

**SUBMITTAL TO THE BOARD OF COMMISSIONERS  
HOUSING AUTHORITY  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 10.3  
(ID # 17767)

**MEETING DATE:**

Tuesday, January 11, 2022

**FROM :** HOUSING AUTHORITY:

**SUBJECT:** HOUSING AUTHORITY: Public Hearing for Adoption of (i) Resolution Number 2022-001, A Resolution of the Board of Commissioners of the Housing Authority of the County of Riverside ("HACR") Finding That Certain Real Property Located in the City of Palm Springs, County of Riverside, State of California, Identified as APN 507-100-044 is "Exempt Surplus Land" Under the California Surplus Land Act, and (ii) A Resolution of the Board of Commissioners of the Housing Authority of the County of Riverside ("HACR") Authorizing the Disposition of Fee Simple Interest in Certain Exempt Surplus Land Located in the City of Palm Springs, County of Riverside, State of California, Identified as APN 507-100-044 by One or More Grant Deed(s) to Desert Aids Project (DAP) in Exchange for and in Consideration of the Recordation of Affordability Covenants on an Adjacent Parcel and Approving a Disposition and Development Agreement Between the HACR and DAP Effecting Such Disposition and Related Actions, District 4. [\$0]; CEQA Exempt; (Clerk of the Board to File the Notice of Exemption)(4/5 Vote Required)

**RECOMMENDED MOTION:** That the Board of Commissioners:

1. Find that the Disposition and Development Agreement ("Agreement") does not constitute a project under California Environmental Quality Act (CEQA) and Section 15004(b) of the CEQA Guidelines in that it does not vest any development rights or result in the physical changes in the environment, requires the Vista Sunrise II, L.P. ("Developer") to comply with CEQA and obtain all land use entitlements from the City of Palm Springs as the lead agency, and does not commit the lead agency to any definite course of action or foreclose alternatives or mitigation measures that would ordinarily be part of CEQA;
2. Conduct a public hearing with the Board of Commissioners pursuant to Health and Safety Code Section 34312.3;

Continued on page 2

**ACTION: Policy, 4/5 Vote Required**

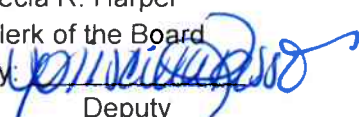
  
Heidi Marshall, Director of Housing, Homelessness Prevention 12/15/2021

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**MINUTES OF THE BOARD OF COMMISSIONERS**

On motion of Commissioner Perez, seconded by Commissioner Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
Nays: None  
Absent: None  
Date: January 11, 2022  
xc: Housing Authority, Recorder

Kecia R. Harper  
Clerk of the Board  
By:   
Deputy

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**RECOMMENDED MOTION:** That the Board of Commissioners:

3. Adopt Resolution Number 2022-001, A Resolution of the Board of Commissioners of the Housing Authority of the County of Riverside Finding That Certain Real Property Located in the City of Palm Springs, County of Riverside, State of California, Identified as APN 507-100-044 is "Exempt Surplus Land" Under the California Surplus Land Act;
4. Adopt Resolution Number 2022-002, A Resolution of the Board of Commissioners of the Housing Authority of the County of Riverside Authorizing the Disposition of Fee Simple Interest in Certain Exempt Surplus Land Located in the City of Palm Springs, County of Riverside, State of California, Identified as APN 507-100-044 by One or More Grant Deed(s) to Desert Aids Project (DAP) in Exchange for and in Consideration of the Recordation of Affordability Covenants on an Adjacent Parcel and Approving a Disposition and Development Agreement Between the HACR and DAP Effecting Such Disposition and Related Actions;
5. Approve the form of the attached Agreement, including all attachments thereto;
6. Authorize the HACR Executive Director to execute the Agreement and any attachments thereto, substantially conforming in form and substance to the attached Agreement, on behalf of HACR, subject to approval as to form by County Counsel;
7. Authorize the HACR Executive Director, or designee, to execute any other documents and administer all actions necessary to implement, complete and memorialize the transactions contemplated in the Agreement, including, but not limited to executing the Grant Deed(s) and Agreement Containing Covenants in substantially the form required by or attached to the Agreement, any escrow instructions, and any other documents necessary to effect the transactions contemplated by the Agreement subject to approval as to form by County Counsel; and
8. Direct the Clerk of the Board to file the attached Notice of Exemption within five (5) days approval of the Agreement.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS: The HACR Property was purchased in 2005 with Proceeds from the County of Riverside Asset Leasing Corporation, program income from the HUD Rental Rehabilitation Program, and a grant from the Riverside County Economic Development Agency</b>			<b>Budget Adjustment:</b>	<b>No</b>
			<b>For Fiscal Year:</b>	21/22

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

The Housing Authority of the County of Riverside ("HACR") is the legal owner of record of the real property located at the intersection of E. Vista Chino and N. Sunrise Way in the City of Palm Springs, County of Riverside, State of California, identified as Assessor's Parcel Number 507-100-044 and depicted on the attached Site Map ("HACR Property"). Desert Aids Project ("DAP") is a California nonprofit public benefit corporation that owns adjacent property and the improvements thereon which include the Desert Aids Project facility and the Palm Springs Family Care Center. The HACR Property is improved as a parking lot that serves the parking

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needs of the Desert Aids Project facility and the Palm Springs Family Care Center pursuant to a Reciprocal Easement Agreement recorded against the HACR Property as Instrument No. 2005-760268 and as amended by that certain unrecorded Reciprocal Easement Agreement dated May 2, 2007, collectively, the "REA".

On February 6, 2018, the Board approved an Exclusive Negotiation Agreement ("ENA") with DAP. The ENA gave DAP site control of the HACR Property so that it could explore options to develop affordable housing on the HACR Property or an adjacent parcel. During the term of the ENA, it was determined that the HACR Property was not suitable for the construction of an affordable housing project because the REA required the use of the HACR Property to remain as parking. However, DAP acquired an adjacent parcel identified as Assessor's Parcel Number 507-100-041 (the "DAP Housing Parcel") and has successfully secured an award from the State in the amount of \$5,769,577 through the No Place Like Home Program and \$14,922,526 in Low Income Housing Tax Credits for construction of an affordable housing project thereon. In order to optimize the proposed affordable housing project, DAP and HACR desire to combine by lot line adjustment a portion of the HACR Property consisting of approximately 3,267 square feet with the DAP Housing Parcel (collectively, the "Future Housing Parcel") to construct and develop affordable housing. The Future Housing Parcel will be ground leased to Vista Sunrise II, L.P. to develop a multi-family affordable housing complex.

DAP is now ready to close construction financing and wishes to complete the acquisition of the approximately 3,267 square feet of the HACR Property and the lot line adjustment necessary to configure the Future Housing Parcel. In exchange for and in consideration of recording long-term affordability covenants on the Future Housing Parcel in favor of HACR, DAP also desires to acquire the balance of the HACR Property to continue to be utilized as parking to serve the adjacent facilities consistent with the REA.

The proposed affordable multifamily rental housing project to be developed on the Future Housing Parcel will be comprised of approximately sixty-one (61) apartment units consisting of one, two, three and four bedrooms, with a community center, pool and other amenities and related infrastructure. Under the terms of the proposed Disposition and Development Agreement between HACR and DAP (the "Agreement"), forty-nine percent (49%) of the units not occupied by an on-site manager will be restricted to extremely low- and low-income households whose incomes do not exceed sixty percent (60%) of the Area Median Income for Riverside County (AMI). At least thirty percent (30%) of these "Restricted Units" will be restricted to occupancy by extremely low-income households whose incomes do not exceed thirty percent (30%) of AMI.

The HACR Property was originally acquired by the HACR as part of a larger 5.37-acre lot for a total purchase price of \$1,000,000 with proceeds from County of Riverside Asset Leasing Corporation, program income from HUD Rental Rehabilitation Program and a grant from the Riverside County Economic Development Agency. HACR divided the original parcel into two separate lots, the northern lot (APN 507-100-045) and the HACR Property. The northern lot was merged with other property and developed as an affordable housing project, known as Vista Sunrise. The HACR Property was and continues to serve as parking for the adjacent Desert

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Aids Project and Palm Springs Family Care Center facilities and is legally restricted to such use for the benefit of the adjacent property pursuant to the REA.

HACR is committed to providing affordable housing and services to the residents of the County of Riverside. Pursuant to applicable provisions of the "Housing Authorities Law" (California Health and Safety Code, Sections 34200, et seq.), notwithstanding any other provision of law, whenever the Board of Commissioners determines that any real property owned by the HACR can be used to provide housing affordable to low income families or the proceeds of a disposition of real property are used directly to assist housing for very low income families, the HACR may sell, convey or otherwise dispose of the real property to provide that affordable housing without complying with other provisions of Title 3, Division 2, Part 2, Chapter 5, Article 8 of the California Government Code.

The approximately 3,267 square foot portion of the HACR Property to be conveyed to DAP to create the Future Housing Parcel will be developed as an affordable housing project subject to long-term affordability covenants and is arguably exempt from surplus property procedures. However, in consultation with the California Department of Housing and Community Development ("HCD") and in order to avoid delay in completing the lot line adjustment necessary to create the Future Housing Parcel, staff recommends the Board of Commissioners make certain findings under the California Surplus Lands Act (Assembly Bill (AB) 1486 (Statutes of 2019, Chapter 664) and AB 1255 (Statutes of 2019, Chapter 661)) ("SLA").

The SLA defines "surplus land" as land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular meeting declaring that such land is surplus and is not necessary for the agency's use. The SLA requires a local agency, including a Housing Authority, to declare such property to be either "surplus land" or "exempt surplus land" prior to taking any action to sell or lease the property.

The SLA requires local agencies to give written notice of the availability of surplus lands to local public entities, including schools and park districts, within whose jurisdiction the property is located, as well as to housing sponsors that have notified HCD of their interest in surplus properties. The SLA imposes a mandatory negotiation process giving first priority to affordable housing development. However, the SLA exempts certain properties, "exempt surplus lands," from these notification and negotiation procedures.

Exempt surplus lands include, without limitation, (i) certain properties conveyed for affordable housing development, (ii) property that is less than 5,000 square feet and sold to a continuous land owner; (iii) property exchanged for another property for that agency's use, and (iv) property that is subject to a valid legal restriction not imposed by the local agency that would prohibit housing (non-residential zoning is not a valid legal restriction).

Under section 54221(f)(1)(A) and 54221(f)(1)(B) of the SLA, the approximately 3,267 square feet portion of the HACR Property qualifies as "exempt surplus land" comprising less than 5,000 square feet and conveyed to a continuous landowner for affordable housing development. Pursuant to the REA, the balance of the HACR Property is restricted to use as parking for the

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benefit of the adjacent Desert Aids Project and Palm Springs Family Care Center facilities. Staff considers the REA a valid legal restriction that prohibits the construction of affordable housing on the HACR Property qualifying it as "exempt surplus land" under section 54221(f)(1)(G) of the SLA. In addition to and in furtherance of the HACR's affordable housing goals, the HACR Property will be conveyed to DAP in exchange for and in consideration of affordable housing covenants to be recorded on the Future Housing Parcel in favor of HACR consistent with the SLA exemptions under section 54221(f)(1)(C).

Based on the foregoing, Staff recommends that the Board of Commissioners find that the HACR Property is "exempt surplus land" under the SLA and adopt Resolution No. 2022-001, A Resolution of the Board of Commissioners of the Housing Authority of the County of Riverside Finding That Certain Real Property Located in the City of Palm Springs, County of Riverside, State of California, identified as APN 507-100-044 is "Exempt Surplus Land" Under the California Surplus Land Act.

In furtherance of the HACR's affordable housing goals and to assist in addressing the unmet need for affordable housing within the County of Riverside, Staff also recommends the Board of Commissioners adopt Resolution No. 2022-002, Authorizing the Disposition of Fee Simple Interest in Certain Exempt Surplus Land Located in the City of Palm Springs, County of Riverside, State of California, Identified as APN 507-100-044 by One or More Grant Deed(s) to Desert Aids Project (DAP) in Exchange for and in Consideration of the Recordation of Affordability Covenants on an Adjacent Parcel and Approving a Disposition and Development Agreement Between the HACR and DAP Effecting Such Disposition and Related Actions.

The terms of the HACR Property disposition and applicable affordability restrictions to be recorded against the Future Housing Parcel are set forth in the attached form of Agreement, including attachments, to be executed by HACR and Developer. The deed restriction to be recorded against the Future Housing Parcel requiring development of approximately sixty-one (61) new units, with no more than 49% affordable to low and extremely low- income households, is in the best interests of HACR, the County of Riverside, and residents of the City of Palm Springs.

Pursuant to California Health and Safety Code Sections 34312.3, HACR published a Notice of Public Hearing notifying the public of the public hearing and consideration of the proposed Agreement relating to the conveyance of the HACR Property in exchange for and in consideration of affordable housing covenants.

The Developer of the affordable housing project to be constructed on the Future Housing Parcel, shall be responsible for all (i) entitlements, land use approvals, permits and CEQA compliance, (ii) construction and development costs, (iii) securing financing, construction, on-site and off-site improvements, and (iv) property maintenance obligations. All land use and development entitlements, including compliance with CEQA, must be obtained from the City of Palm Springs.

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The Agreement does not constitute a project pursuant to the California Environmental Quality Act and State CEQA Guidelines (CEQA). Pursuant to CEQA Guidelines Section 15004(b), approval of the Agreement provides for the disposition of property subject to specific conditions. Approval by the HACR of the Agreement does not vest any development rights and will not result in any physical change to the environment. The Agreement requires the Developer to obtain all necessary land use approvals and entitlements for the development of the Future Housing Parcel from the City of Palm Springs, including compliance with CEQA. As the jurisdiction exercising land use control over the HACR Property, the City of Palm Springs will be the lead agency for purposes of CEQA. The Agreement does not commit the lead agency to any definite course of action or foreclose alternatives or mitigation measures that would ordinarily be part of CEQA review.

County Counsel has reviewed and approved as to form the attached Resolution No. 2022-001, Resolution No. 2022-002, and the Agreement, including all attachments thereto. Staff recommends that the Board adopt Resolution No. 2022-001 and Resolution No. 2022-002, approve the disposition of the HACR Property pursuant to the Agreement, including all attachments, and authorize the HACR Executive Director, or designee, to take any actions necessary to implement the transactions contemplated by the Agreement.

**Impact on Residents and Businesses**

Approval of the Agreement will result in a new affordable housing project which will create temporary construction jobs and result in an increase of affordable housing options in the City of Palm Springs.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

No general funds will be used for this Agreement. Developer will bear its own costs and expenses incurred, or to be incurred, in connection with the development, construction and operation of the proposed project.

Attachments:

- Resolution No. 2022-001
- Resolution No. 2022-002
- Form of the Disposition, Development and Loan Agreement, including all attachments
- Site Map
- Notice of Exemption
- Public Notice

  
Eleanora Lontajo, Principal Management Analyst

1/5/2022

  
Gregory P. Priantos, Director County Counsel

12/30/2021

***NO FEE FOR RECORDING  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103***

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Housing Authority of the  
County of Riverside  
3403 Tenth Street, Suite 300  
Riverside, CA 92501  
Attn: Mike Walsh, Deputy Director

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SPACE ABOVE THIS LINE FOR RECORDERS USE

**DISPOSITION AND DEVELOPMENT AGREEMENT  
and  
JOINT ESCROW INSTRUCTIONS**

By and Between the

HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE

and

DESERT AIDS PROJECT

**WHEN DOCUMENT IS FULLY EXECUTED RETURN  
CLERK'S COPY**

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

JAN 11 2022 10.3

**DISPOSITION AND DEVELOPMENT AGREEMENT  
and  
JOINT ESCROW INSTRUCTIONS**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“**Agreement**”) is entered into as of January 11, 2022 (“**Effective Date**”), by and between the HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, a public body corporate and politic (“**HACR**”), and DESERT AIDS PROJECT, a California nonprofit public benefit corporation (“**DAP**”). HACR and DAP are collectively referred to herein as the “**Parties**” and individually as a “**Party**.”

**RECITALS**

**A.** HACR is the legal owner of record of certain real property comprising approximately 2.92 acres situated within the southwest corner of Vista Chino Drive and North Sunrise Way in the City of Palm Springs, County of Riverside, State of California, identified with Assessor’s Parcel Number **507-100-044**, as more particularly described in the Legal Description attached hereto as **Exhibit A** and incorporated herein by this reference, and as depicted on the Site Map attached hereto as **Exhibit B** and incorporated herein by this reference (“**Property**”).

**B.** The Property is improved and used as a parking lot, with a portion being used for storm water retention. The Property is encumbered by, among other things, a perpetual easement for parking, ingress and egress, in favor of an adjacent property owned by DAP (the “**DAP Property**”) and the owners, tenants, occupants and users of the improvements thereon, including the Desert Aids Project facility and the Palm Springs Family Care Center, and therefore is of minimal fair market value.

**C.** DAP is also the legal owner of record of certain vacant land comprising approximately 1.14 acres and located east-adjacent to the southern portion of the Property, identified with Assessor’s Parcel Number **507-100-041** (the “**Housing Parcel**”), as depicted on the Site Map (**Exhibit B**).

**D.** There is an unmet need for affordable housing within the County of Riverside. On February 6, 2018, HACR and DAP entered into an Exclusive Negotiation Agreement (“**ENA**”) to, among other things, explore and negotiate the development of affordable housing on the Property. Subsequently, however, HACR and DAP agreed that the proposed affordable housing development would be better suited to be built on the Housing Parcel.

**E.** DAP proposes to acquire the Property from HACR in two stages. Initially, DAP and HACR will combine a portion of the Property consisting of approximately 3,267 square feet with the Housing Parcel via a lot line adjustment (the “**Lot Line Parcel**”). The conveyance of the Lot Line Parcel (the “**Lot Line Closing**”) shall occur prior to the conveyance of the remainder of the Property. The combined parcel consisting of the Housing Parcel and the Lot Line Parcel shall be referred to herein as the “**Future Housing Parcel**.”



F. DAP has lease-optioned the Future Housing Parcel to Vista Sunrise II, L.P., a California limited partnership (“**Vista II**”), pursuant to that certain Option to Lease Agreement dated August 13, 2020 (“**Housing Parcel Lease Option**”) for the purpose of Vista II constructing and operating an affordable, multifamily rental housing project comprising approximately sixty-one (61) residential units, a community center, open space and related amenities (“**Housing Project**”). Upon completion of the lot line adjustment and Lot Line Closing, DAP and Vista II will enter into a ground lease, pursuant to which Vista II will become the holder of the leasehold interest in the Future Housing Parcel (the “**Ground Lease**”). Vista II’s managing general partner, CVHC Sunrise Vista LLC, is controlled by Coachella Valley Housing Coalition, which in turn is experienced in developing affordable housing for low-income households. DAP’s affiliate, Sunrise DAP LLC, is a general partner of Vista II.

G. The parking, ingress and egress restrictions encumbering the Property run in perpetuity in favor of the DAP Property, thereby preventing the development of affordable housing. However, in furtherance of the HACR’s affordable housing goals and to assist in addressing the unmet need for affordable housing within the County of Riverside, HACR desires to facilitate and require the development of affordable housing on the Future Housing Parcel and record a 55-year affordability covenant on the Future Housing Parcel, in exchange for and in consideration of the conveyance of the Property to DAP to continue to serve as parking for the benefit of the DAP Property.

H. HACR and DAP have agreed that HACR will transfer and convey the Property to DAP, in consideration for, and conditioned upon, the execution by DAP and Vista II (as the fee owner and leasehold holder, respectively, of the Future Housing Parcel), and recording of an Agreement Containing Covenants substantially in the form of Exhibit C (“**Covenant Agreement**”) on the Future Housing Parcel restricting its use to the development of affordable housing during the term of the Covenant Agreement. The Covenant Agreement shall be recorded against the fee ownership the Future Housing Parcel held by DAP and Vista II’s leasehold interest in the Future Housing Parcel concurrently with the execution of the Ground Lease.

I. The California Surplus Lands Act (Assembly Bill (AB) 1486 (Statutes of 2019, Chapter 664) and AB 1255 (Statutes of 2019, Chapter 661)) (“**SLA**”) requires that before a local agency, including a Housing Authority, takes any action to sell or lease its property, it must declare the property to be either “surplus land” or “exempt surplus land”. Unless surplus land is exempt, the local agency must give written notice of its availability to any local public entity, including schools and park districts, within whose jurisdiction the property is located, as well as to housing sponsors that have notified the State Department of Housing and Community Development (“**HCD**”) of their interest in surplus property.

J. Because the Property is subject to an easement that prohibits housing from being built on the Property, and because HACR will obtain the Covenant Agreement on the Future Housing Parcel in exchange for and in consideration of the conveyance of HACR’s fee interest in the Property, HACR has determined that the Property is “exempt surplus land” under the SLA. The SLA imposes a review period by HCD subsequent to the adoption of a resolution declaring property to be “exempt surplus land.” As a result, subsequent to the expiration of the HCD review period and satisfaction of any conditions imposed by HCD, the Property will be

conveyed to DAP in consideration of the recordation of the Covenant Agreement (the “Closing”).

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby mutually agree as follows:

**1. DISPOSITION AND ACQUISITION OF THE PROPERTY.** HACR agrees to convey and transfer the Property to DAP, and DAP agrees to acquire the Property from HACR, upon and subject to the terms and conditions contained in this Agreement.

**2. CONSIDERATION.** As consideration for its acquisition of the Property from HACR, and as a condition to HACR’s obligation to close Escrow, HACR, DAP (as the fee owner of the Future Housing Parcel) and Vista II (as the holder of the Housing Parcel Lease Option, and subsequent to exercise of such option, as the leasehold interest holder of the Future Housing Parcel under the Ground Lease) shall execute and record the Covenant Agreement in the Official Records of Riverside County, California (“**Official Records**”) on the fee and leasehold interests, respectively, in the Future Housing Parcel.

**2.1. COVENANT AGREEMENT.** At least three (3) business days prior to the Lot Line Closing, HACR, DAP and Vista II shall each execute and deliver to Escrow (as hereinafter defined) the Covenant Agreement.

**2.2. DEPOSIT.** To open Escrow, DAP will deposit funds sufficient to cover the costs of Escrow (“**Deposit**”), which will either (a) be applied against DAP’s closing costs at the Lot Line Closing and the Closing, or (b) if Close of Escrow does not occur due to non-satisfaction of any Contingencies (defined below), refunded to DAP (net of Escrow and/or Title Company cancellation fees, if any), or (iii) if Close of Escrow does not occur due to DAP’s material breach of this Agreement, will be liquidated damages to HACR (see Section 15).

**3. OPENING OF ESCROW.**

**3.1. ESCROW HOLDER.** The transaction that is the subject of this Agreement shall be consummated through an escrow (“**Escrow**”) established with Commonwealth Land Title Company, Attention: Cheryl Greer, 601 South Figueroa Street, Suite 4000, Los Angeles, CA 90017 (“**Escrow Holder**”).

Vista II is not a party to the Escrow, although certain documents may be required from Vista II (such as its notarized signature on the Covenant Agreement to be recorded against the Future Housing Parcel) in order to close Escrow.

**3.2. OPENING OF ESCROW BY DELIVERY OF EXECUTED AGREEMENT.** Promptly after the execution of this Agreement by HACR and DAP, HACR and DAP shall cause a signed original of this Agreement (or scanned emailed or digitally signed version of this executed Agreement, if acceptable to Escrow Holder) to be delivered to Escrow Holder in order to open the Escrow. The date on which Escrow Holder receives and accepts the fully executed Agreement shall be considered the “**Opening of Escrow**” for purposes of this Agreement.

DAP shall deposit the Deposit within three (3) business days after Escrow notifies the Parties of the Opening of Escrow.

Upon accepting this Agreement, Escrow Holder shall notify HACR and DAP in writing as to the date which is considered the Opening of Escrow.

Escrow Holder is hereby authorized and instructed to act in accordance with the provisions of this Agreement (which constitutes joint escrow instructions of HACR and DAP to Escrow Holder), together with any supplemental form instructions requested by Escrow Holder and approved by HACR and DAP, which collectively shall constitute Escrow Holder's escrow instructions. In the event of any conflict or ambiguity between the provisions of this Agreement and Escrow Holder's supplemental form instructions, the provisions of this Agreement shall control unless the supplemental form instructions state that HACR and DAP intend for them to supersede any conflicting or ambiguous provisions in this Agreement.

HACR and DAP shall each deposit, or cause to be deposited, such other documents, instruments and funds as the Escrow Holder may reasonably require to enable Close of Escrow of the transaction on the Closing Date in accordance with this Agreement.

**4. CONTINGENCY PERIOD.** The "**Contingency Period**" shall be the three (3) day period after the Opening of Escrow (except for DAP's contingency under Section 4.7 below as to the remainder of the Property [HCD Conditions], which shall be five (5) days after written notification to DAP of HCD's conditions), which HACR and DAP may extend by mutual written agreement. When all Contingencies are satisfied (or waived) [see Section 6 below], the Closing shall occur within three (3) business days after the date of such satisfaction or waiver.

**4.1. DELIVERY OF HACR'S PROPERTY RECORDS.** DAP acknowledges and agrees that HACR has delivered copies of all of the following, but only if and to the extent that such documents are in HACR's possession or control: (1) any environmental reports, studies, and surveys related to the Property; (2) any permits or approvals issued by governmental agencies for the Property; (3) any inspection reports or studies related to the Property, including, without limitation, any soils reports, property condition reports, and geotechnical reports; and (4) any other documents in HACR's possession or control that are reasonably requested by DAP (collectively, the "**Records**").

**4.2. DAP'S INVESTIGATIONS AND INSPECTIONS.** DAP acknowledges and agrees that, as of the date of this Agreement, it has conducted such inspections, surveys and studies and other due diligence as it has deemed appropriate.

DAP will not permit any mechanic's lien to be filed against the Property as a result of such due diligence, and in the event that a mechanic's lien is so filed, DAP, at its sole cost and expense, shall cause such lien to be discharged, or bonded by DAP at its expense, within five (5) calendar days after filing. DAP hereby indemnifies and holds HACR, the County of Riverside, and their respective agencies, districts, special districts and departments, directors, officers, governing Boards, elected and appointed officials, employees, agents and representatives ("**Indemnites**") harmless from any and all liabilities, losses, damages, costs, claims and expenses

(including without limitation court costs and reasonable attorneys' fees) incurred by or asserted against any such Indemnitee and arising from any activities of DAP or its contractors, agents or other representatives on the Property in connection with DAP's due diligence review. DAP's indemnification obligations shall survive the termination or cancellation of the Escrow or the Close of Escrow.

**4.3. DAP'S TITLE REVIEW.** During the Contingency Period, DAP shall review title matters on the Property, pursuant to Section 5 below.

**4.4. LOT LINE ADJUSTMENT.** The lot line adjustment creating the Future Housing Parcel shall be processed with the City of Palm Springs, and the Title Company shall prepare a legal description for the Future Housing Parcel, which shall be provided to DAP and HACR at least three (3) business days prior to the Lot Line Closing.

**4.5. GROUND LEASE.** DAP shall provide the proposed Ground Lease for the Future Housing Parcel to HACR for its review and approval no later than three (3) business days after the opening of Escrow. Upon approval of the form of Ground Lease by HACR, DAP and Vista II shall execute the Ground Lease, and the executed Ground Lease shall be delivered to Escrow at least three (3) business days prior to the Lot Line Closing. The Title Company shall prepare a legal description for the fee and leasehold interests, respectively, in the Future Housing Parcel, which shall be provided to DAP and HACR at least three (3) business days prior to the Lot Line Closing.

**4.6. PERFECTION DEED.** The Title Company shall prepare a lot line adjustment perfection deed (the "**Perfection Deed**"), which shall be a Grant Deed from DAP to itself and shall include the legal description of the Future Housing Parcel. DAP shall execute the Perfection Deed and deliver the executed Perfection Deed to Escrow at least three (3) business days prior to the Lot Line Closing.

**4.7. HCD CONDITIONS.** With respect to any conditions imposed by HCD as described in Recital J above, HACR shall make a good faith effort to work with HCD to minimize any such conditions (but which effort shall not require the expenditure of funds by HACR on the Property) and shall maintain communications with DAP concerning any proposed HCD conditions. If, notwithstanding HACR's efforts pursuant to the foregoing sentence, HCD imposes any condition or conditions which affect the Property, title, or DAP's ownership, operation or use of the Property, then DAP's approval of such condition or conditions (if any) imposed by HCD shall be a contingency to DAP's obligation to close Escrow on the remaining portion of the Property proposed to be transferred after the Lot Line Closing. DAP shall be deemed to have approved all such conditions if DAP does not notify HACR in writing of DAP's disapproval of any such condition(s) within five (5) days after DAP is given written notification of HCD's review and HCD's conditions.

## **5. TITLE.**

**5.1. TITLE REPORT.** Within three (3) business days after the Opening of Escrow (or as soon as the Title Company can deliver, if sooner), DAP shall cause a preliminary title report ("**Title Report**") issued by Commonwealth Land Title Company ("**Title Company**"), covering

the Property, together with legible (or electronically available) copies of all documents reported as exceptions therein ("**Title Documents**"), to be delivered to DAP.

**5.1.1. SURVEY.** If HACR already has a survey in its possession, HACR shall provide DAP with a copy of the survey with the other Records; however, HACR is not responsible for obtaining or paying for a current survey. DAP shall have the right, at DAP's expense, to engage a licensed civil engineer or surveyor to prepare a survey of the Property during the Contingency Period ("**DAP's Survey**"); however, DAP understands and acknowledges that any delays in the preparation of the DAP's Survey or any issues raised by the DAP's Survey shall not operate to extend, or be cause for extension of, the Contingency Period.

**5.2. DAP'S OBJECTIONS TO/APPROVAL OF TITLE MATTERS.** If DAP objects to any item in the Title Report (or, if applicable, DAP's Survey), DAP shall notify HACR in writing specifying same prior to the end of the Contingency Period. With respect to any item that is timely objected to by DAP in writing, HACR shall have the right, but not the obligation, to cause the removal of such item. If, prior to the end of the Contingency Period, HACR does not (i) cause the removal of such item, or (ii) provide written assurance from the Title Company that such exceptions will be removed on or before the Closing Date, then HACR shall be deemed to have rejected DAP's request to cause the removal of the objected item(s), and DAP shall have the right to terminate this Agreement and the Escrow for failure of a contingency (see Section 6.3 below).

All items in the Title Report (and in any Survey that may be obtained by DAP) that are not timely objected to by DAP, plus matters which have been created by DAP or representatives of DAP, are referred to herein as "**Permitted Exceptions.**"

**5.2.1. FINANCIAL LIENS.** Notwithstanding any provision of this Agreement to the contrary, HACR shall also be responsible, at its sole expense, for removing any financial lien (e.g., mechanics' lien, abstract of judgment, or deed of trust), if any, encumbering any portion of the Property (except for any lien caused by DAP), prior to or concurrently with the Closing, i.e., such liens shall not be considered to be Permitted Exceptions.

**5.2.2. SUPPLEMENTS TO TITLE REPORT WITH ADDITIONAL EXCEPTIONS.** In the event that the Title Company issues any amendments or supplements to the Title Report that add any exceptions to title or other Schedule B items ("**Additional Exception(s)**"), then if DAP objects to any Additional Exception (or requires an endorsement from the Title Company for the Additional Exception), then DAP shall notify HACR in writing specifying same prior to the end of the Contingency Period ("**DAP's Notice Objecting to Additional Exception**"). Any Additional Exception that is not objected to in writing by DAP within said period or which is not subject to the issuance of a DAP-required endorsement by the Title Company at the Closing, or which was caused by DAP or its representatives (e.g., a mechanics lien arising from DAP's inspections and studies), shall automatically be deemed approved by DAP.

With respect to any Additional Exception(s) that is timely objected to by DAP in writing, HACR shall have the right, but not the obligation, to cause the removal of such item. If, prior to the end of the Contingency Period, HACR does not (i) cause the removal of such item, or (ii) provide written assurance from the Title Company that such item will be removed on or before the Closing Date, then HACR shall be deemed to have rejected DAP's request to cause the removal of

the objected item(s), and DAP shall have the right to terminate this Agreement and the Escrow for failure of a contingency (see Section 6.3 below).

**5.3. OWNER'S TITLE POLICY.** DAP shall not be obligated to close Escrow unless the Title Company is prepared to issue, at DAP's election (and expense), either an ALTA Extended Coverage Owner's Policy of Title Insurance or an ALTA Standard Owner's Policy (i.e., CLTA-type standard owner's coverage) (the "**Title Policy**") containing no exceptions to coverage other than the Permitted Exceptions and matters which have been created by DAP or representatives of DAP, with coverage in an amount determined by DAP. DAP shall pay the premium for the Title Policy.

**6. CONDITIONS TO CLOSING.** DAP's and HACR's conditions to their respective obligations to close Escrow are referred to in this Agreement, collectively, as the "**Contingencies.**"

**6.1. CONDITIONS TO DAP'S OBLIGATION TO CLOSE THE LOT LINE PARCEL.** DAP's obligations under this Agreement to close Escrow for the Lot Line Parcel shall be subject to the satisfaction or waiver of each of the following conditions (any of all of which may be waived, in whole or in part, by DAP in writing in its sole discretion); the Close of Escrow shall be deemed to be an acknowledgement by DAP that all of DAP's conditions to Lot Line Closing have been satisfied or waived (see also Section 8.2):

**6.1.1.** DAP shall have approved its due diligence review of the Property.

**6.1.2.** HACR shall have performed all material covenants of HACR.

**6.1.3.** As of the Lot Line Closing Date, there shall not be any liens, encumbrances or other exceptions to title to the Property other than the Permitted Exceptions, and the Title Company is prepared, upon payment of the title premium in accordance with Section 5.3, to issue the Title Policy to DAP subject only to the Permitted Exceptions.

**6.1.4.** As of the Closing Date, there is no litigation affecting the Property.

**6.1.5.** The representations and warranties made by HACR in this Agreement shall be true and correct as of the Closing Date in all material respects with the same force and effect as though such representations and warranties had been made on and as of such date.

**6.1.6.** There is no material, adverse change to the condition (physical, financial, zoning/land use or otherwise) of the Property since the end of the Contingency Period.

**6.1.7.** HACR shall have made all deliveries required by Section 7.1.

***Failure of DAP Contingency.*** If DAP notifies HACR and Escrow Holder in writing, before the end of the Contingency Period, that any of the aforementioned Contingencies have not been satisfied and that DAP wishes to terminate the Escrow and this Agreement on that basis, then this Agreement shall immediately and automatically be deemed to be terminated, the Escrow shall be cancelled, Escrow Holder shall refund DAP's Deposit to DAP (net of any title charges and Escrow cancellation fees, if any), and neither Party shall have any liability to the other except for those obligations in this Agreement that expressly survive termination.

**6.2. CONDITIONS TO HACR'S OBLIGATION TO CLOSE THE LOT LINE PARCEL.** HACR's obligations under this Agreement to close Escrow on the Lot Line Parcel shall be subject to the satisfaction or waiver of each of the following conditions (any or all of which may be waived, in whole or in part, by HACR in writing in its sole discretion); the Close of Escrow shall be deemed to be an acknowledgement by HACR that all of HACR's conditions to Closing have been satisfied or waived (see also Section 8.2):

**6.2.1.** DAP shall have performed all material covenants of DAP.

**6.2.2.** The representations and warranties made by DAP in this Agreement shall be true and correct as of the Closing Date in all material respects with the same force and effect as though such representations and warranties had been made on and as of such date.

**6.2.3.** DAP shall have made all deliveries required by Section 7.2.

**6.2.4.** Title Company shall have provided legal descriptions for each of the fee interest and leasehold interest in the Future Housing Parcel.

**6.2.5.** As of the Closing Date, the fully executed/notarized Memorandum of Ground Lease and Covenant Agreement have been submitted to Escrow Holder by each of DAP and Vista II for recording, and the Title Company is prepared to record said Agreements on the fee and leasehold interests in the Future Housing Parcel.

***Failure of HACR Contingency.*** If HACR notifies DAP and Escrow Holder in writing (with courtesy copy to Vista II), before the end of the Contingency Period, that any of the aforementioned Contingencies have not been satisfied and that HACR wishes to terminate the Escrow and this Agreement on that basis, then this Agreement shall immediately and automatically be deemed to be terminated, the Escrow shall be cancelled, Escrow Holder shall refund DAP's \$1000.00 Deposit to DAP (net of any title charges and Escrow cancellation fees, if any), and neither Party shall have any liability to the other except for those obligations in this Agreement that expressly survive termination.

**6.3. CONDITIONS TO DAP'S OBLIGATION TO CLOSE THE REMAINDER OF THE PROPERTY.** DAP's obligations under this Agreement to close Escrow for acquisition of the remainder of the Property (for convenience, referred to below as the Property) shall be subject to the satisfaction or waiver of each of the following conditions (any of all of which may be waived, in whole or in part, by DAP in writing in its sole discretion); the Close of Escrow shall be deemed to be an acknowledgement by DAP that all of DAP's conditions to Closing have been satisfied or waived (see also Section 8.2):

**6.3.1** DAP shall have approved its due diligence review of the Property.

**6.3.2** HACR shall have performed all material covenants of HACR.

**6.3.3** As of the Closing Date, there shall not be any liens, encumbrances or other exceptions to title to the Property other than the Permitted Exceptions, and the Title Company is prepared, upon payment of the title premium in accordance with Section 5.3, to issue the Title Policy to DAP subject only to the Permitted Exceptions.

**6.3.4** As of the Closing Date, there is no litigation affecting the Property.

**6.3.5** The representations and warranties made by HACR in this Agreement shall be true and correct as of the Closing Date in all material respects with the same force and effect as though such representations and warranties had been made on and as of such date.

**6.3.6** There is no material, adverse change to the condition (physical, financial, zoning/land use or otherwise) of the Property since the end of the Contingency Period.

**6.3.7** HACR shall have notified DAP in writing that the 30-day review period required by the SLA has expired, and of any HCD conditions, and DAP's contingency under Section 4.7 above shall have been satisfied (or deemed satisfied).

*Failure of DAP Contingency.* If DAP notifies HACR and Escrow Holder in writing, before the end of the Contingency Period, that any of the aforementioned Contingencies have not been satisfied and that DAP wishes to terminate the Escrow and this Agreement on that basis, then this Agreement shall immediately and automatically be deemed to be terminated as to the Property, the Escrow shall be cancelled, Escrow Holder shall refund DAP's remaining Deposit to DAP (net of any title charges and Escrow cancellation fees, if any), and neither Party shall have any liability to the other except for those obligations in this Agreement that expressly survive termination.

**6.4. CONDITIONS TO HACR'S OBLIGATION TO CLOSE THE REMAINDER OF THE PROPERTY.** HACR's obligations under this Agreement to close Escrow for the remainder of the Property (for convenience, referred to below as the Property) shall be subject to the satisfaction or waiver of each of the following conditions (any or all of which may be waived, in whole or in part, by HACR in writing in its sole discretion); the Close of Escrow for the Property shall be deemed to be an acknowledgement by HACR that all of HACR's conditions to Closing have been satisfied or waived (see also Section 8.2):

**6.4.1.** DAP shall have performed all material covenants of DAP.

**6.4.2.** The representations and warranties made by DAP in this Agreement shall be true and correct as of the Property Closing Date in all material respects with the same force and effect as though such representations and warranties had been made on and as of such date.

**6.4.3.** The Covenant Agreement shall have been recorded against the fee and leasehold interests in the Future Housing Parcel, and HACR shall have received a recorded copy of such, as well as a copy of each of DAP's and Vista II's owner's policies in the fee and leasehold interests, respectively, demonstrating the recordation thereof.

**6.4.4.** The Title Company shall have prepared a legal description for the remainder of the Property.

**6.4.5.** DAP shall have made all deliveries required hereby.

**6.4.6.** The 30-day review period required by the SLA shall have expired and any requirements of HCD under the SLA shall have been satisfied. Reference is made to Section 4.7 above which provides, among other things, that HACR shall make a good faith effort to work



with HCD to minimize any HCD conditions (but which effort shall not require the expenditure of funds by HACR on the Property) and shall maintain communications with DAP concerning any proposed HCD conditions.

***Failure of HACR Contingency.*** If HACR notifies DAP and Escrow Holder in writing, before the end of the Contingency Period, that any of the aforementioned Contingencies have not been satisfied and that HACR wishes to terminate the Escrow and this Agreement as to the Property on that basis, then this Agreement shall immediately and automatically be deemed to be terminated as to the Property, the Escrow shall be cancelled, Escrow Holder shall refund DAP's remaining Deposit to DAP (net of any title charges and Escrow cancellation fees, if any), and neither Party shall have any liability to the other except for those obligations in this Agreement that expressly survive termination.

**7. DELIVERABLES TO ESCROW HOLDER.** Prior to the Lot Line Close of Escrow (see Section 8 below), HACR and DAP shall deliver to Escrow Holder the following items:

**7.1. HACR'S DELIVERABLES.** HACR shall deliver to Escrow Holder (for recording, filing and/or delivery to DAP and/or HACR at the Lot Line Close of Escrow) the following items:

**7.1.1.** One (1) original, executed and notarized lot line adjustment Grant Deed in recordable form, in a form reasonably agreed to by HACR and DAP during the Contingency Period, and approved by the City of Palm Springs ("**Lot Line Grant Deed**") along with such other documents as may be reasonably required to effect the lot line adjustment;

**7.1.2.** One (1) original, fully executed and notarized Covenant Agreement signed by HACR;

**7.1.3.** Escrow Holder's Preliminary Closing Statement (see Section 9.1 below), approved and signed by HACR;

**7.1.4.** Such executed affidavits, if any, as are customarily required of a seller by the Title Company in order to issue the Title Policy to DAP in accordance with this Agreement, plus such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of HACR; and

**7.1.5.** Any other documents, instruments or funds required to be delivered by HACR to DAP, Escrow Holder or the Title Company pursuant to the terms of this Agreement.

**7.2. DAP'S DELIVERABLES.** DAP shall deliver to Escrow Holder (for recording, filing and/or delivery to HACR and/or DAP, as appropriate, at the Lot Line Close of Escrow) the following items:

**7.2.1.** Funds in the amount of all Lot Line Closing costs, and the premium for the Title Policy;

**7.2.2.** One (1) original, executed and notarized Perfection Deed in recordable form;

7.2.3. A Preliminary Change of Ownership Report completed and executed by DAP, in form suitable for filing with the Assessor for the County of Riverside;

7.2.4. Such executed affidavits, if any, as are customarily required of a buyer by the Title Company in order to issue the Title Policy to DAP in accordance with this Agreement, plus such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of DAP;

7.2.5. Escrow Holder's Preliminary Closing Statement, approved and signed by DAP; and

7.2.6. A final Ground Lease and a Memorandum of Ground Lease in such form as is approved by the parties and the Title Company, fully executed and notarized by executed by DAP and Vista II.

7.2.7. One (1) original, fully executed and notarized Covenant Agreement signed by Vista II and DAP; and

7.2.8. Any other documents, instruments or funds required to be delivered by DAP to HACR, Escrow Holder or the Title Company pursuant to the terms of this Agreement.

7.3. **HACR'S DELIVERABLES.** HACR shall deliver to Escrow Holder (for recording, filing and/or delivery to DAP and/or HACR at the Property Close of Escrow) the following items:

7.3.1. One (1) original, executed and notarized Grant Deed (for the remainder of the Property) in recordable form, in a form reasonably agreed to by HACR and DAP during the Contingency Period ("**Property Grant Deed**");

7.3.2. Escrow Holder's Preliminary Closing Statement (see Section 9.1 below), approved and signed by HACR;

7.3.3. Such executed affidavits, if any, as are customarily required of a seller by the Title Company in order to issue the Title Policy to DAP in accordance with this Agreement, plus such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of HACR; and

7.3.4. Any other documents, instruments or funds required to be delivered by HACR to DAP, Escrow Holder or the Title Company pursuant to the terms of this Agreement.

7.4. **DAP'S DELIVERABLES.** DAP shall deliver to Escrow Holder (for recording, filing and/or delivery to HACR and/or DAP, as appropriate, at the Close of Escrow) the following items:

7.4.1. Funds in the amount of all Closing costs (less the Deposit), and the premium for the Title Policy;

7.4.2. A Preliminary Change of Ownership Report completed and executed by DAP, in form suitable for filing with the Assessor for the County of Riverside;

7.4.3. Such executed affidavits, if any, as are customarily required of a buyer by the Title Company in order to issue the Title Policy to DAP in accordance with this Agreement, plus such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of DAP;

7.4.4. Escrow Holder's Preliminary Closing Statement, approved and signed by DAP; and

7.4.5. Any other documents, instruments or funds required to be delivered by DAP to HACR, Escrow Holder or the Title Company pursuant to the terms of this Agreement.

## 8. CLOSE OF ESCROW.

### 8.1. CLOSING DATE.

8.1.1. The Escrow for the Lot Line Parcel shall be considered closed ("**Lot Line Close of Escrow**") when all of the following are recorded in the Official Records against the Future Housing Parcel: the Lot Line Grant Deed, the Perfection Deed, the Memorandum of Ground Lease, and the Covenant Agreement. The date the Close of Escrow occurs is referred to in this Agreement as the "**Lot Line Closing Date**" or "**Lot Line Closing.**" The Lot Line Closing Date shall be no later than thirty (30) days after the expiration of the Contingency Period ("**Lot Line Outside Closing Date**").

8.1.2. The Escrow for the conveyance of the remainder of the Property shall be considered closed ("**Close of Escrow**") when the Property Grant Deed is recorded in the Official Records. The date the Close of Escrow occurs is referred to in this Agreement as the "**Closing Date**" or "**Closing.**" The Closing Date shall be no later than thirty (30) days after the later to occur of (i) the expiration of the HCD review period under the SLA for disposition of the Property, or (ii) satisfaction of any requirements of HCD under the SLA ("**Outside Closing Date**").

8.2. **CLOSING AS A LIMITED WAIVER OF KNOWN VIOLATIONS.** In the event that, prior to Close of Escrow, DAP or HACR ("**Closing Party**") has actual knowledge of a fact or circumstance which would make any representation, warranty or covenant of the other party under this Agreement untrue or unperformed, or would result in the failure of a condition to the Closing Party's obligation to close Escrow, and the Closing Party nonetheless proceeds with the Close of Escrow, then provided that the other party did not knowingly or intentionally misrepresent or conceal such matter, breach such covenant under this Agreement or cause the failure of such condition, then the Closing Party shall be deemed for all purposes to have waived any claim that such Closing Party may have against the other party for the breach of said representation, condition or obligation.

8.3. **ESCROW RECORDING AND DELIVERIES – LOT LINE PARCEL.** Upon the satisfaction of the Contingencies to close the Lot Line Parcel set forth in this Agreement, Escrow Holder shall cause the transfer of the Lot Line Parcel and accomplish the Lot Line Close of Escrow as follows:

8.3.1. Cause the City of Palm Springs or the Title Company, as appropriate, to record the Lot Line Grant Deed;

**8.3.2.** Cause the Title Company to record the Perfection Deed;

**8.3.3.** Cause the Title Company to record the Memorandum of Ground Lease on the Future Housing Parcel;

**8.3.4.** Cause the Title Company to record the Covenant Agreement on each of the leasehold and fee interests on the Future Housing Parcel;

**8.3.5.** Cause any documentary transfer taxes (if any), recording fees (if any), the Title Policy premium and Escrow fees to be paid from DAP's Deposit and additional funds which shall be deposited by DAP to cover such costs;

**8.3.6.** Cause the Title Company to deliver the Title Policy to DAP (subject to the Permitted Exceptions);

**8.3.7.** Cause the Title Company to deliver to HACR and DAP recorded copies of the Covenant Agreement on each of the leasehold and fee interests in the Future Housing Parcel; and

**8.3.8.** Deliver the final approved Lot Line Closing Statement(s) to DAP and HACR and file any appropriate (if any) the tax reporting forms.

**8.4. ESCROW RECORDING AND DELIVERIES – REMAINDER OF PROPERTY.** Upon the satisfaction of the Contingencies set forth in this Agreement to close Escrow on the remainder of the Property, Escrow Holder shall cause the transfer of the Property and close Escrow as follows:

**8.4.1.** Cause the Title Company to record the Property Grant Deed;

**8.4.2.** Cause any documentary transfer taxes (if any), recording fees (if any), the Title Policy premium, and Escrow fees to be paid from DAP's Deposit and additional funds which shall be deposited by DAP to cover such costs;

**8.4.3.** Cause the Title Company to deliver the Title Policy to DAP (subject to the Permitted Exceptions); and

**8.5.** Deliver the final approved Closing Statement(s) to DAP and HACR and file any appropriate (if any) the tax reporting forms.

## **9. CLOSING COSTS.**

**9.1. EXPENSES.** All expenses (if any) of the Property shall be paid by DAP as of 11:59 pm on the day immediately preceding the Closing Date ("**Proration Time**") in accordance with this Section 9.1. In connection therewith, DAP shall provide Escrow Holder with the information necessary to allow Escrow Holder to prepare a preliminary closing statement for the transaction ("**Preliminary Closing Statement**"). Once the Preliminary Closing Statement is signed by HACR and DAP, then Escrow Holder, for purposes of closing Escrow, shall be entitled to rely upon the information set forth in the Preliminary Closing Statement. Without limiting the generality of the foregoing:

**9.1.1. Utilities.** DAP and HACR shall cause all utilities serving the Property to be transferred to DAP as of the Closing Date, if and to the extent they are not already in DAP's name (as the easement holder). If utilities cannot be transferred and if separate bills are not issued for the period prior to and the period following the Closing Date, then any utility charges shall be prorated between DAP and HACR as of the Proration Time.

**9.1.2. Taxes.** General and special real property taxes and assessments, ad valorem and business personal property taxes for the current tax fiscal year on the Property -- shall be prorated between DAP and HACR as of the Proration Time on the basis of the most recent official tax bills or notice of valuation available to the general public (or, if none, DAP's and HACR's reasonable mutual agreement regarding same).

**9.1.3. General.** It is understood and agreed that only those of the foregoing items which are capable of being definitely ascertained as of the Proration Time shall be prorated through Escrow by Escrow Holder; HACR and DAP agree that all other such items shall be prorated between HACR and DAP outside of Escrow as soon as the amount of the item in question is capable of being definitely ascertained.

**9.2. CLOSING COSTS.** DAP shall pay (i) Escrow fees, (ii) all recording fees (if any), (iii) all documentary transfer taxes (if any), and (iv) the Title Policy premium. Each party shall pay its own legal and accounting fees.

**10. HACR'S REPRESENTATIONS AND WARRANTIES.** HACR hereby makes the following representations and warranties which are being relied upon by DAP, and shall be true as of the Effective Date of this Agreement and at the Close of Escrow, with the same effect as though such representations have been made on each such date:

**10.1.** HACR has all requisite power and authority to enter into and perform this Agreement. The person executing this Agreement on behalf of HACR warrants that he/she has requisite authority to do so. All documents delivered by HACR hereunder will be duly and validly authorized and executed by HACR.

**10.2.** All requisite action has been or will be taken by HACR in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby.

**10.3.** This Agreement and all documents required hereby to be executed by HACR are and shall be valid, legally binding obligations of and enforceable against HACR in accordance with their terms, subject only to applicable bankruptcy, solvency, reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the rights of contracting parties.

**10.4.** HACR has not commenced, nor has HACR received any written notice of, any pending or threatened litigation affecting the Property.

**10.5.** HACR has not filed for, nor has HACR received any notice of or threat that it has or will become the subject of, any reorganization, liquidation, dissolution, receivership or other actions or proceedings under the United States Bankruptcy Code, or any other federal, state or local laws affecting the rights of debtors and/or creditors generally, whether voluntary or involuntary.

**10.6.** HACR has not received any written notice within the last five (5) years to the effect that (i) the Property or any part thereof is currently in violation of any applicable federal, state or local laws, statutes, rules, ordinances, or orders, or (ii) any release of hazardous materials on the Property in violation of environmental laws has occurred during the period of HACR's ownership.

**EXCEPT FOR THE FOREGOING REPRESENTATIONS, HACR MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, REGARDING THE PROPERTY, WHETHER AS TO ITS CONDITION, FITNESS FOR DAP'S INTENDED USE, TITLE MATTERS OR OTHER MATTERS. REFERENCE IS ALSO MADE TO SECTION 12 BELOW.**

**11. REPRESENTATIONS AND WARRANTIES OF DAP.** DAP hereby makes the following representations and warranties which are being relied upon by HACR, and shall be true as of the Effective Date of this Agreement and at the Close of Escrow, with the same effect as though such representations have been made on each such date:

**11.1.** DAP is duly organized and validly existing under the laws of California and has all requisite power and authority to enter into and perform this Agreement. The person executing this Agreement on behalf of DAP warrants that he has the requisite authority to do so. All documents delivered by DAP hereunder will be duly and validly authorized and executed by DAP.

**11.2.** All requisite action has been or will be taken by DAP in connection with the entering into this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby.

**11.3.** This Agreement and all documents required hereby to be executed by DAP are and shall be valid, legally binding obligations of and enforceable against DAP in accordance with their terms, subject only to applicable bankruptcy, solvency, reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the rights or contracting parties.

**11.4.** DAP has not filed for, nor has DAP received any notice of or threat that it has or will become the subject of, any reorganization, liquidation, dissolution, receivership or other actions or proceedings under the United States Bankruptcy Code, or any other federal, state or local laws affecting the rights of debtors and/or creditors generally, whether voluntary or involuntary.

**11.5.** DAP is not in violation of any Anti-Terrorism Law (defined below), and is not, as of the DATE hereof: (i) conducting any business or engaging in any transaction or dealing with any prohibited person under any Anti-Terrorism Law ("**Prohibited Person**"), including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person; (ii) dealing in, or otherwise engaging in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (iii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in, any Anti-Terrorism Law. Neither DAP nor any of its officers, directors, partners, shareholders or members, as applicable, is a Prohibited Person. For purposes of this Agreement, an "**Anti-Terrorism Law**" is any law relating to terrorism, anti-terrorism, money-laundering or anti-

money laundering activities, including without limitation the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, Executive Order No. 13224, and Title 3 of the USA Patriot Act, and any regulations promulgated under any of them.

**EXCEPT FOR THE FOREGOING REPRESENTATIONS, DAP HAS NOT MADE AND THE HACR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER (EXPRESS OR IMPLIED) FROM DAP.**

**12. AS-IS PURCHASE; RELEASE.** It is understood and acknowledged that DAP is acquiring the Property on an AS-IS basis, and, except for HACR's representations in Section 11 above, HACR is making no representations, warranties, guarantees, assurances or promises whatsoever with respect to any portion of the Property that is being sold and transferred to DAP, or with respect to the ownership or operation of the Property.

EXCEPT FOR HACR'S REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 11 ABOVE, DAP'S DECISION TO ACQUIRE THE PROPERTY WILL BE BASED SOLELY UPON AND CONSTITUTE EVIDENCE OF DAP'S INDEPENDENT INVESTIGATION OF THE PROPERTY, ITS USE, DEVELOPMENT POTENTIAL AND SUITABILITY FOR DAP'S INTENDED USE, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING: THE FEASIBILITY OF OPERATING AND DEVELOPING THE PROPERTY FOR THE PURPOSES INTENDED BY DAP AND ALL GOVERNMENTAL REQUIREMENTS OR CONDITIONS REGARDING SAME; THE SIZE AND DIMENSIONS OF THE PROPERTY; THE AVAILABILITY, COST AND ADEQUACY OF WATER, SEWAGE AND ANY UTILITIES SERVING OR REQUIRED TO SERVE THE PROPERTY; ENVIRONMENTAL CONDITIONS; LEASE AND TENANT-RELATED MATTERS IF ANY; THE PRESENCE AND ADEQUACY OF CURRENT OR REQUIRED INFRASTRUCTURE OR OTHER IMPROVEMENTS ON, NEAR OR AFFECTING THE PROPERTY; ANY SURFACE, SOILS, SUBSOIL, FILL OR OTHER PHYSICAL CONDITIONS OF OR AFFECTING THE PROPERTY, SUCH AS CLIMATE, GEOLOGICAL, DRAINAGE, AIR, WATER OR MINERAL CONDITIONS; THE EXTENT AND CONDITIONS OF TITLE TO THE PROPERTY; THE EXISTENCE OF GOVERNMENTAL LAWS, STATUTES, RULES, REGULATIONS, ORDINANCES, LIMITATIONS, RESTRICTIONS OR REQUIREMENTS CONCERNING THE USE, DENSITY, LOCATION OR SUITABILITY OF THE PROPERTY FOR ANY EXISTING OR PROPOSED DEVELOPMENT THEREOF INCLUDING BUT NOT LIMITED TO ZONING, BUILDING, SUBDIVISION, ENVIRONMENTAL OR OTHER REGULATIONS; THE NECESSITY OR AVAILABILITY OF ANY GENERAL OR SPECIFIC PLAN AMENDMENTS, RE-ZONING, ZONING VARIANCES, CONDITIONAL USE PERMITS, BUILDING PERMITS, ENVIRONMENTAL IMPACT REPORTS, PARCEL OR SUBDIVISION MAPS AND PUBLIC REPORTS, OR REQUIREMENTS OF ANY IMPROVEMENT AGREEMENTS; THE NECESSITY OR EXISTENCE OF ANY DEDICATIONS, TAXES, FEES, CHARGES, COSTS OR ASSESSMENTS WHICH MAY BE IMPOSED IN CONNECTION WITH ANY GOVERNMENTAL REGULATIONS OR THE OBTAINING OF ANY REQUIRED PERMITS; THE PRESENCE OF ENDANGERED OR THREATENED PLANT OR ANIMAL SPECIES UPON OR IN THE VICINITY OF THE PROPERTY; THE VALUE OF THE PROPERTY; AND ALL OTHER MATTERS CONCERNING THE CONDITION, USE, DEVELOPMENT, CONSTRUCTION ON OR SALE OF THE PROPERTY.

DAP FURTHER ACKNOWLEDGES THAT ANY INFORMATION THAT MAY HAVE OR MAY BE MADE AVAILABLE TO DAP OR PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF HACR WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES, AND EXCEPT FOR HACR'S RECORDS THAT WERE CREATED BY HACR, HACR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF ANY OTHER INFORMATION AND MAKES NO REPRESENTATIONS AS TO ITS ACCURACY OR COMPLETENESS.

DAP FURTHER ACKNOWLEDGES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE TRANSFER OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION WITH ALL FAULTS, SUBJECT ONLY TO HACR'S REPRESENTATIONS IN SECTION 11 ABOVE.

BY ITS INITIALS BELOW, DAP ACKNOWLEDGES THAT (I) ALL OF THE PROVISIONS OF THIS SECTION 12 HAVE BEEN READ AND FULLY UNDERSTOOD, (II) DAP HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT THE MEANING AND SIGNIFICANCE OF THIS SECTION 12 AND (III) DAP HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION 12.

DAP Initials

**12.1. DAP'S RELEASE.** EXCEPT FOR HACR'S REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 11 AND FOR COVENANTS OF HACR IN THIS AGREEMENT THAT EXPRESSLY AND SPECIFICALLY SURVIVE THE CLOSE OF ESCROW, DAP AGREES TO FULLY AND IRREVOCABLY **RELEASE** HACR FROM ANY AND ALL CLAIMS THAT DAP MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST HACR FOR ANY COSTS, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION WHATSOEVER RELATING TO THE PROPERTY ("**RELEASED CLAIMS**").

IT IS THE INTENTION OF DAP, WITH AND UNDER ADVICE OF COUNSEL, THAT THE FOREGOING RELEASE SHALL BE EFFECTIVE SO AS TO BAR ALL CLAIMS, DEMANDS, CONTROVERSIES, ACTIONS, CAUSES OF ACTION, OBLIGATIONS, LIABILITIES, COSTS, EXPENSES, ATTORNEYS' FEES AND DAMAGES OF WHATSOEVER CHARACTER, NATURE OR KIND, KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, WHICH ARISE FROM OR ARE RELATED OR UNRELATED TO THE RELEASED CLAIMS (EXCEPT FOR HACR'S REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 11 ABOVE AND FOR COVENANTS OF HACR IN THIS AGREEMENT THAT EXPRESSLY AND SPECIFICALLY SURVIVE THE CLOSE OF ESCROW), AND DAP EXPRESSLY ACKNOWLEDGES AND WAIVES ANY AND ALL RIGHTS AND BENEFITS CONFERRED UPON IT BY THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH STATES:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH A CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,



WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

**DAP Initials**

**13. MATERIAL CHANGE, CONDEMNATION AND RISK OF LOSS.** HACR shall immediately notify DAP in writing if HACR becomes aware of any material change in the condition of the Property. If a material change in the condition of the Property which costs less than \$100,000.00 to remediate takes place prior to the Closing Date, and such material change is fully covered by insurance (other than any deductible), DAP shall remain obligated to acquire the Property pursuant to the provisions of this Agreement and shall be entitled to all insurance proceeds resulting from such damage or destruction. If a material change in the condition of the Property takes place prior to the Closing Date, and such material change either exceeds \$100,000.00 to remediate or is not covered by insurance, then DAP shall have the right to either terminate this Agreement and be entitled to a return of its Deposit, net of any title charges and Escrow cancellation fees, if any, promptly after DAP delivers Escrow Holder’s signed cancellation instructions to Escrow Holder, or accept the Property in its then condition. In the event condemnation proceedings are commenced or threatened with respect to all or any portion of the Property, DAP shall similarly have the option to terminate this Agreement upon written notice to HACR and obtain a refund of all Deposits.

**14. DAP’S REMEDIES UPON DEFAULT BY HACR.** In the event the Close of Escrow does not occur due to HACR’s material breach of HACR’s obligations under this Agreement, DAP shall have such legal and equitable remedies as may be available (including, without limitation, the right to specific performance).

**15. LIQUIDATED DAMAGES.**

**IF DAP FAILS TO CLOSE ESCROW IN ACCORDANCE WITH THE REQUIREMENTS OF THIS AGREEMENT DUE TO A MATERIAL BREACH BY DAP, THE PARTIES AGREE THAT HACR SHALL BE ENTITLED, AS ITS SOLE REMEDY, TO THE AMOUNT OF THE DEPOSIT AS LIQUIDATED DAMAGES, WHICH SUM THE PARTIES AGREE IS A REASONABLE SUM CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT. IN PLACING THEIR INITIALS AT THE PLACES PROVIDED, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND WARRANTS THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS MADE.**

**HACR Initials**

**DAP Initials**

**16. NO BROKERS.** DAP and HACR each hereby represents to the other than it has not retained, or been represented by, any broker or finder and that no broker commissions or finder’s fees are owing to any broker or other third party.

**17. GENERAL.**

**17.1. FURTHER ASSURANCES AND DELIVERY OF DOCUMENTS AND FUNDS.** Each party agrees to execute such other and further instructions and documents and to take all actions as may be reasonably necessary or proper in order to consummate the transfer of the Property to DAP hereunder, or the cancellation of the Escrow. All documents and funds necessary to close Escrow which are not expressly required to be delivered by a date certain under this Agreement shall be delivered to Escrow in sufficient time to allow Close of Escrow on the scheduled Closing Date (or Outside Closing Date).

**17.2. POSSESSION OF THE PROPERTY.** On the Closing Date, HACR shall deliver possession of the Property to DAP, free and clear of all liens and encumbrances except non-delinquent general and special property taxes and assessments and the other Permitted Exceptions.

**17.3. NOTICES.** Any notice to any party provided for or pursuant to this Agreement shall be given by (a) electronic mail, (b) personal delivery or (c) by nationally recognized overnight courier service such as Federal Express, UPS or United States Postal Service (freight or postage prepaid), and shall be delivered to the receiving party at the address (including e-mail address) stated below, or at such other address as such party may designate by written notice to the other party from time to time in accordance with the provisions of this Section. Any notice that is delivered by e-mail shall be deemed delivered upon the sender's electronic receipt of confirmation of delivery of the e-mail, and if delivered after 5:00pm Pacific time or on a weekend or State or Federal holiday, shall be deemed to be delivered the next business day. Any notice that is delivered personally shall be deemed delivered upon personal delivery. Any notice that is delivered by overnight delivery shall be deemed delivered upon receipt (or refusal) as confirmed by the overnight courier service.

If to HACR:                   Housing Authority of the County of Riverside  
3403 Tenth Street, Suite 300  
Riverside, CA 92501  
Attn: Deputy Director  
email: [MFWalsh@rivco.org](mailto:MFWalsh@rivco.org)

If to DAP:                    Desert AIDS Project  
Attention: David Brinkman, CEO  
1695 N. Sunrise Way  
Palm Springs CA 92262  
email: [dbrinkman@desertAIDSproject.org](mailto:dbrinkman@desertAIDSproject.org)

Copy to:                    Carl Baker, Esq.  
Director of Legal & Legislative Affairs  
Desert AIDS Project  
1695 N. Sunrise Way  
Palm Springs CA 92262  
email: [cbaker@desertaidproject.org](mailto:cbaker@desertaidproject.org)

Copy to: Sharyl Walker, Esq.  
600 E. Tahquitz Canyon Way, Suite 2  
Palm Springs CA 92262  
email: sharyl@sharylwalkerlaw.com

If to Escrow Holder: Commonwealth Land Title Company Escrow  
Attn: Cheryl Greer  
601 South Figueroa Street  
Suite 4000  
Los Angeles, CA 90017  
email: cgreer@cltic.com

**17.4. TIME OF ESSENCE.** Time is of the essence with respect to this Agreement.

**17.5. WAIVER AND MODIFICATION.** No failure on the part of any Party hereto at any time to require the performance of another Party of any term of this Agreement shall in any way affect such Party's right to enforce such terms, nor shall any waiver of any other term hereof; or of any breach hereof. No right under this Agreement may be waived, except by a written agreement executed by the Party or Parties against which enforcement of such waiver, modification or amendment is sought.

**17.6. ENTIRE AGREEMENT.** This Agreement, including all Recitals herein and Exhibits attached hereto (which Recitals and Exhibits shall be incorporated into and made a part of this Agreement as if set forth in the text), constitutes the entire agreement among the Parties with respect to the Property transfer and shall supersede all prior discussions, negotiations, and agreements whether oral or written with regard to this transaction. This Agreement may not be amended or modified except by an amendment in writing signed by all parties hereto.

**17.7. HEADINGS.** The headings of this Agreement are for the purpose of reference only and shall not limit or define the meaning hereof.

**17.8. GOVERNING LAW.** This Agreement shall be construed under and in accordance with the laws of the State of California.

**17.9. ATTORNEYS' FEES.** If any action or proceeding is commenced by either Party to enforce or interpret their rights under this Agreement or to collect liquidated damages or seek specific performance as a result of the breach of any of the provisions of this Agreement, the prevailing party in such action or proceeding, including any bankruptcy, insolvency or appellate proceedings, shall be entitled to recover all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, in addition to any other relief awarded by the court.

**17.10. ASSIGNMENT.** DAP may not assign its interest under this Agreement to any person or entity without HACR's consent, which may be withheld in HACR's discretion.

**17.11. BINDING ON SUCCESSORS.** This Agreement is for the benefit of, and is binding on, the parties and their permitted successors and assigns.

**17.12. CONSTRUCTION.** This Agreement is the result of negotiations between the Parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. The Parties hereby waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same.

**17.13. SEVERABILITY.** If any provision of this Agreement or any portion of any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or non-enforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof.

**17.14. NO THIRD PARTY BENEFICIARY.** Except for the County of Riverside, which shall expressly be made a third party beneficiary hereunder, no term or provision of this Agreement is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, term, corporation or any other entity not a Party hereto (including, without limitation, any broker), and no such other person, firm, corporation or entity shall have any right of cause of action hereunder.

**17.15. COUNTERPARTS, ETC. THIS AGREEMENT MAY BE EXECUTED IN MULTIPLE COUNTERPARTS,** each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Signatures scanned and transmitted by e-mail, and/or digitally, may be used in place of original signatures on this Agreement or any document delivered pursuant hereto (other than where original documents are required by the Escrow Holder or, if applicable, the Title Company).

*[signatures on next page; remainder of page intentionally left blank]*

THIS DISPOSITION AGREEMENT AND JOINT ESCROW INSTRUCTIONS IS EXECUTED BY HACR AND DAP AS OF THE EFFECTIVE DATE DEFINED ABOVE.

**HACR:**

HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, a public body corporate and politic

By: \_\_\_\_\_  
Heidi Marshall, Executive Director

Date: \_\_\_\_\_

**DAP:**

DESERT AIDS PROJECT,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
David Brinkman, Chief Executive Officer

Date: \_\_\_\_\_

ATTEST:

Kecia R. Harper  
Clerk of the Board

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Gregory P. Priamos, County Counsel

By:  \_\_\_\_\_  
Amri Dhillon, Deputy Counsel

**EXHIBIT A**

**Legal Description of the Property**

*[Attached]*

**EXHIBIT B**

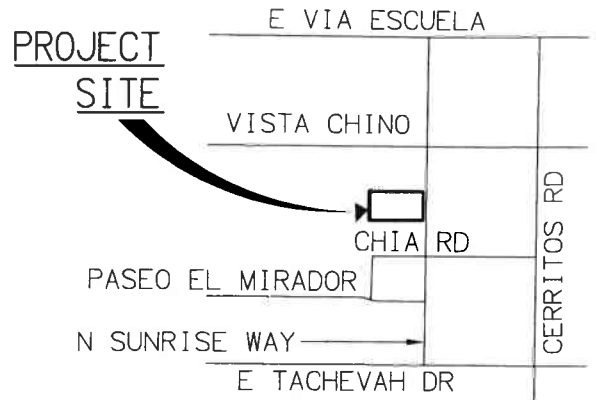
**Site Plan Depicting Property and Adjoining Parcels**

*[Attached]*

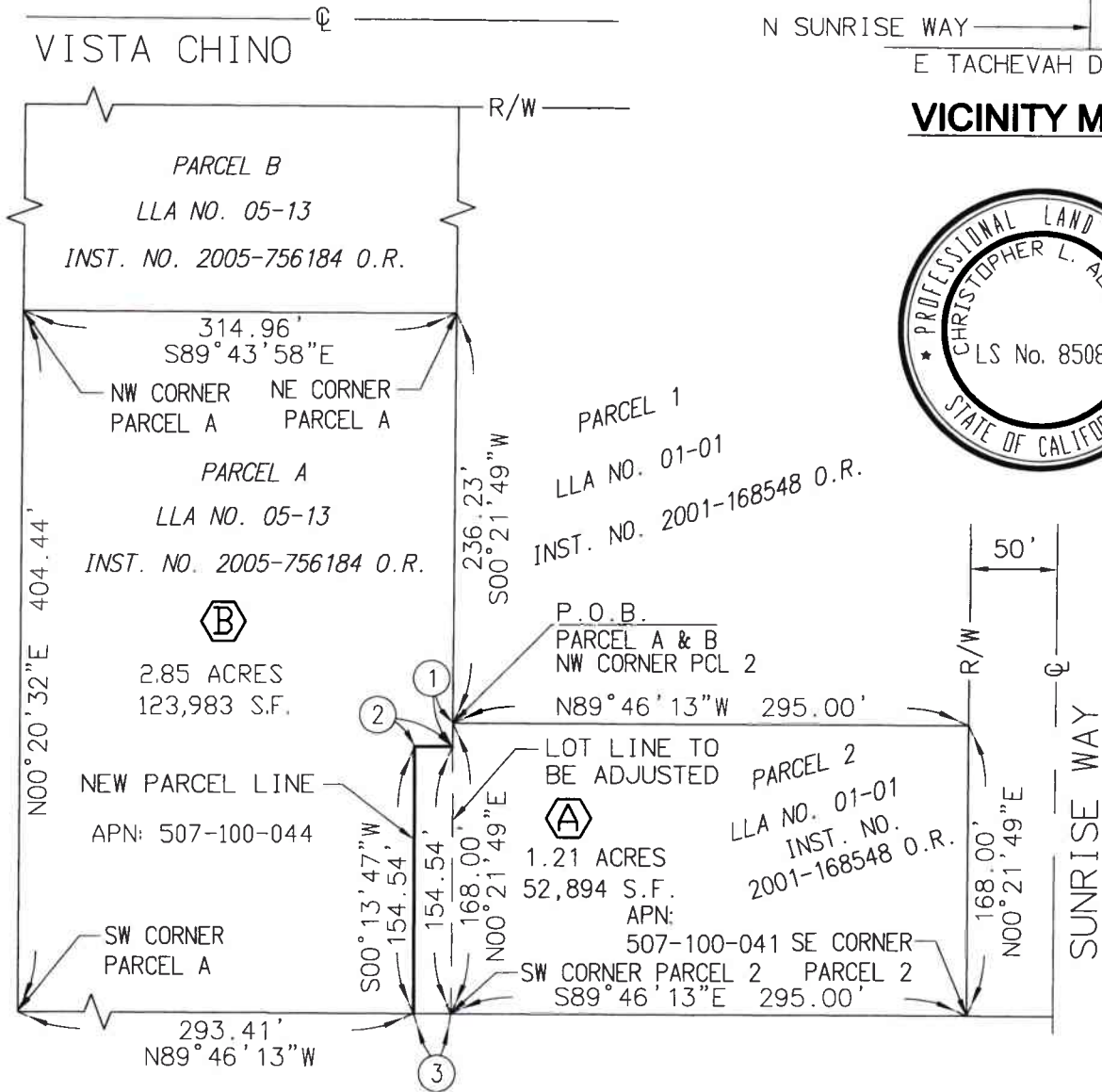
NOTE: NO STRUCTURES OBSERVED ON EITHER PARCEL

# EXHIBIT "B"

DATA TABLE			
(NO)	BEARING/DELTA	RADIUS	LENGTH
1	S00°21'49"W	--	13.46'
2	N89°46'13"W	--	21.75'
3	S89°46'13"E	--	21.39'

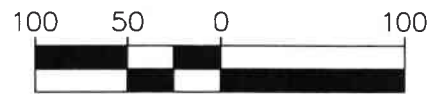


**VICINITY MAP**



**Michael Baker**  
INTERNATIONAL

75410 Gerald Ford Drive, Suite 100  
Palm Desert, CA 92211  
Phone: 760-346-7481 www.mbakintl.com



SCALE: 1"=100'

**CITY OF PALM SPRINGS ENGINEERING SERVICES**

APPROVED:

ERIK HOWARD, Engineering Resources Inc.

DATE

7648

P.L.S.

LEGAL DESCRIPTION:

SEE EXHIBIT "A"

DRAWN BY: GE

SCALE: 1"=100'

CPS FILE NO:

LLA 21-03-1537

CHECKED BY: JD

DATE: 11/08/21

SHEET NO:

1



**EXHIBIT C**

**Form of Covenant Agreement**

*[Attached]*

OFFICIAL BUSINESS Document  
entitled to free recording per  
Government Code Section 27383

Recording Requested by and When  
Recorded Return to:

HOUSING AUTHORITY OF THE  
COUNTY OF RIVERSIDE  
3403 Tenth Street, Suite 300  
Riverside, California 92501  
Attn: Deputy Director

---

Space above this line for Recorder's use only

FORM OF  
AGREEMENT CONTAINING COVENANTS  
(INCLUDING RENTAL RESTRICTIONS)

THIS AGREEMENT CONTAINING COVENANTS (INCLUDING RENTAL RESTRICTIONS) (this "**Covenant Agreement**" or "**Agreement**") is entered into as of January 11, 2022, by and between the HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, a public body, corporate and politic (herein referred to as "**HACR**"), VISTA SUNRISE II, L.P., a California limited partnership (herein referred to as "**Developer**"), and DESERT AIDS PROJECT, a California nonprofit public benefit corporation ("**Fee Owner**" or "**DAP**"). HACR, Developer and Fee Owner are individually referred to herein as a "Party" and collectively as "Parties."

RECITALS

A. HACR was established by action of the Board of Supervisors of the County of Riverside on November 23, 1942, pursuant to the California Housing Authorities Law (Health and Safety Code §§ 34200, et seq., the "**Housing Authority Law**"), and constitutes a corporate and politic public body, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out the purposes and provisions of the Housing Authority Law.

B. There is an unmet need for affordable housing within the County of Riverside, California.

C. HACR acquired certain real property comprising approximately 2.92 acres situated within the southwest corner of Vista Chino Drive and North Sunrise Way in the City of Palm Springs, County of Riverside, State of California, identified with Assessor's Parcel Number **507-100-044** ("**HACR Parcel**").

D. In furtherance of the affordable housing goals and objectives of the HACR, HACR and DAP entered into that certain Disposition and Development Agreement and Joint Escrow Instructions (“**DDA**”) dated as of January 11, 2022, relating to, among other things, the disposition of the HACR Parcel by HACR to DAP, and the combination of a portion thereof with an adjacent parcel owned by DAP pursuant to a lot line adjustment. DAP and Developer have entered into a ground lease (“**Ground Lease**”) for the combined parcel so that Developer can construct, develop and operate on the leasehold interest a total of sixty-one (61) apartment units in a multifamily affordable rental housing development, with related infrastructure (collectively, the “**Project**”). The leasehold interest held by Developer and the fee interest held by Fee Owner are legally described in the “**Legal Description**” attached hereto as **Exhibit A** (the “**Property**”)

E. In consideration of the lot line adjustment and the disposition of the HACR Parcel to DAP, and in furtherance of the housing functions of HACR pursuant to the Housing Authority Law, Developer is required to utilize the Property solely for the development of the Project and restrict the use and occupancy of forty-nine percent (49%) of the rental units (excluding the Manager Unit) in the Project to occupancy by Extremely Low Income Households and Low Income Households at an Affordable Rent for a period of fifty-five (55) years from the date of issuance of a Certificate of Occupancy for the last building within the Project.

F. The HACR Parcel was initially purchased by HACR with bond proceeds and program income from the HUD Rental Rehabilitation Program for affordable housing purposes. The covenants and restrictions set forth herein are given in consideration of the disposition of the HACR Parcel to DAP, and the conditions imposed upon the affordable housing by applicable law. An affiliate of DAP is a general partner of Developer and, as a result, Developer and DAP will receive substantial benefit from the disposition of the HACR Parcel to DAP.

G. HACR has agreed to convey the HACR Parcel to DAP on the condition that the Project be developed, maintained and operated on the Property in accordance with the restrictions concerning affordability, operation, and maintenance of the Project specified in this Covenant Agreement.

H. In consideration of the conveyance of the HACR Parcel to DAP, the lot line adjustment, which facilitates the development of the Project, and other good and valuable consideration, the receipt of which is acknowledged by Developer, Developer has agreed to observe the terms and conditions set forth herein, and DAP, in its capacity as the Fee Owner and ground lessor under the Ground Lease, has consented that the terms and conditions set forth herein shall bind and run with the Property (leasehold and underlying fee) during the term of this Agreement, and will be recorded against the Property (leasehold and underlying fee), it being expressly understood and agreed, however, that, except as set forth herein, DAP shall have no obligations for the performance of any covenants, terms or conditions under this Agreement.

I. To ensure that the Property will be used and operated in accordance with all applicable conditions and restrictions, HACR, Developer and DAP (as the consenting Fee Owner and lessor under the Ground Lease) wish to enter into this Covenant Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer, on behalf of itself and its successors, assigns, and each successor in interest to the leasehold interest in the Property or any part thereof, and HACR, agree as follows (and DAP, in its capacity as the Fee Owner and lessor under the Ground Lease, hereby consents to said agreement):

1. **Restrictions.**

a. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that Developer, such successors and such assignees shall use the Property only for the development and operation of an affordable housing development as specified in the this Covenant Agreement. No change in the use of the Property shall be permitted without the prior written approval of HACR. The apartment units, parking, community space and other improvements made to the Property shall collectively be referred to herein as the “**Improvements**”. The Improvements shall comply with all applicable requirements of the Palm Springs Municipal Code, including, without limitation, all applicable sections regarding comprehensive accessibility and adaptability requirements for multifamily new construction development.

b. Without limiting the generality of the foregoing, Developer, such successors and such assignees shall use the Property solely for the development, construction and operation thereon of a sixty-one (61) unit multi-family affordable rental housing complex consisting of studio and one-bedroom units (except for one 2-bedroom unit to be occupied by the Manager), forty nine percent (49%) (excluding any Manager Unit) or twenty-nine (29) Units of which shall be occupied by or made available at an Affordable Rent to Extremely Low Income Households and Low Income Households (collectively, the “**Restricted Units**”) in accordance herewith. Of the Restricted Units, thirty percent (30%) or nine (9) Units shall be occupied by or made available at an Affordable Rent to Extremely Low Income Households. The required distribution of the Restricted Units by type, affordability mix and rent is set forth in Exhibit C attached hereto and incorporated herein by this reference.

c. The maximum incomes of Extremely Low Income Household and Low Income Household residential tenants eligible to rent the Restricted Units shall be determined on the basis of the area median income for the County of Riverside Standard Metropolitan Area as determined by the U.S. Department of Housing and Urban Development and published approximately annually by the California Department of Housing and Community Development (“**Area Median Income**”).

d. For purposes of this Agreement, the term “**Extremely Low Income Household**” shall mean a household whose Gross Income does not exceed the requirements set forth in HSC §50106 for the County of Riverside, adjusted for actual family size.

e. For purposes of this Agreement, the term “**Low Income Household**” shall mean a household whose Gross Income does not exceed sixty percent (60%) of Area Median Income, adjusted for actual family size.

f. **“Gross Income”** shall be calculated in accordance with Title 25, § 6914 of the California Code of Regulations

g. The maximum monthly **“Affordable Rent”** for an Extremely Low Income Household, including a reasonable utility allowance for utilities and services (excluding telephone), that may be charged to tenants of the Restricted Units, shall not exceed one-twelfth (1/12) times the product of thirty percent (30%) times thirty percent (30%) of the Area Median Income, adjusted for family size appropriate for the Restricted Unit.

h. The maximum monthly **“Affordable Rent”** for a Low Income household, including a reasonable utility allowance for utilities and services (excluding telephone), that may be charged to tenants of the Restricted Units, shall not exceed one-twelfth (1/12) times the product of thirty percent (30%) times sixty percent (60%) of the Area Median Income, adjusted for family size appropriate for the Restricted Unit.

i. For purposes of calculating Affordable Rent, **“adjusted for family size appropriate for the Restricted Unit”** shall mean the number of bedrooms in the Unit plus one; or, if permitted in accordance with the HSC, the number of bedrooms in the Unit multiplied by 1.5.

j. HACR, and its successors and assigns, shall have the right, but not the obligation, to monitor and enforce the covenants contained in this section 1.

k. To the extent permitted by law, Section 42 of the Internal Revenue Code and TCAC, this Paragraph shall govern in the event of increases in tenant incomes: (a) A tenant who initially qualified as an Extremely Low Income Household, but who, due to an increase in income, no longer qualifies as an Extremely Low Income Household but does qualify as a Low Income Household, shall pay as rent an amount that does not exceed affordable rent to a Low Income Household, as permitted hereby; (b) a tenant whose Gross Income exceeds that permitted for a Low Income Household but does not exceed 80% of Area Median Income, shall pay as rent in an amount not to exceed 30% of 70% of Area Median Income; (d) if a household's income increases to above 80% of Area Median Income, but is less than 120% of Area Median Income, the household may be required to pay 30% of 110% of Area Median Income; and (e) if a household's income increases to above 120% of Area Median Income, the household may be required to pay market rate rent for the unit, to the extent permitted by applicable law.

l. Except for one or more resident manager(s), no officer, employee, agent, official or consultant of Developer may occupy any of the units.

m. Units (other than the manager's unit) in the Project that are not Restricted Units shall be occupied by households whose Gross Income does not exceed that permitted for a Moderate Income Household at a monthly rent not to exceed one-twelfth (1/12) times the product of thirty percent (30%) times one hundred ten percent (110%) of the Area Median Income, adjusted for family size appropriate for the unit. For purposes hereof, **“Moderate Income Household”** means a Household whose Gross Income does not exceed one hundred twenty percent (120%) of Area Median Income, adjusted for actual family size. Prior to leasing a Unit and annually thereafter, Developer, at its sole expense, shall cause the Property Manager (as defined in Section 22) to certify the eligibility of the Moderate Income Household tenant consistent with the income certification procedures for Restricted Units set forth in Section 19.d.

n. Failure to comply with the requirements of this Agreement is an event of default hereunder.

o. Except for the non-discrimination provisions set forth in Section 4 below, which shall remain in effect in perpetuity, this Agreement and the use and occupancy restrictions set forth herein shall remain in effect for a period of fifty-five (55) years from the issuance of a Certificate of Occupancy for the last building built in the Project (“**Term**” or “**Affordability Period**”). Without regard to a transfer, for the duration of the term set forth herein, the Property shall be held, sold and conveyed, subject to the covenants, conditions, and restrictions on the Project set forth herein.

p. Developer shall comply with the terms of the instruments secured by the Property for so long as they are encumbering the Property.

q. Notwithstanding anything to the contrary contained herein, if the Project qualifies for low income housing tax credits, Developer shall at all times comply with the rent restrictions and affordability requirements set forth in Section 42 of the Internal Revenue Code of 1986, as amended and any statutes, regulations of TCAC. In the event of a conflict between the rent and affordability requirements required by TCAC and this Covenant, Developer shall comply with the most restrictive covenant.

r. It is anticipated that certain Restricted Units in the Project (the “**Subsidy Units**”) will receive rental subsidies throughout the term (the “**Rental Subsidy**”). If any change in federal law occurs, or any action (or inaction) by Congress or any federal or state agency occurs, which results in a material reduction, termination or nonrenewal of the Rental Subsidy through no fault of the Developer, such that the Rental Subsidy is materially reduced or no longer available, Developer shall, in anticipation of such loss in Rental Subsidy, use good faith efforts for a period of sixty (60) days, to obtain alternative sources of rental subsidies and shall provide HACR weekly progress reports on Developer’s efforts to obtain alternative sources of rental subsidies. If at the end of such sixty (60) day period Developer is unable to secure an alternate source of rental subsidy, Developer may increase the rent on one or more of the Restricted Units that overlap with a Subsidy Unit, to the Affordable Rent for Low Income Households, subject to the following requirements:

(i) Any such rent increase must be pursuant to a transition plan approved by HACR showing how the rent increase will be phased-in, and which Restricted Units will be subject to the increase, and, if applicable, be consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California’s Federal and State Low Income Housing Tax Credit Program;

(ii) At the time Developer requests an increase in the rent, Developer shall provide HACR with a copy of the proposed annual operating budget showing the impact of the loss or reduction of the Rental Subsidy;

(iii) Any subsequent rent increases remain subject to subsection k. above;  
and

(iv) The number of Restricted Units subject to the rent increase and the level of rent increase may not be greater than the amount required to ensure that the Project generates sufficient income to cover its operating costs and debt service as shown on the annual operating budget, and as is necessary to maintain the financial stability of the Project.

(v) Developer shall continue to use good faith efforts to obtain alternative sources of rental subsidies and shall provide HACR with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents on the Restricted Units to be reduced back to the Affordable Rents set forth in this Section 1. Upon receipt of any alternative rental subsidies, Developer shall reduce the rents on the Restricted Units back to the Affordable Rents set out in this Section 1, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Project as shown on the annual operating budget.

2. **Structural Modifications.** In order to protect and maintain the architectural and structural integrity of the Property, no structural modification will be made to the Property without a validly issued building permit in accordance with the requirements of the Municipal Code of the City of Palm Springs. Any application for a building permit pursuant to this section and in connection with a proposed exterior modification to the Property shall be accompanied by elevations and plans depicting the proposed modifications.

3. **Maintenance of the Property.** Developer, on behalf of itself and its successors, assigns, and each successor in interest to the Property and Project or any part thereof hereby covenants to and shall protect, maintain, and preserve the Property in compliance with all applicable federal and state law and regulations and local ordinances. In addition, Developer, its successors and assigns, shall maintain the Improvements on the Property in the same aesthetic and sound condition (or better) as the condition of the Property at the time of the issuance of a Certificate of Occupancy for the Project, reasonable wear and tear excepted. This standard for the quality of maintenance of the Property shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or deterioration or failure, and within a reasonable period of time repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as reasonably necessary; cleaning windows on a regular basis; painting the buildings on a regular program and prior to the significant deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; maintaining security devices in good working order. In the event Developer, or its successor or assign, fails to maintain the Property in accordance with the standard for the quality of maintenance, HACR or its designee shall have the right but not the obligation to enter the Property upon reasonable notice to Developer, correct any violation, and hold Developer, or such successors or assigns responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Property; provided, however, any such liens shall be subject and subordinate to the deed of trust in favor of the lender or lenders which is in the most senior lien position (as in comparison to the remaining deeds of trust (if any) on the Property).

4. **Nondiscrimination**. Developer and its successors or assigns shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of any contractors or consultants, to participate in subcontracting/subconsulting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of this Covenant Agreement and may result in termination, debarment or other sanctions. This language shall be incorporated into all contracts between Developer and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers. Developer shall comply with the provisions of the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended, and all Administrative Rules and Regulations issued pursuant to said acts and orders with respect to its use of the Property.

Developer herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that this Covenant Agreement is made and accepted upon and subject to the following conditions: There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property.

Developer, its successors and assigns, shall refrain from restricting the rental, sale, or lease of the Property or any portion thereof, on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and contract entered into with respect to the Property, or any portion thereof, after the date of this Covenant Agreement shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis



listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

In addition to the obligations and duties of Developer set forth herein, Developer shall, upon notice from HACR, promptly pay to HACR all fees and costs, including administrative and attorneys’ fees, incurred by HACR in connection with responding to or defending any discrimination claim brought by any third party and/or local, state or federal government entity, arising out of or in connection with this Covenant Agreement.

5. **Development of the Property.** Developer covenants and agrees for itself, its successors and assigns and every successor in Developer’s interest in the Property or any part thereof, that Developer, its successors and assigns, shall develop and construct, or cause the development and construction, of the Project on the Property in accordance with the entitlements for the Property and all applicable governmental approvals and state, federal and local laws.

6. **Land Use Approvals.** Developer shall ensure that zoning of the Property and all applicable land use requirements will permit development and construction of the Project on the Property and the use, operation and maintenance of such Project in accordance herewith. Nothing contained herein shall be deemed to entitle Developer to any County of Riverside (“County”) permit or other County approval necessary for the development of the proposed Project, or waive any applicable County requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the County in connection with approval of the development of the Project described herein, (c) guarantee to Developer or any other party any profits from the development of the Project, or (d) amend any County laws, codes or rules. Developer acknowledges that this Agreement does not vest any development rights and that this is not a Development Agreement as provided in Government Code § 65864.

7. **Compliance With CEQA.** Developer shall perform all necessary final actions and obtain the final approvals for the development and construction of the Project within the time frames required by applicable law. Such final actions and approvals may include, but are not limited to the following: (i) completing requisite activities to comply with California Environmental Quality Act (“CEQA”), (ii) all final action and approvals for environmental and

land use permits by governmental authorities having jurisdiction over the Property, and (iii) resolution or final adjudication of any legal challenges, including such challenges based on CEQA. This Agreement does not restrict the lead agency from considering any feasible mitigation measures and alternatives, including the “no project” alternative and does not bind the lead agency to any definite course of action prior to CEQA compliance

Developer represents and warrants that the Property and all improvements located thereon, including any portion thereof and the improvements constituting the Project, shall comply with all applicable state, local and federal laws and all covenants or restrictions of record (“**Applicable Requirements**”). If the Property and all improvements located thereon do not comply with said Applicable Requirements, Developer shall promptly rectify the same at Developer’s expense.

Developer represents and warrants that the Property will be developed in full compliance with all applicable CEQA requirements for new construction in the County. The commencement of any development and construction identified herein is contingent upon Developer obtaining all required environmental and land use permits, including CEQA compliance with any applicable public agencies. In the event any action is brought challenging the legality of compliance with CEQA or any other law applicable to the Property, including any actions related to any of the proposed uses of the property or this Agreement, Developer shall indemnify, defend (with counsel reasonably acceptable to HACR), and hold harmless the HACR Indemnitees at its sole cost and expense (including but not limited to, reasonable attorney fees, cost of investigation, defense and settlements or awards), for, from and against any and all claims, actions, proceedings, demands, liabilities, costs, expenses, including reasonable attorney’s fees and costs, damages and losses, cause or causes or action and suit or suits (collectively, “**Claims**”) arising from or in connection with the failure to comply with such applicable law, or any action to attack, set aside, void, or annul any approvals of the County, any other governmental authority with jurisdiction over the Project or the Property, or HACR, its advisory agencies, or legislative body concerning this Agreement, including without limitation any challenge to CEQA compliance.

8. **Scope of Development.** The Property shall be developed in accordance with any and all permits issued by the City of Palm Springs and other governmental authorities with jurisdiction over the Project. Developer shall be solely responsible to pay all costs to develop and construct the Project on the Property pursuant to this Agreement, and any Applicable Requirements. HACR shall not be obligated to provide any funds for the development of the Project. The Property shall be utilized by Developer in accordance with all applicable laws, including the Palm Springs Municipal Code.

9. **Notice of Non-Responsibility.** HACR shall, at any and all times during the term of this Agreement, have the right to post and maintain on the Property, or any portion thereof, and record against the Property, or any portion thereof, as required by law, any notice or notices of non-responsibility provided for by the mechanics’ lien laws of the State of California; provided, however, that upon the request of HACR, Developer shall, on behalf of HACR, post and maintain on the Property, or any portion thereof, and record against the Property, or any portion thereof, all notices of non-responsibility provided for by the mechanics’ lien laws of the State of California.

10. **Nondiscrimination During Construction.** Developer agrees that during the construction of the improvements provided for in this Agreement, Developer will not discriminate

against any employee or applicant for employment because of race, color, religion, sex, or national origin.

11. **Disclaimer of Responsibility by HACR.** HACR neither undertakes nor assumes nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any person furnishing the same, or otherwise. Developer and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by HACR in connection with such matter is for the public purpose of redeveloping the Property, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. HACR shall not be responsible for any of the work of construction, improvement or development of the Project on the Property.

12. **Rights of Access.** Representatives of HACR shall have the reasonable right of access to the Property, upon 24 hours' written notice to Developer (except in the case of an emergency, in which case HACR shall provide such notice as may be practical under the circumstances), without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of HACR shall be those who are so identified in writing by the Executive Director of HACR.

13. **Taxes, Assessments, Encumbrances and Liens.** Developer shall pay prior to delinquency all real estate taxes and assessments assessed and levied on or against the Property or any portion thereof. Developer shall remove, or shall have removed, any levy or attachment made on the Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amount of any tax, assessment, encumbrance or lien, or to limit the remedies available to Developer in respect thereto.

14. **Covenants Running with the Land.** All conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by HACR, its successors and assigns, against Developer, its successors and assigns, to or of Developer's interest in the Property, or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof. HACR shall be deemed the beneficiary of the covenants, conditions and restrictions of this Agreement both for and in its own right and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of HACR, without regard as to whether HACR has been, remains, or is an owner of any land or interest in the Property. Except as provided in the preceding sentence, the covenants, conditions and restrictions contained in this Agreement shall not benefit nor be enforceable by any other owner or tenant of real property except HACR.

15. **Insurance.** Without limiting or diminishing Developer's obligation to indemnify or hold HACR harmless, Developer shall procure and maintain or cause to be maintained, at its sole cost and expense, insurance meeting the requirements set forth in Exhibit D hereto.

16. **Hold Harmless/Indemnification.** Developer and its successors and assigns shall indemnify and hold harmless HACR, the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, governing Boards, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "**Indemnitees**") from any liability whatsoever, based or asserted upon any actions or failure to act of Developer, its officers, employees, subcontractors, agents or representatives, arising out of, in connection with or in any way relating to the Property, the development and/or operation of the Project, and/or the performance of this Covenant Agreement, including but not limited to property damage, bodily injury, or death or any other claim or injury of any kind or nature whatsoever, except in the event of the gross negligence or willful misconduct of an Indemnitee; provided however, any gross negligence or willful misconduct of an Indemnitee will only affect Developer's duty to indemnify for the specific act found to be gross negligence or willful misconduct, and will not preclude Developer's duty to indemnify for any act or omission of Developer as required herein. Developer shall defend the Indemnitees against any claim or action based upon such alleged acts or omissions, at Developer's sole expense, including all costs and fees including, but not limited, to attorneys' fees and costs, cost of investigation, defense and settlements or awards. With respect to any action or claim subject to indemnification herein by Developer, Developer shall, at its sole cost, have the right to use counsel of its own choice to adjust, settle, or compromise any such action or claim without the prior consent of Indemnitees; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Developer's indemnification to Indemnitees as set forth herein. Developer's obligation hereunder shall be satisfied when Developer has provided to HACR the appropriate form of dismissal relieving Indemnitees from any liability for the action or claim involved. The specified insurance limits required in this Agreement shall in no way limit or circumscribe Developer's obligations to indemnify and hold harmless the Indemnitees herein from third party claims. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Developer from indemnifying the Indemnitees to the fullest extent allowed by law. The indemnity set forth herein shall survive the expiration or earlier termination of this Agreement.

17. **Notices.** All Notices provided for in this Agreement shall be deemed received when personally delivered, or two (2) days following mailing by certified mail, return receipt requested. All mailing shall be addressed to the respective parties at their addresses set forth below, or at such other address as each party may designate in writing and give to the other party:

If to HACR:                    Housing Authority of the County of Riverside  
   3403 Tenth Street, Suite 300  
   Riverside, CA 92501  
   Attn: Deputy Director

If to Developer:            c/o CVHC  
   45-701 Monroe Street, Suite G

Indio, CA 92201  
Attention: Mary Ann Ybarra

With a copy to: Sunrise DAP, LLC  
1695 N. Sunrise Way  
Palm Springs CA 92262  
Attention: David Brinkman, CEO

With a copy to: Wells Fargo Affordable Housing  
Community Development Corporation  
550 S. Tryon Street  
23rd Floor, D1086-239  
Charlotte, NC 28202-4200  
Attention: Director of Asset Management

With a copy to: Wells Fargo Bank, National Association  
CRELS Monitoring Team  
600 South 4th Street, 8th Floor  
MAC N9300-085  
Minneapolis, MN 55415

If to Fee Owner: Desert AIDS Project  
1695 N. Sunrise Way  
Palm Springs CA 92262  
Attention: David Brinkman, CEO

With a copy to: Carl Baker, Esq.  
Director of Legal & Legislative Affairs  
Desert AIDS Project  
1695 N. Sunrise Way  
Palm Springs CA 92262

With a copy to: Sharyl Walker, Esq.  
600 E. Tahquitz Canyon Way, Suite 2  
Palm Springs CA 92262

18. **Remedies.** HACR shall have the right, in the event of any breach of any term or covenant of this Agreement, to exercise all available rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of such term or covenant.

19. **Term.** The non-discrimination covenants, conditions and restrictions contained in Section 4 of this Covenant Agreement shall remain in effect in perpetuity. Every other covenant, condition and restriction contained in this Covenant Agreement shall continue in full force and effect for the Affordability Period.

20. **Notice and Cure.** Prior to exercising any remedies hereunder, HACR shall give Developer notice of such default in accordance herewith. Any monetary default shall be cured within seven (7) business days of delivery of written notice. Except as otherwise set forth herein, if a non-monetary default is reasonably capable of being cured within sixty (60) days of delivery of such notice of default, Developer shall have such period to effect a cure prior to exercise of remedies by HACR. If the non-monetary default is such that it is not reasonably capable of being cured within sixty (60) days of delivery of such notice of default, and Developer (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by HACR; but in no event no later than one hundred eighty (180) days from delivery of such notice of default, unless such date is extended by HACR.

HACR, upon providing Developer with any notice of default under this Agreement, shall at the same time provide a copy of such default notice to any lenders listed in Section 9 or, subsequent to the recordation of this Covenant Agreement in the Official Records of the County of Riverside, that have requested notice in writing and received acknowledgment thereof in writing by HACR (“**Lenders**”) and any tax credit investor who has given written notice to HACR of its interest in the Property and the Project. From and after such notice has been delivered to the Lenders and tax credit investor, and such permitted lenders and tax credit investor shall have the same period for remedying the default complained of as the cure period provided to Developer pursuant to this Section. HACR shall accept performance by the Lenders and tax credit investor as if the same had been made by Developer.

If a violation of any of the covenants or provisions of this Covenant Agreement remains uncured after the respective time period set forth in this Section (an “**Event of Default**”), HACR and its successors and assigns, without regard to whether HACR or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Developer of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

21. **Sale, Assignment or Transfer of the Project or Property.** Except for a Permitted Transfer as defined below, Developer hereby covenants and agrees not to sell, transfer, assign or otherwise dispose of the Project, the Property or any portion thereof, without obtaining the prior written consent of HACR, which shall be granted or withheld in its discretion. Any approved sale, assignment, or transfer of the Project or Property shall be memorialized in an assignment and assumption agreement, the form and substance of which has been first approved in writing by HACR in its discretion. Such assignment and assumption agreement shall, among other things, provide that the transferee has assumed in writing and in full, and is reasonably capable of performing and complying with, Developer’s duties and obligations under this Covenant Agreement; provided, however, Developer shall not be released of all obligations under this Agreement for any obligations which arose or were due to be performed prior to the date of such assignment.

Notwithstanding the forgoing, the following transfers (each a “**Permitted Transfer**”) shall be permitted without the consent of HACR:

(i) A conveyance of a security interest in the Project and/or Property in connection with any loan and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith and the first transfer following such foreclosure, deed or other conveyance in lieu of foreclosure;

(ii) A conveyance of the Project and/or Property to any affiliate of Developer, including, but not limited to, a conveyance to Developer’s general partners or affiliate assignee pursuant to an option agreement with Developer, or the acquisition of the limited partner’s interest in Developer by an affiliate;

(iii) The admission of limited partners to Developer, or similar mechanism, and the purchase of any such limited partnership interest or interests by the general partner;

(iv) The removal for cause of any general partner by a limited partner of the Developer, and the replacement thereof, pursuant to Developer’s partnership agreement, provided HACR receives five (5) business days advance written notice of such removal.

Without limiting Developer’s obligation to provide advance notice of such removal for cause of any general partner by a limited partner and the replacement thereof set forth in the immediately preceding sentence, amendments to the partnership agreement required to effectuate the Permitted Transfer set forth in this clause (iv) shall not require the consent of the HACR; provided, however, Developer shall provide HACR with an executed copy of such amended agreement within ten (10) days of execution thereof;

(v) The lease for occupancy of all or any part of the Project in accordance with the terms of this Covenant Agreement;

(vi) The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement; and

(vii) The withdrawal, removal and/or replacement of any limited partner of Developer, pursuant to the partnership agreement, provided HACR receives five (5) business days advance written notice of such withdrawal, removal and/or replacement.

(viii) Any transfer described in (ii), (iii), and (vi) above shall be subject to the reasonable approval of documentation by HACR’s Executive Director or designee for conformance with this Agreement.

22. **Amendments or Modifications.** This Agreement may only be amended or modified only by a written amendment signed by authorized representatives of both parties.

23. **Governing Law; Venue; Severability.** This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Covenant Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue

to another location. In the event any provision in this Covenant Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way

24. **Binding Effect.** The rights and obligations of this Agreement shall bind and inure to the benefit of the permitted respective heirs, successors and assigns of the parties.

25. **Permitted Mortgages.** No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Covenant Agreement shall defeat or render invalid or in any way impair the lien or charge of any deed of trust or mortgage or the lien or charge of a deed of trust made by the Developer for the benefit of any lender and nothing herein shall prohibit or otherwise limit the exercise of a Lender's rights and remedies thereunder, including a foreclosure or deed-in-lieu of foreclosure and subsequent transfer thereafter (or the encumbrance of the Project in connection with any acquisition and/or construction loan in connection with any such subsequent transfer).

26. **Severability.** In the event that any provision, whether constituting a separate paragraph or whether contained in a paragraph with other provisions, is hereafter determined to be void and unenforceable, it shall be deemed separated and deleted from this Agreement and the remaining provisions of this Covenant Agreement shall remain in full force and effect.

27. **Operation of Project.**

a. **Project Monitoring and Evaluation; Tenant Checklist.** Developer shall submit a Tenant Checklist Form to HACR, substantially in the form of Exhibit B attached hereto and incorporated herein by this reference, may be revised by HACR from time to time, summarizing the racial/ethnic composition, number and percentage of households who are tenants of the Restricted Units. The Tenant Checklist Form shall be submitted upon completion of the construction and thereafter, on a semi-annual basis on or before March 31 and September 30. In addition, Developer shall annually submit, on each April 1 after the issuance of a Certificate of Occupancy for the last building in the Project, such other monitoring forms as reasonably requested by HACR.

Developer shall provide to HACR draft written lease agreements for tenants of the Project for not less than one year. HACR shall review the initial form of the lease agreement prior to Developer executing any leases and, provided that Developer uses a lease form approved by HACR, Developer shall be permitted to enter into residential leases without HACR's prior written consent. Any material changes to the written lease shall be approved in writing by HACR prior to any use by Developer.

b. **Prohibited Lease Terms.** The rental agreement/lease may not contain any of the following provisions:

(1) **Agreement to be sued.** Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of Developer in a lawsuit brought in connection with the lease.

(2) **Treatment of property.** Agreements by tenant that Developer may take, hold, or sell personal property of household members without notice to the tenant and a court



decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. Developer may dispose of this personal property in accordance with State law.

(3) Excusing Developer from responsibility. Agreement by the tenant not to hold Developer or Developer's agents legally responsible for any action or failure to act, whether intentional or negligent.

(4) Waiver of notice. Agreement of the tenant that Developer may institute a lawsuit without notice to the tenant.

(5) Waiver of legal proceeding. Agreement by the tenant that the Developer may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

(6) Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury.

(7) Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

(8) Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorneys' fees or other legal costs even if the tenant wins in a court proceeding by Developer against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(9) Mandatory supportive services. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

c. Written Selection Policies. Developer shall adopt written selection policies and criteria that meet the following requirements, and are approved in writing by HACR prior to entering into any lease for the Project, which selection policies shall be subject to all applicable laws, including Section 42 of the Internal Revenue Code:

(1) Are consistent with the purpose of providing housing for Extremely Low Income Households and Low Income Households.

(2) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease.

(3) Provide for:

(A) The selection of tenants from a written waiting list in the chronological order of their satisfaction of all eligibility requirements, insofar as is practicable; and

(B) The prompt written notification to any rejected applicant of the grounds for any rejection;

(4) To the extent permitted by law, provide first priority in the selection of otherwise eligible tenants to persons displaced by HACR (if any); and

(5) Carry out the affirmative marketing procedures of HACR, to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market area. Developer and HACR shall cooperate to effectuate this provision during the Developer's initial lease-up of the Restricted Units and as vacancies occur.

d. Income Requirements and Certification. Prior to leasing a Restricted Unit and annually thereafter, Developer, at its sole expense, shall cause the Property Manager to certify the eligibility of each tenant applicant as an Extremely Low Income Household or Low Income Household. The Developer shall complete such certification on forms as may be reasonably required by HACR (which may include provision to HACR of any reporting forms required by California Tax Credit Allocation Committee (CTCAC)). Gross income calculations for prospective (and continuing) tenants shall be determined in accordance herewith and with applicable state law. Developer shall cause the Property Manager to submit such income certification, verification and such additional information as may reasonably be required in the future by HACR or CTCAC. Such supporting documentation shall include, for each member of the household eighteen (18) years old or older, copies of documentation and verification procedures as required by Section IV of CTCAC's Compliance Online Reference Manual, as may be amended from time to time by CTCAC and currently located at - <https://www.treasurer.ca.gov/ctcac/compliance/manual/manual.pdf>. Developer and HACR agree and acknowledge that HACR may require such additional information, if any, required to comply with applicable California law regarding affordable housing.

e. Submission of Audited Financial Statements. Developer shall prepare and obtain an audited annual financial statement for the Project for each calendar year (the "**Annual Audited Financial Statements**") ending after completion of such Project. By no later than the April 1st following the year in which final certificate of occupancy for the Project is issued, Developer shall submit such Annual Audited Financial Statements to HACR for the immediately preceding calendar year. Thereafter, by no later than each April 1st, Developer shall submit Annual Audited Financial Statements to HACR for the immediately preceding year in accordance with Section 6.1 of the DA.

28. Agreement Runs with Property. In accordance with California Civil Code Section 1461 et seq., all conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land. HACR shall be deemed the beneficiary of the covenants, conditions and restrictions of this Agreement both for and in their own rights and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of HACR, without regard to whether HACR has been, remains, or is an Developer of any land or interest therein in the Property, surrounding areas or the Project.

29. Access to Project. Representatives of HACR shall have the right of access to the Property, upon twenty four (24) hours' prior written notice to Developer (except in the case of an

emergency, in which HACR shall provide such notice as may be practical under the circumstances), without charges or fees, during normal business hours to review the operation of the Project in accordance with this Agreement subject to the rights of tenants under individual tenant leases.

30. **Management.** Developer shall be responsible for the operation of the Project either by direct management or by contracting its managerial functions to a third party property manager reasonably acceptable to HACR and with at least five (5) years' experience managing similar projects. HACR approves Hyder & Company as the initial management agent of the Project (together with any successors and assigns, "**Property Manager**"). The Property Manager will be charged with managing the Project on behalf of the Developer in accordance herewith. HACR shall have the right to review and approve, which approval shall not be unreasonably withheld, conditioned or delayed any such entity prior to its selection by the Developer. Developer shall include in any such property management agreement a provision providing for the termination of the agreement in the event that the Property Manager violates any federal, state or local health and safety laws and regulations which are not cured within thirty (30) days following the giving of notice of such violations by HACR or any other governmental entity; provided, however, that in the case of a violation that cannot be cured within such thirty (30) day period, that such cure shall be commenced within thirty (30) days of notification and shall be diligently prosecuted to completion not later than sixty (60) days after notification. Developer, its successors and assigns, upon notice from HACR, shall pay any costs and fees (including administrative and attorneys' fees) incurred by HACR in connection with responding to or defending any discrimination claim brought by any third party and/or local, state or federal government entity, arising out of or in connection with the Project or the Property.

31. **Compliance with Applicable Laws.** Developer shall carry out the design, construction and operation of the Project in conformity with all applicable federal, state and local laws, ordinances, statutes, codes, rules, resolutions, regulations, policy statements, orders, and decrees including without limitation, all applicable labor and employment laws and standards, laws regarding hazardous substances, laws regarding the acceptance or rejection of tenants and/or the termination of any tenancy, zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Code of Ordinances of Riverside County, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. § 12101, *et seq.*, as currently exists or as may be amended from time to time, Government Code § 4450, *et seq.*, as currently exists or as may be amended from time to time, Government Code § 11135, *et seq.*, as currently exists or as may be amended from time to time, and the California Building Standards Code, Health and Safety Code § 18900, *et seq.* as currently exists or as may be amended from time to time.

32. **Recitals.** The Recitals are a substantive part of this Agreement and are incorporated herein by this reference.

33. **Counterparts.** This Agreement may be signed by the different parties hereto in counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

34. **Compliance During Term of Ground Lease.** The terms and provisions of this Agreement shall be binding on Developer and shall also bind and run with Developer's leasehold interest in the Property for the term of this Agreement as described in Section 19. In addition, by signing this Agreement below, DAP, as the Fee Owner and ground lessor under the Ground Lease, hereby consents, acknowledges and agrees that the terms and provisions of this Agreement shall also bind and run with the underlying fee ownership of the Property during the term of this Agreement as described in Section 19, and will be recorded against the fee, such that this Agreement shall encumber the entirety of title to the Property, i.e., both the leasehold interest and the underlying fee interest.

35. **Entire Agreement.** This Covenant Agreement sets forth and contains the entire understanding and agreement of the parties hereto with respect to the subject matter hereof. There are no oral or written representations, understandings, or ancillary covenants, undertakings or agreements, which are not contained or expressly referred to herein.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, HACR, Developer and DAP have signed this Agreement as of the dates set opposite their signatures.

**HACR:**

HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, a public body corporate and politic

By: Form- Do Not Sign  
Heidi Marshall, Executive Director

Date: \_\_\_\_\_

APPROVED AS TO FORM:

COUNTY COUNSEL

By: Form- Do Not Sign  
Deputy County Counsel

**DEVELOPER:**

Vista Sunrise II, L.P.,  
a California limited partnership

By: CVHC Sunrise Vista LLC,  
a California limited liability company,  
its general partner

By: Coachella Valley Housing Coalition,  
a California nonprofit public benefit corporation,  
its sole/member/manager

By: Form- Do Not Sign  
Pedro S.G. Rodriguez,  
Interim Executive Director

Date: \_\_\_\_\_

By: Sunrise DAP LLC,  
a California limited liability company,  
its administrative general partner

By: Desert AIDS Project,  
a California nonprofit public benefit corporation,  
its sole/member/manager

By: Form- Do Not Sign  
David Brinkman,  
Chief Executive Officer

Date: \_\_\_\_\_

**DAP:**

DESERT AIDS PROJECT,  
a California nonprofit public benefit corporation

By: Form- Do Not Sign  
David Brinkman, Chief Executive Officer

Date: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

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 \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

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 \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

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 \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

EXHIBIT A  
LEGAL DESCRIPTION

Real property in the County of Riverside, State of California, described as follows:

[to come]

**Exhibit "B"**

**Tenant Checklist**

[attached]

**Exhibit B: Sample Tenant Checklist**

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

Address: \_\_\_\_\_

Insert a check mark for each item that is relevant to the family below

Unit No.	Tenant Name	Move In Date	Move Out Date	Rent Amount	Family Size	No of BRs	Utility Allowance	Tenant Portion	Section 8 Subsidy	Recert Date	Tenant Income	% of Median	Non-Hisp	Hisp	Am. Ind (AIA N)	Asn	Bl k	N Ha w Pe Islan	WH T	AJA N & WH T	AS N & WH T	BL K & WH T	AIA N & BL K	Two or more Races	

Prepared by: \_\_\_\_\_

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

Phone Number: \_\_\_\_\_

Problems or questions please call, \_\_\_\_\_

**If you would like this form prepared on Microsoft Excel e-mailed to you, please contact [jugarcia@rivco.org](mailto:jugarcia@rivco.org)**

**EXHIBIT C**

**SCHEDULE OF AFFORDABLE RENTS**

<b>Number and Type of Units</b>		<b>Maximum Income</b>	<b>Maximum Monthly Affordable Rent</b>
Nine (9)	Studio Units	Extremely Low Income Household	1/12 of 30% X 30% of AMI (less utility allowances)
Twenty (20)	One-bedroom Units	Low Income Household	1/12 of 30% X 60% of AMI (less utility allowances)
Thirty One (31)	Studio & One-bedroom Units	Moderate Income Household	1/12 of 30% of 110% of AMI (less utility allowance)

## EXHIBIT D

### INSURANCE REQUIREMENTS

Without limiting or diminishing the Developer's obligation to indemnify or hold HACR harmless, Developer shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement. As respects to the insurance section only, HACR herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds..

a. Builder's All Risk (Course of Construction) Insurance. Developer shall provide a policy of Builder's All Risk (Course of Construction) insurance coverage including (if the work is located in an earthquake or flood zone or if required on financed or bond financing arrangements) coverage for earthquake and flood, covering the HACR, Developer and every subcontractor, of every tier, for the entire Project, including property to be used in the construction of the work while such property is at off-site storage locations or while in transit or temporary off-site storage. Such policy shall include, but not be limited to, coverage for fire, collapse, faulty workmanship, debris removal, expediting expense, fire department service charges, valuable papers and records, trees, grass, shrubbery and plants. If scaffolding, false work and temporary buildings are insured separately by the Developer or others, evidence of such separate coverage shall be provided to County prior to the start of the work. Such policy shall be written on an all risk basis and a completed value form. Such policy shall cover the full insurable value. Such policy shall cover the full insurable value. Such policy shall also provide coverage for temporary structures (on-site offices, etc.), fixtures, machinery and equipment being installed as part of the work. Developer shall be responsible for any and all deductibles under such policy. Upon request by HACR, Developer shall declare all terms, conditions, coverages and limits of such policy. Such policy shall name the HACR as a loss payee as their interest may appear. If the County so provides, in its sole discretion, the All Risk (Course of Construction) insurance for the Project, then Developer shall assume the cost of any and all applicable policy deductibles (currently, \$50,000 per occurrence) and shall insure its own machinery, equipment, tools, etc. from any loss of any nature whatsoever.

b. Worker's Compensation. If the Developer has employees as defined by the State of California, the Developer shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the HACR. Policy shall name the HACR as Additional Insureds.

c. Commercial General Liability Insurance. Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Developer's performance of its obligations hereunder. Policy shall name the HACR as Additional Insured. Policy's limit of

liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the HACR as Additional Insureds. Policy shall name HACR as Additional Insureds.

d. Vehicle Liability Insurance. If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Developer shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the HACR as Additional Insureds.

e. General Insurance Provisions – All Lines.

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The Developer must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceed \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the HACR, and at the election of the County's Risk Manager, Developer's carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the HACR, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) Developer shall cause Developer's insurance carrier(s) to furnish the HACR with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the HACR prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If Developer insurance carrier(s) policies does not meet the minimum notice requirement found herein, Developer shall cause Developer's insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.

4) In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the HACR receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Developer shall not commence operations until the HACR has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and

if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

5) It is understood and agreed to by the parties hereto that the Developer's insurance shall be construed as primary insurance, and the HACR's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

6) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the HACR reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Management's reasonable judgment, the amount or type of insurance carried by the Developer has become inadequate.

7) Developer shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

8) The insurance requirements contained in this Agreement may be met with a program(s) of self- insurance acceptable to the HACR.

Developer agrees to notify HACR of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Covenant Agreement.



1 **BOARD OF COMMISSIONERS**

**HOUSING AUTHORITY OF THE**  
**COUNTY OF RIVERSIDE**

3 **RESOLUTION NUMBER 2022-001**

4 **A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING**  
5 **AUTHORITY OF THE COUNTY OF RIVERSIDE FINDING THAT CERTAIN REAL**  
6 **PROPERTY LOCATED IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE,**  
7 **STATE OF CALIFORNIA, IDENTIFIED AS APN 507-100-044 IS "EXEMPT**  
8 **SURPLUS" LAND UNDER THE CALIFORNIA SURPLUS LANDS ACT**

9 **WHEREAS**, the California Surplus Lands Act (Assembly Bill (AB) 1486 (Statutes  
10 of 2019, Chapter 664) and AB 1255 (Statutes of 2019, Chapter 661) ("SLA") requires  
11 that before a local agency, including a Housing Authority, takes any action to sell or  
12 lease surplus property, it must declare the property to be either "surplus land" or  
13 "exempt surplus land";

14 **WHEREAS**, "surplus land" means land owned in fee simple by any local agency  
15 for which the local agency's governing body takes formal action in a regular meeting  
16 declaring that such land is surplus and is not necessary for the agency's use;

17 **WHEREAS**, unless the surplus land is exempt, the agency must give written  
18 notice of its availability to any local public entity, including schools and park districts,  
19 within whose jurisdiction the property is located, as well as to housing sponsors that  
20 have notified the State Department of Housing and Community Development ("HCD")  
21 of their interest in surplus properties and imposes a mandatory negotiation process  
22 giving first priority to affordable housing development;

23 **WHEREAS**, the SLA exempts certain properties, "exempt surplus lands," from  
24 the mandatory notification and negotiation procedures, including, without limitation, (i)  
25 certain properties conveyed for affordable housing development, (ii) property that is  
26 less than 5,000 square feet and sold to a contiguous land owner; (iii) property  
27 exchanged for another property for that agency's use, and (iv) property that is subject  
28

FORM APPROVED COUNTY COUNSEL  
BY:  AMRIT P. DHILLON  
DATE: 12/27/2021

JAN 11 2022 10.3

1 to a valid legal restriction not imposed by the local agency that would prohibit housing  
2 (non- residential zoning is not a valid legal restriction; and

3       **WHEREAS**, the Housing Authority of the County of Riverside, a public body  
4 corporate and politic (“HACR” or “Housing Authority”), is a housing authority duly  
5 created, established and authorized to transact business and exercise its power, under  
6 and pursuant to the provisions of the Housing Authorities Law which is Part 2 of Division  
7 24 of the California Health and Safety Code (commencing with Section 34200 et seq,  
8 the “Housing Authorities Law”);

9       **WHEREAS**, pursuant to applicable provisions of the Housing Authorities Law,  
10 notwithstanding any other provision of law, whenever the Board of Commissioners  
11 determines that any real property owned by the HACR can be used to provide housing  
12 affordable to low income families or the proceeds of a disposition of real property are  
13 used directly to assist housing for very low income families, the HACR may sell, convey  
14 or otherwise dispose of the real property to provide that affordable housing without  
15 complying with other provisions of Title 3, Division 2, Part 2, Chapter 5, Article 8 of the  
16 California Government Code;

17       **WHEREAS**, HACR is the legal owner of record of approximately 2.87 gross acres  
18 of real property located at 1695 N. Sunrise Way, City of Palm Springs, County of  
19 Riverside, State of California, identified with Assessor’s Parcel Number 507-100-044,  
20 described in the Legal Description (Exhibit A) attached hereto and depicted on the Site  
21 Map (Exhibit B) attached hereto (“Property”);

22       **WHEREAS**, the Property was acquired by HACR in 2005 with proceeds from the  
23 County of Riverside Asset Leasing Corporation, program income from the HUD Rental  
24 Rehabilitation Program, and a grant from the Riverside County Economic Development  
25 Agency and was part of a 5.37 acre property that was subdivided into two separate  
26 legal parcels, one of which is APN 507-100-044 and the other which was developed as  
27 an affordable housing project;  
28

1           **WHEREAS**, the Property is subject to a Reciprocal Easement Agreement dated  
2           September 8, 2005, between HACR, Vista Sunrise Apartments L.P., and DAP (as  
3           hereinafter defined) recorded on September 14, 2005 as Instrument No. 2005-760268  
4           and as amended by that certain unrecorded Reciprocal Easement Agreement dated  
5           May 2, 2007, collectively, the "Easement") restricting its use to ingress, egress and  
6           parking to serve the Desert Aids Project and Palm Springs Family Care Center facilities  
7           located on adjacent property;

8           **WHEREAS**, the Easement constitutes a valid legal restriction that prohibits the  
9           construction of affordable housing on the Property;

10           **WHEREAS**, Desert AIDS Project, a California nonprofit public benefit corporation  
11           ("DAP") and HACR desire to enter into a Disposition and Development Agreement and  
12           Joint Escrow Instructions ("DDA"), relating to, among other things, the disposition of  
13           the Property by HACR to DAP in exchange for and in consideration of long-term  
14           affordable housing covenants to be placed on an adjacent parcel owned by DAP (the  
15           "Housing Parcel");

16           **WHEREAS**, the Housing Parcel will be ground leased by DAP to Vista Sunrise  
17           II, a California limited partnership ("Developer") for the construction and development  
18           thereon of a total of sixty-one (61) apartment units, forty nine percent (49%) of which  
19           will be affordable to Extremely Low Income Households and Very Low Income  
20           Households, in a multifamily rental housing development, with related infrastructure;

21           **WHEREAS**, a portion of the Property consisting of approximately 3,267 square  
22           feet (the "Housing Portion") will be conveyed to DAP and combined with the contiguous  
23           Housing Parcel pursuant to a lot line adjustment ("Conveyance No. 1") to be integrated  
24           as part of the affordable housing development consistent with the DDA;

25           **WHEREAS**, subsequent to conveyance of the Housing Portion (Conveyance No.  
26           1), the remainder of the Property (excluding the Housing Portion) will be conveyed to  
27           DAP in exchange for and in consideration of the long term affordable housing  
28           covenants in favor of HACR to be recorded against the fee and leasehold interests in

1 the Housing Parcel ("Conveyance No. 2") and DAP will continue to utilize the Property  
2 as parking to serve the adjacent property and the Desert Aids Project and Palm Springs  
3 Family Care Center facilities thereon consistent with the REA; and

4 **WHEREAS**, the Property will be conveyed to DAP by two Grant Deeds effecting  
5 conveyance of the Housing Portion (Conveyance No. 1) and conveyance of the  
6 remainder of the Property (Conveyance No. 2) in exchange for and in consideration of  
7 (i) affordable housing covenants in favor of HACR to be recorded on the fee interest in  
8 the Housing Parcel owned by DAP, and (ii) affordable housing covenants in favor of  
9 HACR to be recorded on the leasehold interest in the Housing Parcel to be owned by  
10 Developer, which such affordable housing covenants will require the construction and  
11 development thereon of a total of sixty-one (61) apartment units, forty nine percent  
12 (49%) of which will be affordable to Extremely Low Income Households and Very Low  
13 Income Households, in a multifamily rental housing development, with related  
14 infrastructure;

15 **WHEREAS**, the Board of Commissioners has considered the provisions of the  
16 SLA, including Section 54221(f)(1) defining "exempt surplus land," the terms and  
17 conditions of Conveyance No. 1 conveying the approximately 3,267 square foot  
18 Housing Portion to the owner of contiguous property for affordable housing  
19 development, the information contained in the submittal to the Board of Commissioners  
20 by staff and provided at the public hearing, and finds that the Housing Portion is  
21 "exempt surplus land" under Section 54221(f)(1)(A) and Section 54221(f)(1)(B) of the  
22 SLA;

23 **WHEREAS**, the Board of Commissioners has considered the provisions of the  
24 SLA, including Section 54221(f)(1) defining "exempt surplus land," the existing  
25 Easement on the remainder of the Property (excluding the Housing Portion) as  
26 contemplated the terms and conditions of Conveyance No. 2 in exchange for and in  
27 consideration of affordability covenants on the Housing Parcel, the information  
28 contained in the submittal to the Board of Commissioners by staff and provided at the

1 public hearing, and finds that the Easement constitutes a valid legal restriction limiting  
2 the use of the Property (excluding the Housing Portion) to parking and prohibiting the  
3 development of affordable housing thereon and that the Property is “exempt surplus  
4 land” within the meaning of Section 54221(f)(1)(G) of the SLA;

5 **WHEREAS**, the Board of Commissioners further finds and determines that the  
6 Property (excluding the Housing Portion) also qualifies as “exempt surplus land” within  
7 the meaning of Section 54221(f)(1)(C) of the SLA based on the terms and conditions  
8 of Conveyance No. 2 requiring the recordation of long-term affordable housing  
9 covenants on the Housing Parcel in favor of HACR in exchange for and in consideration  
10 of the underlying fee interest in the Property all in furtherance of the HACR’s affordable  
11 housing goals and to assist in addressing the unmet need for affordable housing within  
12 the County of Riverside.

13 **NOW THEREFORE, BE IT RESOLVED, FOUND, DETERMINED AND**  
14 **ORDERED** by the Board of Commissioners of the County of Riverside, State of  
15 California (“Board”), in regular session assembled on or about January 11, 2022, in the  
16 meeting room of the Board located on the 1<sup>st</sup> floor of the County Administrative Center,  
17 4080 Lemon Street, Riverside, California, and based upon the evidence and testimony  
18 presented on the matter, both written and oral, including the Administrative Record as  
19 it relates to the Property, as follows:

- 20 1. The foregoing recitals are true and correct.
- 21 2. The Board of Commissioners hereby finds and determines that the  
22 approximately 3,267 square foot Housing Portion of the Property to be  
23 conveyed as Conveyance No. 1 is “exempt surplus land” under Section  
24 54221(f)(1)(A) and Section 54221(f)(1)(B) of the SLA insofar as the  
25 Housing Portion is less than 5,000 square feet and will be conveyed to the  
26 owner of contiguous property for purposes of developing affordable  
27 housing.
- 28 3. The Board of Commissioners hereby finds and determines that the

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Easement constitutes a valid legal restriction limiting the use of the Property (excluding the Housing Portion) to parking and prohibiting the development of affordable housing thereon and that the Property is "exempt surplus land" within the meaning of Section 54221(f)(1)(G) of the SLA.

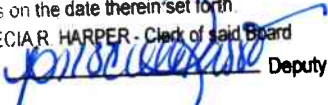
4. Board of Commissioners further finds and determines that the Property (excluding the Housing Portion) also qualifies as "exempt surplus land" within the meaning of Section 54221(f)(1)(C) of the SLA based on the terms and conditions of Conveyance No. 2 requiring the recordation of long-term affordable housing covenants on the Housing Parcel in favor of HACR in exchange for and in consideration of the underlying fee interest in the Property.

5. The Board of Commissioners hereby finds and determines that the disposition of the Property to DAP in exchange for and in consideration of affordable housing covenants to be recorded against the Housing Parcel is in the best interests of HACR and in furtherance of the HACR's affordable housing goals to assist in addressing the unmet need for affordable housing within the County of Riverside and complies with the Housing Authorities Law, including Section 34312.3 thereof, and the purpose and requirements of the SLA.

6. This Resolution shall become effective in accordance with applicable law.

ROLL CALL:

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
Nays: None  
Absent: None

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.  
KECIAR HARPER - Clerk of said Board  
By  Deputy

## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE PROPERTY

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

#### Parcel A:

That portion of Parcel 2 of Parcel Map, in the City of Palm Springs, County of Riverside, State of California, as shown by map on file in Book 17, Page 7 of Parcel Maps, in the Office of the County Recorder of said County, more particularly described as follows:

Commencing at the Northeast corner of said Parcel 2;  
Thence along the Easterly line of said Parcel 2, South 0°21'09" West, a distance of 335.00 feet to the True Point of Beginning.

Thence continuing along the Easterly line of said Parcel 2, South 0°21'09" West, a distance of 404.09 feet to the Southeast corner of said Parcel 2;

Thence along the Southerly line of said Parcel 2, North 89°44'25" West, a distance of 314.97 feet to the Southwest corner of said Parcel 2;

Thence along the Westerly line of said Parcel 2, North 0°20'42" East, a distance of 404.44 feet; Thence South 89°40'34" East, a distance of 315.02 feet to the True Point of Beginning.

Except therefrom all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet, but with no right of surface entry, as provided in deed recorded April 28, 1964 as Instrument No. 1964-052476 of Official Records and March 6, 1975 as Instrument No. 1975- 026565, of Official Records.

Said legal description is shown as Parcel A on that certain approved Lot Line Adjustment No. 05-13, as evidenced by document recorded September 13, 2005 as Instrument No. 2005-756184 records of said County.

Assessor's Parcel No: 507-100-044

#### Parcel B:

An easement for ingress, egress and parking purposes as set forth as Easement "A" in that certain "Reciprocal Easement Agreement" dated September 8, 2005, executed by the Housing Authority of the County of Riverside, Vista Sunrise Apartments, L.P., a California Limited Partnership and the Desert Aids Project, a California Non-Profit Corporation, recorded September 14, 2005 as Instrument No. 2005-760268, of Official Records.

Parcel C:

An easement for ingress, egress and parking purposes, as set forth as Easement "B " in that certain "Reciprocal Easement Agreement" dated September 8, 2005 executed by the Housing Authority of the County of Riverside, Vista Sunrise Apartments, L.P., a California Limited Partnership, and the Desert Aids Project, a California Non-Profit Corporation, recorded September 14, 2005 as Instrument No. 2005-760268 of Official Records.



Exhibit A



EXHIBIT "B"

SITE MAP



- Property – 
- Housing Portion 

1 **BOARD OF COMMISSIONERS**

**HOUSING AUTHORITY OF THE**  
**COUNTY OF RIVERSIDE**

3 **RESOLUTION NUMBER 2022-002**

4 **A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING**  
5 **AUTHORITY OF THE COUNTY OF RIVERSIDE AUTHORIZING THE DISPOSITION**  
6 **OF FEE SIMPLE INTEREST IN REAL PROPERTY LOCATED IN THE CITY OF**  
7 **PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, IDENTIFIED**  
8 **AS ASSESSOR PARCEL NUMBERS 507-100-044 ("PROPERTY") BY ONE OR**  
9 **MORE GRANT DEED(S) TO DESERT AIDS PROJECT ("DAP") IN EXCHANGE**  
10 **FOR AND IN CONSIDERATION OF THE RECORDATION OF AFFORDABILITY**  
11 **COVENANTS ON AN ADJACENT PARCEL AND APPROVING A DISPOSITION**  
12 **AND DEVELOPMENT AGREEMENT BETWEEN THE HACR AND DAP**  
13 **EFFECTING SUCH DISPOSITION AND RELATED ACTIONS**

14 WHEREAS, the Housing Authority of the County of Riverside, a public body  
15 corporate and politic, ("HACR" or "Housing Authority"), is a housing authority duly  
16 created, established and authorized to transact business and exercise its power, under  
17 and pursuant to the provisions of the Housing Authorities Law which is Part 2 of Division  
18 24 of the California Health and Safety Code (commencing with Section 34200 et seq,  
19 the "Housing Authorities Law");

20 WHEREAS, HACR is the legal owner of record of approximately 2.87 gross acres  
21 of real property located adjacent to a Desert Aids Project facility located at 1695 N  
22 Sunrise Way, City of Palm Springs, County of Riverside, State of California, identified  
23 with Assessor's Parcel Number 507-100-044, described in the Legal Description  
24 (Exhibit A) attached hereto and depicted on the Site Map (Exhibit B) attached hereto  
25 ("Property");

26 WHEREAS, the Property was acquired by HACR in 2005 with proceeds from the  
27 County of Riverside Asset Leasing Corporation, program income from the HUD Rental  
28 Rehabilitation Program, and a grant from the Riverside County Economic Development

FORM APPROVED COUNTY COUNSEL  
BY: AMRI P. DHILLON DATE: 12/29/2021

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1 Agency and was part of a 5.37 acre property that was subdivided into two separate  
2 legal parcels, one of which is APN 507-100-044 and the other which was developed as  
3 an affordable housing project;

4 **WHEREAS**, pursuant to applicable provisions of the Housing Authorities Law,  
5 notwithstanding any other provision of law, whenever the Board of Commissioners  
6 determines that any real property owned by the HACR can be used to provide housing  
7 affordable to low income families or the proceeds of a disposition of real property are  
8 used directly to assist housing for very low income families, the HACR may sell, convey  
9 or otherwise dispose of the real property to provide that affordable housing without  
10 complying with other provisions of Title 3, Division 2, Part 2, Chapter 5, Article 8 of the  
11 California Government Code;

12 **WHEREAS**, by adoption of Resolution No. 2022-001 on January 11, 2022, the  
13 Board of Commissioners found and determined that the Property is “exempt surplus  
14 land” as defined by Section 54221(f)(1) of the California the Surplus Land Act  
15 (Assembly Bill (“AB”) 1486 (Statutes of 2019, Chapter 664) and AB 1255 (Statutes of  
16 2019, Chapter 661);

17 **WHEREAS**, DAP and HACR desire to enter into a Disposition and Development  
18 Agreement and Joint Escrow Instructions (“DDA”), relating to, among other things, the  
19 disposition of the Property by HACR to DAP in exchange for and in consideration of  
20 affordable housing covenants to be placed on the adjacent “Housing Parcel,” as  
21 hereinafter defined;

22 **WHEREAS**,. DAP will continue to utilize the majority of the Property as a parking  
23 lot for the adjacent the Desert Aids Project and Palm Springs Family Care Center  
24 facilities consistent with a Reciprocal Easement Agreement restricting the use of the  
25 Property, but a portion of the Property will be combined with an adjacent parcel owned  
26 by DAP pursuant to a lot line adjustment to create the “Housing Parcel” which will be  
27 ground leased by DAP to Vista Sunrise II, a California limited partnership (“Developer”)  
28 for the construction and development thereon of a total of sixty-one (61) apartment

1 units, forty nine percent (49%) of which will be affordable to Extremely Low Income  
2 Households and Very Low Income Households, in a multifamily rental housing  
3 development, with related infrastructure (collectively, the "Project");

4 **WHEREAS**, the DDA requires that affordable housing covenants in favor of  
5 HACR be recorded against the Housing Parcel and the proposed Project in exchange  
6 for and in consideration of the conveyance of the Property to DAP;

7 **WHEREAS**, the Developer is a partnership and affordable housing developer,  
8 engaged in the development, construction and operation of affordable housing serving  
9 residents of the County of Riverside;

10 **WHEREAS**, DAP desires to acquire (i) the Property from HACR, and (ii) enter  
11 into a ground lease with Developer for the Housing Parcel, such that Developer can  
12 develop, construct and operate the Project;

13 **WHEREAS**, in connection with the Project, Developer will be responsible for all  
14 (i) entitlements, land use approvals, permits and CEQA compliance, (ii) construction  
15 and development costs, (iii), securing financing, construction, on-site and off-site  
16 improvements, and (iv) Housing Parcel maintenance obligations;

17 **WHEREAS**, the sale of the Property to DAP and the development of the Project  
18 as set forth herein is consistent with and will advance HACR's affordable housing goals  
19 and assist in addressing the unmet need for low income affordable housing that will  
20 benefit the surrounding community;

21 **WHEREAS**, in accordance with California Health & Safety Code Section  
22 34312.3, HACR published a Notice of Public Hearing notifying the public of the public  
23 hearing and consideration of the proposed DDA relating to the conveyance of the  
24 Property in exchange for and in consideration of affordable housing covenants and  
25 finding the Property "exempt surplus land". A copy of the DDA was made available for  
26 public review on the date the Notice of Public Hearing was published;

27 **WHEREAS**, the Board of Commissioners has considered all the terms and  
28 conditions of the proposed disposition of the Property set forth in the proposed DDA,

1 and the information contained in the submittal to the Board of Commissioners by staff  
2 and provided at the public hearing, and believes that conveyance of the Property in  
3 accordance with the proposed DDA is in the best interests of the HACR and the health,  
4 safety and welfare of its residents, and in accord with the public purposes and  
5 provisions of applicable State and local law and requirements; and

6 **WHEREAS**, pursuant to the California Environmental Quality Act and State  
7 CEQA Guidelines ("CEQA") Section 15004(b), the DDA does not constitute a project,  
8 does not vest any development rights and will not result in any physical changes to the  
9 environment in that the DDA requires the Developer to obtain all necessary land use  
10 approvals and entitlements for the Housing Parcel, including compliance with CEQA,  
11 from the City of Palm Springs as lead agency and does not commit the lead agency to  
12 any definite course of action or foreclose alternatives or mitigation measures that would  
13 ordinarily be part of CEQA and the existing parking lot use on the remainder of the  
14 Property will be continued.

15 **NOW THEREFORE, BE IT RESOLVED, FOUND, DETERMINED AND**  
16 **ORDERED** by the Board of Commissioners of the County of Riverside, State of  
17 California ("Board"), in regular session assembled on or about January 11, 2022, in the  
18 meeting room of the Board located on the 1<sup>st</sup> floor of the County Administrative Center,  
19 4080 Lemon Street, Riverside, California, and based upon the evidence and testimony  
20 presented on the matter, both written and oral, including the Administrative Record as  
21 it relates to the DDA and the Project, as follows:

- 22 1. That it has received and heard all oral and written objections (if any) to the  
23 proposed DDA for the proposed disposition of the Property to DAP, and the  
24 other matters pertaining to this transaction, and that all such oral and written  
25 objections (if any) are hereby overruled.
- 26 2. The foregoing recitals are true and correct.
- 27 3. The Board of Commissioners hereby finds and determines that the  
28 conveyance of the Property to DAP in consideration of affordable housing

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covenants to be recorded against the Housing Parcel, plus additional consideration as provided in the DDA, will provide housing for extremely low, low and moderate income persons.

4. The Board of Commissioners hereby finds and determines that the conveyance of the Property to DAP in accordance with the DDA is consistent with the Housing Authorities Law.

5. The Board of Commissioners hereby approves the conveyance of the Property to DAP.

6. The Board of Commissioners hereby finds and determines that the DDA between HACR and DAP substantially in the form attached hereto (including all attachments thereto) as Exhibit "C" and incorporated herein by this reference, is hereby approved, and authorizes the HACR Executive Director to execute the DDA and all necessary documents in furtherance of the transactions described in the DDA substantially conforming in form and substance to the attached Agreement, subject to approval as to form by County Counsel.

/// ROLL CALL:

/// Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
/// Nays: None  
/// Absent: None

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.

Kecia R. Harper, Clerk of said Board

By  Deputy

EXHIBIT "A"

LEGAL DESCRIPTION OF THE MASTER PROPERTY

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

Parcel A:

That portion of Parcel 2 of Parcel Map, in the City of Palm Springs, County of Riverside, State of California, as shown by map on file in Book 17, Page 7 of Parcel Maps, in the Office of the County Recorder of said County, more particularly described as follows:

Commencing at the Northeast corner of said Parcel 2;  
Thence along the Easterly line of said Parcel 2, South 0°21'09" West, a distance of 335.00 feet to the True Point of Beginning.

Thence continuing along the Easterly line of said Parcel 2, South 0°21'09" West, a distance of 404.09 feet to the Southeast corner of said Parcel 2;

Thence along the Southerly line of said Parcel 2, North 89°44'25" West, a distance of 314.97 feet to the Southwest corner of said Parcel 2;

Thence along the Westerly line of said Parcel 2, North 0°20'42" East, a distance of 404.44 feet; Thence South 89°40'34" East, a distance of 315.02 feet to the True Point of Beginning.

Except therefrom all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet, but with no right of surface entry, as provided in deed recorded April 28, 1964 as Instrument No. 1964-052476 of Official Records and March 6, 1975 as Instrument No. 1975- 026565, of Official Records.

Said legal description is shown as Parcel A on that certain approved Lot Line Adjustment No. 05-13, as evidenced by document recorded September 13, 2005 as Instrument No. 2005-756184 records of said County.

Assessor's Parcel No: 507-100-044

Parcel B:

An easement for ingress, egress and parking purposes as set forth as Easement "A" in that certain "Reciprocal Easement Agreement" dated September 8, 2005, executed by the Housing Authority of the County of Riverside, Vista Sunrise Apartments, L.P., a California Limited Partnership and the Desert Aids Project, a California Non-Profit Corporation, recorded September 14, 2005 as Instrument No. 2005-760268, of Official Records.

EXHIBIT A

Parcel C:

An easement for ingress, egress and parking purposes, as set forth as Easement "B" in that certain "Reciprocal Easement Agreement" dated September 8, 2005 executed by the Housing Authority of the County of Riverside, Vista Sunrise Apartments, L.P., a California Limited Partnership, and the Desert Aids Project, a California Non-Profit Corporation, recorded September 14, 2005 as Instrument No. 2005-760268 of Official Records.

EXHIBIT A



**EXHIBIT "B"**

**SITE MAP**



**EXHIBIT B**

EXHIBIT "C"  
DISPOSITION AND DEVELOPMENT AGREEMENT  
[Behind this page]

EXHIBIT C



Original Negative Declaration/Notice of Determination was routed to County Clerks for posting on. 01-13-22 Date YPR Initial

### Notice of Exemption

**To:**  
 Office of Planning and Research  
For U.S Mail: Street Address:  
P.O. Box 3044 1400 Tenth St.  
Sacramento, CA 95812-3044 Sacramento, CA 95814

**From:**  
**Public Agency:** Housing Authority of the County of Riverside  
**Address:** 3403 Tenth Street  
Riverside, CA 92501  
**Contact:** Nicole Sanchez, Development Specialist  
**Phone:** (760) 863-2825

County Clerk  
County of: Riverside  
2724 Gateway Drive  
P.O. Box 751  
Address: Riverside, CA 92502-0751

Lead Agency (if different from above):  
Address: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Phone: \_\_\_\_\_

**SUBJECT: Filing of Notice of Determination in Compliance with Section 21108 or 21152 of the Public Resources Code.**

State Clearinghouse Number (if submitted to State Clearinghouse): \_\_\_\_\_

Project Title: Disposition and Development Agreement

Project Location (include county): County of Riverside-Assessor's Parcel Number 507-100-044

**Project Description:**

The Housing Authority of the County of Riverside (HACR) owns that certain real property located at N. Sunrise and Vista Chino, in the City of Palm Springs, County of Riverside, State of California, identified with Assessor's Parcel Number 507-100-044 ("Property").

Pursuant to applicable provisions of the "Housing Authorities Law" (California Health & Safety Code, Section 34200, et seq.), notwithstanding any other provision of law, whenever the Board of Commissioners determines that any real property owned by the HACR can be used to provide housing affordable to low income families or the proceeds of a disposition of real property are used directly to assist housing for very low income families, and this use is in the HACR's best interest, the HACR may sell, convey or otherwise dispose of the real property without complying with other provisions of Title 3, Division 2, Part 2, Chapter 5, Article 8 of the California Government Code. The HACR is committed to providing affordable housing and services to the residents of the County of Riverside and in consultation with the California Department of Housing and Community Development and in order to avoid delaying the proposed disposition of the Property, the HACR has determined the Property is "exempt surplus land" under the California Surplus Lands Act (Government Code 54220 et seq.).

Desert Aids Project (DAP) desires to acquire the Property from HACR in exchange for and in consideration of long-term affordability covenants to be recorded against the Housing Parcel (as hereinafter defined) and the Proposed Project (as hereinafter defined) to be developed thereon. The Property is subject to a Reciprocal Easement Agreement and is currently used as a parking lot for the adjacent Desert Aids Project facility and the Palm Springs family Care Center. DAP wishes to combine a portion of the Property via a lot line adjustment with an adjacent lot owned by DAP (collectively, the "Housing Parcel") which DAP will ground lease to Vista Sunrise II, L.P. (Developer). The lot line adjustment creating the Housing Parcel will allow Developer to develop, construct and operate thereon an affordable multifamily rental housing project comprised of approximately sixty one (61) units consisting of studios and one bedrooms units, with amenities. The acquisition and development of affordable housing on the leasehold interest in the Housing Parcel shall collectively be referred to herein as the "Proposed Project".

Under the terms of the proposed Disposition and Development Agreement ("Agreement"), forty-nine percent (49%) of the units to be constructed on the Housing Parcel not occupied by an on-site manager will be restricted to occupancy by extremely low and low income households whose incomes do not exceed sixty percent (60%) of the Area Median Income for Riverside

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County (AMI). At least thirty percent (30%) of these "Restricted Units" will be restricted to occupancy by extremely low income households whose incomes do not exceed thirty percent (30%) of AMI. The maximum qualifying income for all other units in the Proposed Project will be one hundred twenty percent (120%) of AMI.

There is an unmet need for affordable housing within the County of Riverside. Consistent with applicable provisions of the Health & Safety Code and subject to the satisfaction of certain conditions precedent, the Property will be conveyed to DAP in exchange for and in consideration of affordability covenants in favor of HACR to be recorded against both the leasehold interest and the fee interest in the Housing Parcel. As to the Housing Parcel, Developer shall be responsible for all (i) entitlements, land use approvals, permits and CEQA compliance, (ii) construction and development costs, (iii) securing financing, construction, on-site and off-site improvements, and (iv) property maintenance obligations. All land use and development entitlements, including compliance with CEQA, must be obtained from the City of Palm Springs.

The terms of Property conveyance and applicable affordability restrictions are set forth in Agreement, including attachments, to be executed by the HACR and DAP. Developer and HACR will enter into an Agreement Containing Covenants in the form attached to the Agreement to be recorded against the leasehold interest in the Housing Parcel. The deed restrictions restricting at least twenty-nine (29) new housing units to occupancy by low and extremely low income households is in the best interests of the HACR, the County of Riverside and the residents thereof. The remainder of the Property not part of the Housing Parcel will continue to be used as parking for the adjacent Desert Aids Project facility and the Palm Springs family Care Center consistent with the Reciprocal Easement Agreement.

Project Sponsor: Housing Authority of the County of Riverside

This is to advise that the County of Riverside Board of Commissioners approved the above project on

Lead agency or  Responsible Agency

January 11, 2022  
(tentative date)

and has made the following determinations regarding the above described project:

The Agreement does not constitute a project pursuant to the California Environmental Quality Act and State CEQA Guidelines (CEQA). Pursuant to CEQA Guidelines Section 15004(b), approval of the Agreement provides for the conveyance of property subject to specific conditions. Approval by the HACR of the Agreement does not vest any development rights and will not result in any physical change to the environment. The Agreement requires the Developer to obtain all necessary land use approvals and entitlements for the Housing Parcel from the City of Palm Springs, including compliance with CEQA. As the jurisdiction exercising land use control over the Property and the Housing Parcel, the City of Palm Springs, will be the lead agency for the purposes of CEQA. The Agreement does not commit the lead agency to any definite course of action or foreclose alternatives or mitigation measures that would ordinarily be part of CEQA review.

Housing Authority of the County of Riverside

Signature: (Public Agency)



Title: Juan Garcia, Principal Development Specialist  
Housing Authority of the County of Riverside

Date:

12/29/21

Date received for filing at OPR: \_\_\_\_\_

# Riverside County Clerk-Recorder

## Authorization to Bill by Journal Voucher

To be completed by submitting Agency

### HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE

Authorization # \_\_\_\_\_

Date: \_\_\_\_\_

Agency/Division: Housing Authority of the County of Riverside - Attn: Jennifer Paz

Accounting String: FUND DEPT ID ACCT  
(Interfund) 523230-40600-5600100000  
(Non-Interfund)

**This authorizes the "County Clerk & Recorder Office" to issue a Journal Voucher for payment of all fees for the accompanying documents.**

Number of Documents Included: 1 Notice of Exemption (DDA)  
Wildomar Property

Authorized by:  \_\_\_\_\_  
Juan Garcia, Principal Development Specialist

Presented by: \_\_\_\_\_  
Nicole Sanchez, Development Specialist II

\_\_\_\_\_

### To be completed by County Recorder

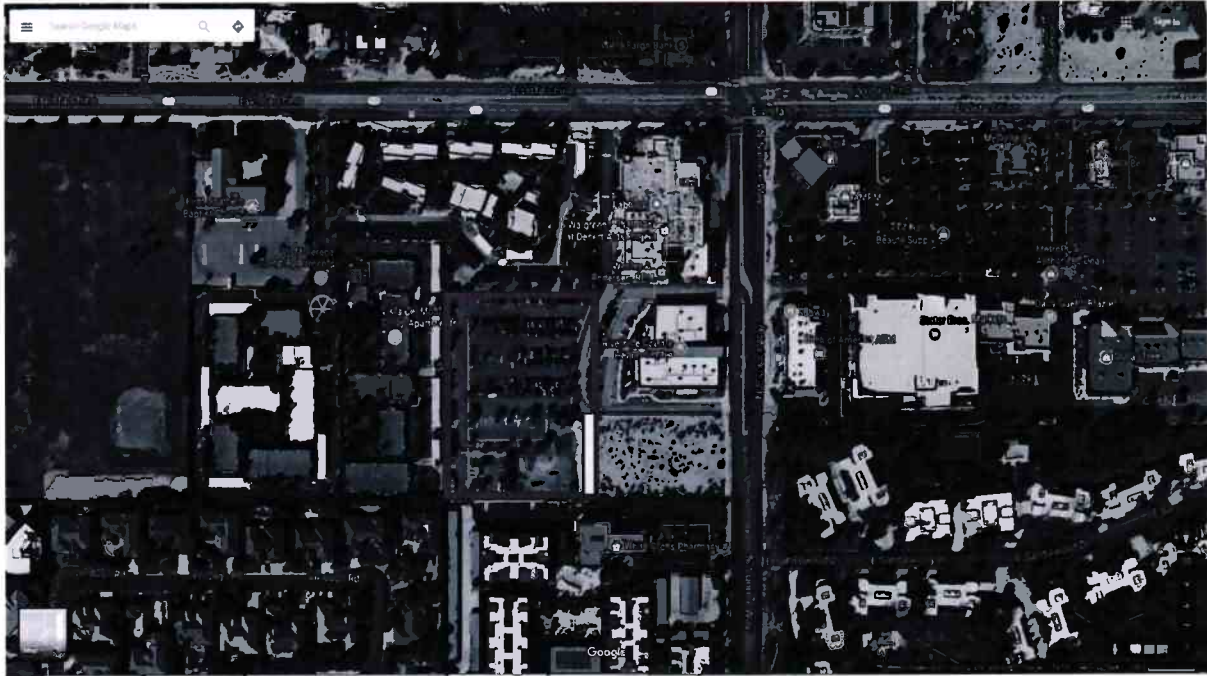
Accepted by: \_\_\_\_\_

Date: \_\_\_\_\_

Document no(s)/invoice no(s): \_\_\_\_\_

HACR PARCEL

SITE MAP



Address: 1695 N. Sunrise Way, Palm Springs, CA, 92262

Accessors Parcel Number: 507-100-044

Property –

Housing Portion

NOTICE OF PUBLIC HEARING BY THE HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE REGARDING A DISPOSITION AND DEVELOPMENT AGREEMENT TO CONVEY REAL PROPERTY IDENTIFIED AS ASSESSOR'S PARCEL NUMBER 507-100-044 LOCATED IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, TO DESERT AIDS PROJECT AND FINDING THE PROPERTY IS EXEMPT SURPLUS LAND

NOTICE IS HEREBY GIVEN THAT the Housing Authority of the County of Riverside's ("Authority") Board of Commissioners ("BOC") will hold a Public Hearing **on or about** January 11, 2022, at the hour of 9:30 a.m. or as soon thereafter as the matter can be heard, in the Board Chambers, County Administrative Center, 4080 Lemon Street 1<sup>st</sup> Floor, Riverside, CA 92501, for the purpose of considering a proposed Disposition and Development Agreement ("Agreement") by and between the Authority and Desert Aids Project, a California nonprofit public benefit corporation ("DAP"), pursuant to Health & Safety Code Section 34312.3. The proposed Agreement provides for the conveyance by the Authority to DAP of certain real property consisting of approximately 2.87 gross acres, identified as Assessor's Parcel Number 507-100-044, located at the intersection of N. Sunrise and Vista Chino, in the city of Palm Springs, County of Riverside, State of California ("Site"), in exchange for and in consideration of affordable housing covenants on an adjacent parcel.

The Site is currently developed as a parking lot for an existing DAP facility north of the Site, and is subject to a Reciprocal Easement Agreement restricting the use of the Site to parking. DAP wishes to own the Site and continue to use it as a parking lot. A portion of the Site consisting of approximately 3,267 square feet will be combined with an adjacent parcel south east of the Site owned by DAP. The combined property ("Housing Parcel") will be ground leased from DAP to Vista Sunrise II, L.P. (Developer). Developer will construct thereon a total of sixty one (61) apartment units to be occupied by and rented to extremely low, low and moderate income households, with amenities and related infrastructure.

In exchange for and in consideration of the conveyance of the Site to DAP, DAP and Developer have agreed that forty-nine percent (49%) of the units not occupied by an on-site manager built on the Housing Parcel will be restricted to extremely low and low income households whose incomes do not exceed sixty percent (60%) of the Area Median Income for Riverside County ("AMI"). Such twenty nine (29) restricted units shall be referred to as the "Affordable Units." At least thirty percent (30%) of the "Affordable Units" or nine (9) units will be restricted to occupancy by extremely low income households whose incomes do not exceed thirty percent (30%) of AMI. The Affordable Units shall be subject to an Agreement Containing Covenants recorded against the fee and leasehold interests in the Housing Parcel in favor of HACR, which will require the Affordable Units to remain continually affordable for the longest feasible time, but not less than 55 years from the issuance of a certificate of occupancy for the last building completed in the Project.

The Property is "exempt surplus land" under applicable provisions of the California Surplus Lands Act ("SLA") and the proposed conveyance of the Site complies with the SLA and the Housing Authorities Law.

The following documents are available for public inspection and copying during regular business hours (8:00 a.m. to 5:00 p.m., Monday through Friday) at the offices of the County located at 3403 Tenth St., Suite 300, Riverside, CA 92501 or email [NiSanchez@rivco.org](mailto:NiSanchez@rivco.org): A copy of the proposed Agreement and all attachments.

At any time before the date and time set forth above for the public hearing by the Authority, any written comments on or objections to the proposed Agreement may be filed with the County Clerk. All persons wishing to question, comment, object to, or be heard on any or all such matters at the public hearing will be given an opportunity to appear and be so heard. If you later desire to challenge actions of the Authority in connection with these actions, you could be limited to raising issues you have raised at or before the public hearing.

Further information concerning this matter may also be obtained by contacting Juan Garcia, Principal Development Specialist at 951-343-5473. This information will be made available in alternative formats upon request. If you require assistance or auxiliary aids to participate at this public hearing, please contact the County Clerk at 951-955-1060 or email [COB@RIVCO.ORG](mailto:COB@RIVCO.ORG) in advance of the meeting.

Publish: