FY for 1st Amendment		\$ 1,985,671.33
Amount of FY18/19		\$ 1,985,671.33
TOTAL COUNTY COST 6.36% - 1st Amendment		\$ 126,288.70

Exhibit C

FY 2019/20 to FY 2028/29

DPSS Lease Cost Analysis

Harrison St, Coachella

ESTIMATED AMOUNTS

	FY 2019/20	FY 2020/21	FY2021/22- FY2028/29
<u>Total Square Footage to be Leased:</u>			
Current Office:	52,520	52,520	52,520
Approximate Cost per SQFT (July-Oct)	\$ 2.14	\$ 2.14	
Approximate Cost per SQFT (Nov-June)	\$ 2.14	\$ 2.14	
Lease Cost per Month (July-Oct)	\$ 112,392.80	\$ 112,392.80	
Lease Cost per Month (Nov-June)	\$ 112,392.80	\$ 112,392.80	
Total Lease Cost (July - Oct)	449,571.20	449,571.20	\$ 3,933,748.00
Total Lease Cost (Nov - June)	\$ 899,142.40	\$ 899,142.40	\$ 6,968,353.60
Total Estimated Lease Cost for FY 2019/20 to FY 2028/29	\$ 1,348,713.60	\$ 1,348,713.60	\$ 10,902,101.60
<u>Estimated Additional Costs:</u>			
Utility Cost per Square Foot	\$ 0.12	\$ 0.12	
Estimated Utility Costs per Month	\$ 6,302.40	\$ 6,302.40	
Total Estimated Utility Cost	\$ 75,628.80	\$ 75,628.80	\$ 554,611.20
Tenant Improvements	\$ 1,296,368.69	\$ 1,296,368.69	\$ -
EDA Lease Management Fee - 4.92%	\$ 130,138.05	\$ 130,138.05	\$ 536,383.40
TOTAL ESTIMATED COST FOR FY 2019/20 to FY 2028/29	\$ 2,850,849.14	\$ 2,850,849.14	\$ 11,993,096.20
Amount Previously approved in Lease Agreement	\$ 2,829,688.48	\$ 1,479,909.40	\$ 9,932,666.85
Amount of FY for 1st Amendment	\$ 21,160.66	\$ 1,370,939.74	\$ 2,060,429.35
TOTAL COUNTY COST 6.36% - 1st Amendment	\$ 1,345.82	\$ 87,191.77	\$ 131,043.31
F11: Cost - Total Cost	\$ 5,438,201.07		
F11: Net County Cost - Total Cost	\$ 345,869.59		



Original Negative Declaration/Notice of
Determination was routed to County
Clerks for posting on.

7/26/17
Date

bb
Initial

NOTICE OF EXEMPTION

June 29, 2017

Project Name: Approval of First Amendment to Lease and Subordination, Non-Disturbance and Attornment Agreement for the Riverside County Department of Public Social Services (DPSS), located in Coachella, County of Riverside, California

Project Number: FM042165001300

Project Location: 51258 Harrison Street, West of Highway 111, Coachella, California; Assessor's Parcel Number (APN) 778-080-006 (See attached exhibit)

Description of Project: The County of Riverside (County) Board of Supervisors, on behalf of the Department of Public Social Services (DPSS), has been under a Board approved certain Lease Agreement with CP Coachella DPSS, LLC for the premises at 51-258 Harrison Street, Coachella since on February 9, 2016. The terms of the Lease provided that the Lessor would commence construction of a free-standing, two-story building with a targeted completion and occupancy date of October 2017. This First Amendment to Lease extends the completion date to November 30, 2018 due primarily to a change in the DPSS project facilities budgets. The First Amendment to Lease also requires that the Developer be responsible for the purchase and installation of furniture, fixtures, and equipment.

In addition, Lessor has requested a loan to be secured by a deed-of-trust and Lender has requested execution of the attached Subordination, Non-Disturbance and Attornment Agreement by the County. By execution of these agreements, the County agrees to subordinate its leasehold estate to the liens in favor of the Lender which shall have no effect on prospective rights and obligations of the County or the Lender as set forth in the Lease. In addition, in the event the Lender or its successor becomes the Lessor, the County will recognize (attorn) the Lender or its successor as Lessor and the County's rights and obligations shall remain the same (not disturbed) as set forth in the Lease for the remainder of the Lease term. The proposed discretionary to amend the existing ten-year lease agreement is defined as the proposed project under the California Environmental Quality Act (CEQA). The First Amendment requires the developer to purchase furniture, fixtures, and equipment, extends the completion date and requires an executed SNDA to be executed by the County. The First Amendment to Lease places full responsibility on the Lessor to comply with and provide full CEQA review with the appropriate lead agency once the actual project and design parameters are established and to submit the necessary CEQA documentation to the lead agency overseeing the approval process.

Name of Public Agency Approving Project: County of Riverside, Economic Development Agency

Name of Person or Agency Carrying Out Project: County of Riverside, Economic Development Agency; CP Coachella DPSS, LLC

Exempt Status: State CEQA Guidelines Section 15061(b) (3), General Rule or "Common Sense" Exemption. Codified under California Code of Regulations Title 14, Article 5, Section 15061.

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P.O. Box 1180 • Riverside, California • 92502 • T: 951.955.8916 • F: 951.955.8686

www.rivcoeda.org

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Redevelopment Agency
Workforce Development

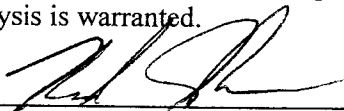
Reasons Why Project is Exempt: The discretionary action to extend the completion date, require the developer to purchase furniture, fixtures, and equipment, and the execution of a SNDA is exempt from the requirements of CEQA as it would not result in direct impacts to the physical environment or reasonably foreseeable indirect effects. The amendment to the lease would have no direct physical effect on the environment as the agreement consists only of an extension of term, and a refinement of fiscal and legal responsibilities regarding the execution of the contract and does not include any changes to the existing land use or a physical disruption of the property.

- **Section 15061 (b) (3) – “Common Sense” Exemption:** In accordance with CEQA, the use of the Common Sense Exemption is based on the “general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.” State CEQA Guidelines, Section 15061(b) (3). The use of this exemption is appropriate if “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” *Ibid*. This determination is an issue of fact and if sufficient evidence exists in the record that the activity cannot have a significant effect on the environment, then the exemption applies and no further evaluation under CEQA is required. See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68. The ruling in this case stated that if a project falls within a category exempt by administrative regulation or 'it can be seen with certainty that the activity in question will not have a significant effect on the environment', no further agency evaluation is required. With certainty, there is no possibility that the Project may have a significant effect on the environment. The direct effects of the proposed First Amendment to the Lease Agreement is limited to the extension of an existing lease agreement with revisions in contractual obligations.

The potential indirect effects from the action to develop a build to suit facility were previously addressed in a Notice of Exemption approved by the Board on February 9, 2016. The Lessor, as required by terms of that previous agreement, would be required to provide CEQA review and analyze the effects of all of the discretionary actions involved in the development of the future site for the Coachella DPSS facility. This proposed lease extension and assignment of contractual obligations will not result in any direct or indirect physical environmental impacts. In no way, would the Project as proposed have the potential to cause a significant environmental impact and the Project is exempt from further CEQA analysis.

Based upon the identified exemption above, the County of Riverside, Economic Development Agency hereby concludes that no physical environmental impacts are anticipated to occur and the project as proposed is exempt under CEQA. No further environmental analysis is warranted.

Signed: _____



Date: _____

6/29/17

Mike Sullivan, Senior Environmental Planner
County of Riverside, Economic Development Agency

RIVERSIDE COUNTY CLERK & RECORDER

**AUTHORIZATION
TO BILL
BY JOURNAL VOUCHER**

Project Name: DPSS First Amendment to Lease Agreement, Coachella

Accounting String: 524830-47220-7200400000 - FM042165001300

DATE: June 29, 2017

AGENCY: Riverside County Economic Development Agency

THIS AUTHORIZES THE COUNTY CLERK & RECORDER TO BILL FOR FILING AND HANDLING FEES FOR THE ACCOMPANYING DOCUMENT(S).

NUMBER OF DOCUMENTS INCLUDED: One (1)

AUTHORIZED BY: Mike Sullivan, Senior Environmental Planner, Economic Development Agency

Signature: 

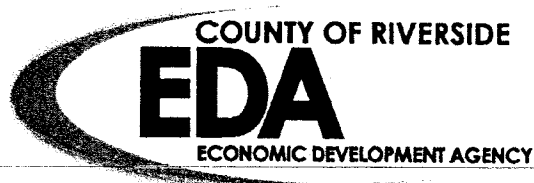
PRESENTED BY: Yolanda King, Real Property Agent, Economic Development Agency

-TO BE FILLED IN BY COUNTY CLERK-

ACCEPTED BY: -

DATE: -

RECEIPT # (S) -



Date: June 29, 2017

To: Mary Ann Meyer, Office of the County Clerk

From: Mike Sullivan, Senior Environmental Planner, Project Management Office

Subject: **County of Riverside Economic Development Agency Project # FM042165001300**
DPSS First Amendment to Lease Agreement, Coachella

The Riverside County's Economic Development Agency's Project Management Office is requesting that you post the attached Notice of Exemption. Attached you will find an authorization to bill by journal voucher for your posting fee.

After posting, please return the document to:

Mail Stop #1330

Attention: Mike Sullivan, Senior Environmental Planner,

Economic Development Agency,

3403 10th Street, Suite 400, Riverside, CA 92501

If you have any questions, please contact Mike Sullivan at 955-8009.

Attachment

cc: file

1 **FIRST AMENDMENT TO LEASE**

2 (Department of Public Social Services,
3 51258 Harrison St. Coachella, CA 92236)
4

5 This **FIRST AMENDMENT TO LEASE** ("First Amendment") is made as of
6 July 25, 2017, by and between the **COUNTY OF RIVERSIDE**, a political
7 subdivision of the State of California ("County"), as Lessee, and **CP COACHELLA**
8 **DPSS, LLC**, a California limited partnership ("Lessor") and, sometimes collectively
9 referred to as the "Parties".

10 **RECITALS**

11 **A.** Lessor and County entered into that certain Lease dated February 9,
12 2016, ("Lease") pursuant to which Lessor has agreed to lease to County and County
13 has agreed to lease from Lessor that certain building to be constructed and located at
14 51258 Harrison St., Coachella, California, as more particularly described in the Original
15 Lease.

16 **B.** The Lease, together with this First Amendment is collectively referred to
17 hereinafter as the "Lease".

18 **C.** County and Lessor desire to further amend the Lease by revising the
19 premises description, extending the delivery of premises period and including
20 additional improvements by Lessor.

21 **NOW, THEREFORE**, for good and valuable consideration the receipt and
22 adequacy of which is hereby acknowledged, the Parties agree as follows:

23 **1. Premises.**

24 Section 2.2 of the Lease is hereby deleted and replaced with the
25 following: Section 2.2 Defined. The Premises shall consist of that certain real
26 property, including all improvements thereon or to be provided by Lessor under the
27 terms of this Lease, and identified as the easterly approximately 4.51 acre portion of
28 Assessor's Parcel Number 778-080-006, located in the City of Coachella, County of

JUL 25 2017 3:16

1 Riverside, State of California, generally described as a free-standing, two-story building
2 consisting of approximately 52,520 square feet with approximately 312 parking spaces
3 allocated as unreserved and secured, all as shown on the attached Exhibit "A." It is
4 understood that the Premises includes all appurtenances and easements thereto and
5 the non-exclusive right of ingress and egress at all times to and from the public streets
6 and highways for County, its employees and invitees.

7 **2. Delay in Delivery of Premises.**

8 Section 4.3 of the Lease is hereby deleted and replaced with the
9 following:

10 The Delay in Delivery of Premises shall be amended from 605 days (20
11 months) to 945 days (31 months) September 30, 2018. With respect to the options
12 referenced in this section, they shall be amended as follows:

13 a. If the Original Term of this Lease has not commenced by the
14 Inside Date, (the "Inside Date" as defined in Section 2(c) below), County may, at its
15 sole option, deduct from any rents that may become due hereunder the sum of one
16 day's rent (based on 1/30th of the initial month's rent to be paid including expenses) for
17 each day the Premises are not substantially complete and available for occupancy as
18 per Section 6.2 of Exhibit "B" to the lease, , as liquidated damages for failure of Lessor
19 to provide occupancy in a timely manner as prescribed hereunder; or

20 b. If the Original Term of this Lease has not commenced by the
21 Outside Date (the "Outside Date" as defined in Section 2(c) below), County may, at its
22 sole option, cancel this lease and Lessor hereby waives any and all rights that it may
23 have against County for any costs, expenses, and/or charges that Lessor may have
24 incurred as a result of preparing the Premises for occupancy. Added to each of the
25 above time periods shall be any days the County delays the completion of the project
26 counted from the Effective Date of this First Amendment.

27 c. For purposes of this First Amendment, the Inside Date shall be
28 November 30, 2018 and the Outside Date shall be January 31, 2018.

1 **3. Leasehold Improvement Funds and Reimbursement**

2 Section 5.3 the language in Section 5.3 of the Lease is hereby deleted and
3 the following language substituted:

4 5.3 Leasehold Improvement Funds; Furniture, Fixtures, and Equipment
5 Funds; and Reimbursement. As part of the Lease, an amount of \$69.89 per square foot
6 or \$3,670,922,00 including a County contingency amount of \$250,000, for County
7 change orders, shall be provided by Lessor to be used to pay for design and
8 construction of County's Leasehold Improvements (the "LI Funds"). The LI Funds
9 amount is to be reimbursed according to the formula outline in Section 9 of Exhibit "B,"
10 to this lease, the Leasehold Improvement Agreement. In addition, Lessor shall procure
11 and purchase and install for County, certain Furniture, Fixtures, and Equipment, and
12 County shall reimburse Lessor for the cost. The scope of work and reimbursement
13 terms are set forth in Section 11 of Exhibit "B" to this lease.

14 **4. Effective Date.**

15 The Lease shall be deemed binding and effective on February 9, 2016, the date
16 on which it was approved and executed by the Chairman of the Board of Supervisors.

17 **5. Exhibit "B".**

18 The following new language is added to Exhibit "B" and established as a new
19 Section 11:

20 SECTION 11 PROCURMENT OF FURNITURE, FIXTURES AND EQUIPMENT
21 BY LESSOR AND REIMBURSEMENT BY COUNTY. In addition to the construction of
22 the Leasehold Improvements, Lessor shall procure, purchase, and install certain
23 Furniture, Fixtures, and Equipment in the leased premises.

24 County shall pay to Lessor an amount not to exceed \$2,000,000.00 for
25 reimbursement for the actual costs of the Furniture, Fixtures, and Equipment ("FF&E
26 Costs") made by Lessor. In no event shall Lessor be reimbursed for an amount in
27 excess of actual FF&E costs.

1 Lessor shall procure a furniture vendor for the purchase and installation of the
2 FF&E. Included in the FF&E costs is a Management Fee of 3.5% to be paid by County
3 to Lessor. In the event any FF&E vendor requests a deposit to be provided by Lessor
4 to be held in connection with an FF&E purchase and installation, County shall reimburse
5 Lessor for interest in the amount of six (6%) percent per annum for the time period said
6 deposit is held by Lessor, which is included in the FF&E cost. Upon obtaining the
7 pricing for the FF&E the complete specifications and cost breakdown shall be attached
8 to this lease agreement and made a part of this Exhibit "B." County reserves the right to
9 review and approve the furniture bid package. Upon Substantial Completion of the
10 Leasehold Improvements, Lessor shall install the FF&E. Upon completion of the FF&E
11 installation and approval of said installation by County, Lessor shall submit an invoice
12 for the actual cost of the FF&E and County shall pay to Lessor the actual cost of the
13 FF&E within thirty (30) days of receipt of Lessors invoice.

14 **6. First Amendment to Prevail.** The provisions of this First Amendment
15 shall prevail over any inconsistency or conflicting provisions of the Lease, and shall
16 supplement the remaining provisions thereof. Unless defined herein or the context
17 requires otherwise, all capitalized terms herein shall have the meaning defined in the
18 Lease.

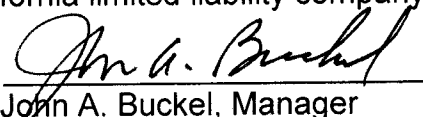
19 **7. Miscellaneous.** Except as amended or modified herein, all the terms of
20 the Lease shall remain in full force and effect and shall apply with the same force and
21 effect. If any provisions of this Amendment or the Lease shall be determined to be
22 illegal or unenforceable, such determination shall not affect any other provision of the
23 Lease and all such other provisions shall remain in full force and effect. The language
24 in all parts of the Lease shall be construed according to its normal and usual meaning
25 and not strictly for or against either Lessor or Lessee. Neither this Amendment, nor the
26 Lease, nor any notice nor memorandum regarding the terms hereof, shall be recorded
27 by Lessee.

1 **8. Effective Date.** This First Amendment to Lease shall not be binding or effective
2 until its approval by the County's Board of Supervisors and fully executed by the
3 Parties, which date shall be deemed to be July 25, 2017.

4 LESSEE:
5 COUNTY OF RIVERSIDE

6 By: 
7 John Favaglione, Chairman,
8 Board of Supervisors

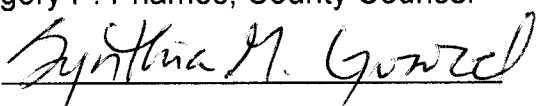
LESSOR:
CP COACHELLA DPSS, LLC, a
California limited liability company

By: 
John A. Buckel, Manager

9
10 ATTEST:
11 Kecia Harper-Ihem
12 Clerk of the Board

13 By: 
14 Deputy

15
16
17
18
19
20 APPROVED AS TO FORM:
21 Gregory P. Priamos, County Counsel

22 By: 
23 Synthia M. Gunzel
24 Supervising Deputy County Counsel

25
26
27
28 YK:ra/041317/CO013/18.867

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

RECORDED AND REQUEST OF AND WHEN
RECORDED RETURN TO

Wells Fargo Bank, National Association
1512 Eureka Road
3rd Floor, Suite 350
Roseville, CA 95661-3070
Loan No. 1015443

Attention: Jackie DeSimone

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENMENT AGREEMENT

This Subordination, Non-disturbance, and Attornment Agreement ("**Agreement**") is made as of July 25, 2017 between Wells Fargo Bank, National Association ("**Lender**"), having its address at 1512 Eureka Road, 3rd Floor, Suite 350, Roseville, California 95661, and the County of Riverside ("**County**"), by its authorized representative the Assistant County Executive Officer/EDA having its address at 3403 Tenth Street, Suite 400, Riverside, California 92501.

Recitals:

A. Lender has agreed to make a loan to CP Coachella DPSS, LLC, a California limited liability company ("**Lessor**"), to be secured by that certain: (i) Leasehold Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of _____, 2017, executed by Lessor, as trustor, in favor of American Securities Company, a California corporation, as trustee, for the benefit of Lender, as beneficiary, and recorded on _____, 2017, as Instrument No. _____, in the Official Records of Riverside County, California, and (ii) Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of _____, 2017, executed by R. B. Johnson Investments, LLC, a California limited liability company, as trustor ("**Fee Owner**"), in favor of American Securities Company, a California corporation, as trustee, for the benefit of Lender, as beneficiary, and recorded on _____, 2017, as Instrument No. _____, in the Official Records of Riverside County, California (collectively, together with all amendments, increases, renewals, modifications, consolidations, replacements, substitutions, and extensions thereto, either current or future, referred to hereafter as the "**Mortgage**") encumbering the interest of Lessor and Fee Owner in real property located in Riverside County, State of California. The legal description of the encumbered real property (the "**Mortgage Premises**") is set forth in Exhibit A, attached to this Agreement. The Mortgage, together with the promissory note or notes, the loan agreement(s), and other documents executed in connection with it are hereafter collectively referred to as the "Loan Documents".

B. On February 9, 2016, County and Lessor entered into a lease for the Mortgage Premises (as amended, the "**Lease**"). The Lease creates a leasehold estate in favor of County for space (the "**Premises**") on the Mortgage Premises.

To confirm their understanding concerning the legal effect of the Mortgage and the Lease, in consideration of the mutual covenants and agreements contained in this Agreement and other valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and County, intending to be legally bound, agree and covenant as follows:

1. **Representations and Warranties.** County warrants and represents that the Lease is in full force and effect and that, as of the date of this Agreement and to the best of County's knowledge, there is no default under the Lease by Lessor or County.

2. **County Subordination.**

2.1 Subject to the provisions of Section 3, the Loan Documents shall constitute a lien or charge on the Mortgage Premises that is prior and superior to the Lease, to the leasehold estate created by it, and to all rights and privileges of County under it; by this Agreement, the Lease, the leasehold estate created by it, together with all rights and privileges of County under it, is subordinated, at all times, to the lien or charge of the Loan Documents in favor of Lender.

2.2 By executing this Agreement, County subordinates the Lease and County's interest under it to the lien right and security title, and terms of the Loan Documents, and to all advances or payments made, or to be made, under any Loan Document.

3. **Non-disturbance.**

3.1 Lender consents to the Lease.

3.2 Despite County's subordination under Section 2, and for so long as there shall then exist no breach, default, or event of default on the part of County under the Lease beyond any applicable notice or grace periods, County's peaceful and quiet possession of the Premises shall not be disturbed and County's rights and privileges under the Lease, including, its right to extend the term of the Lease, its right of first refusal to lease the property after expiration of the original term and any extensions thereof, shall not be diminished by Lender's exercise of its rights or remedies under the Loan Documents.

3.3 If (a) Lender, or any other party other than Lender (collectively, a "Transferee") shall acquire title to, and possession of, the Premises on foreclosure of the Mortgage in an action in which Lender shall have been required to name County as a party defendant, by deed in lieu of foreclosure, or otherwise, and (b) County is not in default under the Lease beyond any applicable cure or grace periods, has not canceled or terminated the Lease, nor surrendered, vacated or abandoned the Premises and remains in actual possession of the Premises at the time Transferee shall so acquire title to, and possession of, the Premises, and if requested by Transferee, Transferee and County shall enter into a new lease on the same terms and conditions as were contained in the Lease, except that:

(a) The obligations and liabilities of Transferee under a new lease shall be subject to the terms and conditions of this Agreement (including the provisions of Sections 5-7);

(b) Transferee shall have no obligations or liabilities to County under any such new lease beyond those of Lessor as were contained in the Lease; and

(c) The expiration date of any new lease shall coincide with the original expiration date of the Lease.

3.4 County shall not be named or joined in any foreclosure, trustee's sale, or other proceeding to enforce the Loan Documents unless such joinder shall be legally required to perfect the foreclosure, trustee's sale, or other proceeding.

4. **Attornment.**

4.1 If Transferee shall succeed to Lessor's interest in the Mortgage Premises by foreclosure of the Mortgage, by deed in lieu of foreclosure, or in any other manner, County shall be bound to Transferee under all the terms, covenants and conditions of the Lease for the balance of its term thereof with the same force and effect as if Transferee were the Lessor under the Lease. County shall be deemed to have full and complete attornment to and to have established direct privity between County and:

- (a) Transferee when in possession of the Mortgage Premises;
- (b) A receiver appointed in any action or proceeding to foreclose the Mortgage;
- (c) Any party acquiring title to the Mortgage Premises; or
- (d) Any successor to Lessor.

4.2 County's attornment is self-operating, and it shall continue to be effective without execution of any further instrument by any of the parties to this Agreement or the Lease immediately upon Transferee succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessor, which Lender also agrees to give County. The terms of the Lease are incorporated into this Agreement by reference

4.3 In consideration of, and as condition precedent to, County's agreement to attorn to any such Transferee, subject to the terms and conditions of this Agreement, Transferee shall be deemed to have assumed all terms, covenants, and conditions of the Lease to be observed or performed by Lessor from the date on which the Transferee succeeds to Lessor's interests under the Lease.

5. **Transferee as Lessor.** If Transferee shall succeed to the interest of Lessor under the Lease, Transferee shall be bound to County under all the terms, covenants and conditions of the Lease, and County shall, from the date of Transferee's succession to the Lessor's interest under the Lease, have the same remedies against Transferee for breach of the Lease that County would have had under the Lease against Lessor; provided, however, that despite anything to the contrary in this Agreement or the Lease, Transferee, as successor to the Lessor's interest, shall:

(a) Be liable for any act or omission of the Lessor of which Lender had notice prior to foreclosure or deed in lieu thereof, and failed to cure within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Mortgagor, and which related to the repair or maintenance of the Premises; provided that the Transferee may elect either to perform the pre-existing obligation or to permit the County to perform it and to recover the cost out of Rent;

(b) Not be subject to any offsets or defenses expressly permitted under the Lease, including abatement rights which County might have had against Lessor;

(c) Not be bound by any rent or additional rent that County might have paid for more than one month in advance to Lessor; or

(d) Not be bound by (i) any termination or cancellation of the Lease (in whole or in part), or (ii) any amendment or modification of the Lease which (A) reduces the fixed rent payable by County, (B) reduces the term of the Lease, or (C) materially increases Lessor's obligations under the Lease, in the case of (i) or (ii) which is made without Lender's written consent.

(e) Be subject to the County's right to assert continuing claims, such as material interference with the County's use and enjoyment of the premises, against the Lender.

(f) Upon any further transfer of Lessor's interest by Transferee, be relieved of all obligations under the lease as Lessor and such obligations shall terminate as to Transferee.

6. **Right to Cure.** County agrees that, before County exercises any of its rights or remedies under the Lease, Lender shall have the right, but not the obligation, to cure the default within the same time given Lessor in the lease to cure the default, plus an additional thirty (30) days or ten (10) days in the case of defaults in the payment of money from Lessor to County. County agrees that the cure period shall be extended by the time necessary for Lender to commence foreclosure proceedings and to obtain possession of the Mortgage Premises, provided that:

(a) Lender shall notify County of Lender's intent to effect its remedy;

(b) Lender initiates immediate steps to foreclose on or to recover possession of the Mortgage Premises;

(c) Lender initiates immediate legal proceedings to appoint a receiver for the Mortgage Premises or to foreclose on or recover possession of the Mortgage Premises within the thirty (30) day period; and

(d) Lender prosecutes such proceedings and remedies with due diligence and continuity to completion.

7. **Assignment of Rents.** If Lessor defaults in its performance of the terms of the Loan Documents, County agrees to recognize the assignment of rents under the Mortgage made by Lessor to Lender and shall pay to Lender, as assignee, from the time Lender gives County notice that Lessor is in default under the terms of the Loan Documents, the rents under the Lease, but only those rents that are due or that become due under the terms of the Lease after notice by Lender. Payments of rents to Lender by County under the assignment of rents and Lessor's default shall continue until the first of the following occurs:

(a) No further rent is due or payable under the Lease;

(b) Lender gives County notice that the Lessor's default under the Loan Documents has been cured and instructs County that the rents shall thereafter be payable to Lessor;

(c) The lien of the Mortgage has been foreclosed and the purchaser at the foreclosure sale (whether Lender or a Transferee) gives County notice of the foreclosure sale. On giving notice, the purchaser shall succeed to Lessor's interests under the Lease, after which time the rents and other benefits due Lessor under the Lease shall be payable to the purchaser as the owner of the Mortgage Premises.

8. **County's Reliance.** When complying with the provisions of Section 7, County shall be entitled to rely on the notices given by Lender under Section 7, and Lessor agrees to release, relieve, and protect County from and against any and all loss, claim, damage, or liability (including reasonable attorney's fees) arising out of County's compliance with such notice.

County shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with Section 7 to the same extent as if such rents were paid directly to Lessor. Any dispute

between Lender (or Lender's Transferee) and Lessor as to the existence of a default by Lessor under the terms of the Mortgage, the extent or nature of such default, or Lender's right to foreclosure of the Mortgage, shall be dealt with and adjusted solely between Lender (or Transferee) and Lessor, and County shall not be made a party to any such dispute (unless required by law).

9. **Lender's Status.** Nothing in this Agreement shall be construed to be an agreement by Lender to perform any covenant of the Lessor under the Lease unless and until it obtains title to the Mortgage Premises by power of sale, judicial foreclosure, or deed in lieu of foreclosure, or obtains possession of the Mortgage Premises under the terms of the Loan Documents.

10. **Cancellation of Lease.** County agrees that it will not cancel, terminate, or surrender the Lease, except at the normal expiration of the Lease term or as provided in the Lease.

11. **Special Covenants.** Despite anything in this Agreement or the Lease to the contrary, if Lender acquires title to the Mortgage Premises, County agrees that: Lender shall have the right at any time in connection with the sale or other transfer of the Mortgage Premises to assign the Lease or Lender's rights under it to any person or entity, and that Lender, its officers, directors, shareholders, agents, and employees shall be released from any further liability under the Lease arising after the date of such transfer, provided that the assignee of Lender's interest assumes Lender's obligations under the Lease, in writing, from the date of such transfer.

12. **Transferee's Liability (Non-Recourse).** If a Transferee acquires title to the Mortgage Premises:

(a) County's recourse against Transferee for default under the Lease shall be limited to the Mortgage Premises or any sale, insurance, or condemnation proceeds from the Mortgage Premises;

(b) County shall look exclusively to Transferee's interests described in (a) above for the payment and discharge of any obligations imposed on Transferee under this Agreement or the Lease; and

(i) Transferee, its officers, directors, shareholders, agents, and employees are released and relieved of any personal liability under the Lease;

(ii) County shall look solely to the interests of Transferee set forth in (a) above, and

(iii) County shall not collect or attempt to collect any judgment out of any other assets or from any general or limited partners or shareholders of Transferee.

13. **Transferee's Performance Obligations.** Subject to the limitations provided in Sections 11 and 12, if a Transferee acquires title to the Mortgage Premises, the Transferee shall perform and recognize all County improvement allowance provisions, all rent-free and rent rebate provisions, and all options and rights of offer, in addition to Lessor's other obligations under the Lease.

14. **Notice.** All notices required by this Agreement shall be given in writing and shall be deemed to have been duly given for all purposes when:

(a) Deposited in the United States mail (by registered or certified mail, return receipt requested, postage prepaid); or

(b) Deposited with a nationally recognized overnight delivery service such as Federal Express or Airborne.

Each notice must be directed to the party to receive it at its address stated below or at such other address as may be substituted by notice given as provided in this section.

The addresses for notification are:

Lender:

Wells Fargo Bank, National Association
1512 Eureka Road
3rd Floor, Suite 350
Roseville, CA 95661-3070
Loan No. 1015443
Attention: Nathan E. Baker

County:

Economic Development Agency
3403 Tenth Street, Suite 400
Riverside, CA 92501
Attention: Deputy Director of Real Estate

Copies of notices sent to the parties' attorneys or other parties are courtesy copies, and failure to provide such copies shall not affect the effectiveness of a notice given hereunder.

15. Miscellaneous Provisions.

15.1 This Agreement may not be modified orally; it may be modified only by an agreement in writing signed by the parties or their successors-in-interest. This Agreement shall inure to the benefit of and bind the parties and their successors and assignees.

15.2 The captions contained in this Agreement are for convenience only and in no way limit or alter the terms and conditions of the Agreement.

15.3 This Agreement has been executed under and shall be construed, governed, and enforced, in accordance with the laws of the State of California except to the extent that California law is preempted by the U.S. federal law. The invalidity or unenforceability of one or more provisions of this Agreement does not affect the validity or enforceability of any other provisions.

15.4 This Agreement has been executed in duplicate. Lender and County agree that one (1) copy of the Agreement will be recorded.

15.5 This Agreement shall be the entire and only agreement concerning subordination of the Lease and the leasehold estate created by it, together with all rights and privileges of County under it, to the lien or charge of the Loan Documents and shall supersede and cancel, to the extent that it would affect priority between the Lease and the Loan Documents, any previous subordination agreements,

including provisions, if any, contained in the Lease that provide for the subordination of the Lease and the leasehold estate created by it to a deed of trust or mortgage. This Agreement supersedes any inconsistent provision of the Lease.

15.6 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which copies, taken together, shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the copies and attached to a single copy of this Agreement to physically form one original document, which may be recorded without an attached copy of the Lease.

15.7 If any legal action or proceeding is commenced to interpret or enforce the terms of this Agreement or obligations arising out of it, or to recover damages for the breach of the Agreement, the party prevailing in such action or proceeding shall be entitled to recover from the non-prevailing party or parties all reasonable attorneys' fees, costs, and expenses it has incurred.

15.8 Word Usage. Unless the context clearly requires otherwise, (a) the plural and singular numbers will each be deemed to include the other; (b) the masculine, feminine, and neuter genders will each be deemed to include the others; (c) "shall," "will," "must," "agrees," and "covenants" are each mandatory; (d) "may" is permissive; (e) "or" is not exclusive; and (f) "includes" and "including" are not limiting.

Executed on the date first above written.

[SIGNATURE PAGE FOLLOWS]

County:

COUNTY OF RIVERSIDE

By: 

John Tavaaglione, Chairman
Board of Supervisors

Lender:

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____

Nathan E. Baker
Its: Senior Vice President

ATTEST:

Kecia Harper-Ihem
Clerk of the Board

By: 

Deputy

APPROVED AS TO FORM:

Gregory P. Priamos,
County Counsel

By: 

Synthia M. Gunzel
Supervising Deputy County Counsel

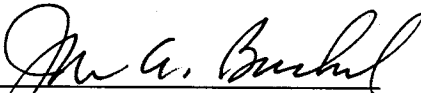
Accepted and Agreed To:

Lessor:

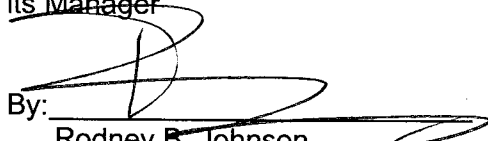
CP COACHELLA DPSS, LLC,
a California limited liability company

By: CAPITAL PARTNERS DEVELOPMENT
COMPANY, LLC, a California limited
liability company
Its: Manager

By: BUCKEL INVESTMENTS, LLC,
a Delaware limited liability company
its Manager

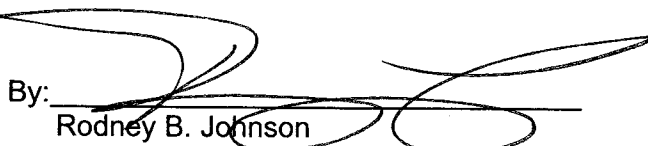
By: 
John A. Buckel
Its: Managing Member

By: R. B. JOHNSON INVESTMENTS, LLC,
a California limited liability company
its Manager

By: 
Rodney B. Johnson
Its: Manager

Fee Owner:

R. B. JOHNSON INVESTMENTS, LLC,
a California limited liability company

By: 
Rodney B. Johnson
Its: Manager

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF Sacramento)

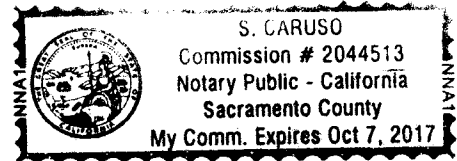
On July 11, 2017 before me, S. Caruso, a notary public, personally appeared Rodney B. Johnson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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 S. Caruso

My commission expires 10-7-2017



STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2017 before me, _____, a notary public, personally appeared Marion Ashley, Chairman of the Board of Supervisors, 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 _____

My commission expires _____

Exhibit A: Legal description of Mortgage Premises

All that certain real property located in the City of Coachella, County of Riverside, State of California, described as follows: