



CITY COUNCIL AS HOUSING SUCCESSOR AGENCY STAFF REPORT

DATE: July 11, 2011

CONSENT CALENDAR

SUBJECT: PARTICIPATION AGREEMENT ("PA") WITH JEWISH FAMILY SERVICES OF SAN DIEGO COUNTY IN AN AMOUNT OF \$80,000 FOR THE REHABILITATION OF NIGHTENGALE MANOR AS A 10-UNIT PERMANENT SUPPORTIVE HOUSING PROGRAM LOCATED AT 2951 DE ANZA ROAD, IN THE CITY'S CAPACITY AS THE HOUSING SUCCESSOR AGENCY OF THE COMMUNITY REDEVELOPMENT AGENCY

FROM: David H. Ready, City Manager

BY: Community and Economic Development

SUMMARY

This Participation Agreement allows Jewish Family Services of San Diego (JFSSD) to undertake the renovations of Nightengale Manor at 2951 Anza Road in Palm Springs, owned by the County of Riverside, under the Permanent Supportive Housing Program, designed to develop supportive housing and services that will allow homeless individuals or those at-risk of being homeless to live as independently as possible. All tenants are placed in safe, affordable housing and supportive services are provided to bolster physical and mental healing, as well as help increase income levels.

Assistance in the Supportive Housing Program is provided to help homeless persons meet three overall goals:

- achieve residential stability,
- increase their skill levels and/or incomes, and
- obtain greater self-determination and self-sufficiency (i.e., more influence over decisions that affect their lives).

In December 2009, housing services were suspended at Nightengale Manor with the opening of Roy's Desert Resource Center, as the funding was shifted from Nightengale Manor to Roy's. Riverside County, through its Housing Authority as owner of Nightengale Manor, had acquired and maintained the property in 1987 for the exclusive

purpose of housing homeless households as was granted in the 1986-87 final approved Planned Development District by the City.

RECOMMENDATION:

- 1) Approve Agreement No. A _____, A Participation Agreement ("PA") with Jewish Family Services of San Diego County in the amount of \$80,000 for the rehabilitation of Nightengale Manor as a 10-unit Permanent Supportive Housing Program facility located at 2951 De Anza Road, in the City's capacity as the Housing Successor Agency of the Community Redevelopment Agency; and
- 2) Authorize the City Manager to execute all necessary documents. A _____.

STAFF ANALYSIS:

The Housing Authority of the County of Riverside, as a regional housing authority, is tasked with addressing a wide-range of housing needs within Riverside County. One of these needs is the provision of housing for homeless individuals and families. To address this need, the Housing Authority had acquired the 2951 Anza Road property in Palm Springs in 1987 and has maintained the property, known as Nightengale Manor, for the exclusive purpose of housing homeless households. Over the past twenty year, the Housing Authority had partnered with local homeless service providers who have leased the property for a nominal fee (\$1 per year) and operated homeless housing programs. This partnership has included four different faith-based operators through the years, which significantly reduces the operating costs to the County associated with the programs.

In the spring of 2007, the Coachella Valley Association of Governments' (CVAG) Homelessness Committee embarked on a series of planning and resource exploration initiatives to coordinate valley-wide planning efforts for homelessness under the broader recommendations developed as part of the County of Riverside's 10 Year Plan to End Homelessness. The Homelessness Committee developed its own 'Strategic Plan to End Homelessness' which outlined goals centered on creating and expanding homeless services for the entire Coachella Valley.

Due to a lack of services in the Western Coachella Valley, the CVAG Homelessness Committee set as its first priority creating a Western Coachella Valley Regional Multi-Service Center that will provide comprehensive support services to promote progress towards permanent housing and self-sufficiency.

On December 31, 2009, the Roy's Desert Resource Center (DRC), named in honor of the late County Supervisor Roy Wilson, was opened as the first comprehensive homeless center built in Western Coachella Valley. This regional effort was

homeless center built in Western Coachella Valley. This regional effort was spearheaded by CVAG and its Homelessness Committee and supported by the cities of the Coachella Valley, the Riverside County Department of Public Social Services' (DPSS) Homelessness Program, and numerous private and public partnerships. Roy's DRC is located in Palm Springs and offers emergency shelter and several supportive services to ninety homeless individuals each night. As part of that initiative, DPSS shifted its funding and transitioned services from Nightengale Manor to Roy's.

Jewish Family Services of San Diego, d/b/a/ Desert SOS (JFSSD), is the DRC operator and assists clients in regaining their stability in the community, as well as securing safe and affordable housing.

In early 2010, the Housing Authority met with City staff to discuss potentially partnering on Nightengale Manor's continued use. Staff presented the request to the City Council's Affordable Housing Subcommittee and on May 27, 2010, the Subcommittee directed staff to continue dialogue with the Housing Authority on restoring Nightengale Manor's original purpose of housing homeless individuals or families.

The Housing Authority issued a competitive Request for Qualifications (RFQ) on August 12, 2011 to utilize the facility to provide housing and supportive services to homeless individuals/families. JFSSD was the only applicant and on October 12, 2011, they received the Notice of Award from the Housing Authority. On December 28, 2011, the Lease Agreement was executed by both parties.

JFSSD is now in a position to again assume operations of Nightengale Manor. Having successfully operated the facility previously, coupled with being the operator of the *Desert Vista Permanent Supportive Housing Program*, they are poised to transform the facility into a permanent home for low and extremely low-income individuals. The *Desert Vista* program is both already fully-funded and ideal for relocating some of its residents to the Nightengale facility.

On March 1, 2011, JFSSD was awarded a \$650K annual Riverside County DPSS contract to operate the *Desert Vista Permanent Supportive Housing Program*. *Desert Vista* is a HUD-funded, 40-bed, scattered site program serving disabled individuals. JFSSD was awarded this program based, in part, on the excellent program reviews it received for *Desert Horizon*, the 32-bed, HUD-funded transitional living program which JFSSD has operated since December 1, 2007. *Desert Vista* has secure matching funds, as required by HUD. The contract was renewed on March 1, 2012 for one additional year and continued funding is highly likely.

JFSSD has determined that the Nightengale facility can comfortably accommodate 10 of the 40 *Desert Vista* residents. In anticipation of this, JFSSD entered into a lease for

the property with the Housing Authority on December 28, 2011. Since that time, JFSSD has maintained the property at its expense.

Due to the current condition of the facility, modifications to the structure will be necessary. These necessary changes include: adding kitchenettes to the units that do not have them; modifying some of the existing kitchenettes; remodeling one of the units to render it ADA compliant; replacing two pressure regulators that were removed due to vandalism; replacing HVAC units; installing new locks, deadbolts, and necessary appliances; painting the facility's interior and some of its exterior; removing of hazardous playground equipment; and thoroughly cleaning (i.e. "deep cleaning") the facility.

The result will be 10 Single Room Occupancy (SRO) units with one individual in each unit, as required by HUD for permanent housing. Residents can stay in the units indefinitely and pay 30% of their adjusted gross income for rent. Rental income is put back into the program to help pay for supportive services. There will be an office on-site that will be staffed during regular business hours. A full array of supportive services will be offered on the premises, including intensive case management. As JFSSD did when operating this facility previously, security and neighborhood relations will be a major focus of staff.

Participants will be assisted with meeting HUD national goals and remain in permanent housing through the following means and activities:

- a. Moderate Demand Housing Model
- b. Participating in the Process of Identifying and Achieving Goals
- c. Developing an Individual Housing Plan
- d. Skill development

Adjusting to a Moderate-Demand Model

A moderate demand model will be used to help clients obtain and remain in permanent housing. Within this model, clients will realize that there is a moderate predetermined, standard timeframe. Clients have sufficient time to complete related tasks, develop skills, and achieve the confidence to retain housing.

Participating in the Process of Identifying and Achieving Goals

As soon as it is reasonable within this moderate-demand model, clients will learn about the primary goals of the model through meeting with staff (particularly Employment, Housing, Life Skills and Benefit staff) will assist them with their housing, income and resource goals. This will help promote a sense of autonomy, responsibility, and a sense of having control over and being able to take action to positively influence their lives.

Developing an Individual Housing Plan

Participants will be assisted with remaining in permanent housing by developing an Individualized Housing Plan with the proposed program's staff. Each participant will begin developing an Individualized Housing Plan by completing an assessment tool. The assessment tool will evaluate each participant's current level of readiness and will indicate areas where additional skills are needed to live successfully in permanent housing.

Development of Skills to Maintain Permanent Housing

Staff will assist clients in identifying their needs and monitor performance goals. The goals that will be measured for success within the plan will include employment (if client is employable), income, money management, medical and mental health care (as needed), crisis/peer counseling, substance abuse treatment (if needed), accessing mainstream resources, and other life skills training.

The Desert-SOS staff is trained to provide counseling and instruction focusing on tenants successfully realizing HUD's National goals:

- To help participants obtain and remain in permanent housing
- To help participants increase skills and/or income
- To help participants achieve greater self-determination

The Facility

In anticipation of this project, JFSSD called for bids from a number of licensed contractors obtained from a list of contractors who have done work for the City of Palm Springs. The successful bidder is Chris W. Foster, Inc., General Building Contractor. Mr. Foster's business is located in Palm Springs and he has walked the property multiple times to assure a complete bid. His bid includes the latest roof damage which JFSSD temporarily repaired until renovation work could begin. Mr. Foster's company carries all of the requisite liability and insurance coverage. He was the only contractor who presented a full bid and was also the lowest cost.

The facility will house 10 residents and will have a community room for community and case management meetings, storage for necessary supplies, a laundry area and an on-site office. The office will be staffed during regular business hours with on-call staff available during off hours. Two existing units will be combined to make one large, fully ADA-compliant unit which will be wheelchair accessible.

A detailed budget is included detailing the renovations required to bring the facility to HUD standards. Depending on availability of funds, JFSSD anticipates a 60-day construction period and occupancy on or around September 1, 2012.

The Project targets the special needs population of Palm Springs. The mix will consist of ten studio units of which one will be modified to be ADA compliant. Therefore this Project will serve 10 unduplicated persons. Additionally, this project will be 100% affordable with rents at 30% area median income. The Project will benefit the City by rehabbing an older apartment complex and providing 10 affordable housing units.

RDA ISSUES:

This project was budgeted in the Community Redevelopment Agency's Low and Moderate Income Housing fund in the 2011-2012 year. However, on June 27, 2011, the State of California passed AB 1X 26, which dissolves all of the redevelopment agencies in the State of California and became effective October 1, 2011. As part of the law, the Agency was prohibited from entering new contracts after June 27, 2011, which prevented entering an agreement with JFSSD in Fall 2011.

Part of the law contained an "opt-in" provision, however, which would have allowed agencies to continue operating in return for a sizable payment to the State. The intent was to enter a Participation Agreement with JFSSD and the Agency in October, 2011, after the Agency "opted in" under AB 1X 27. However, in August, 2011, the California Redevelopment Association and the League of California Cities, however, sued the State over the two laws on constitutional grounds. No action could be taken by the Agency while the lawsuit was pending.

On December 29, 2011, the California Supreme Court upheld AB 1X 26, eliminating redevelopment agencies, and overturned AB 1X 27, the opt-in payment.

On January 4, 2012, the City Council approved a resolution authorizing the City to become the Successor Agency and the Housing Successor Agency. The City Council elected to retain the responsibility for performing housing functions previously performed by the Palm Springs Community Redevelopment Agency and assume all rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of in accordance with Cal. Health and Safety Code §34176.

Actions of the Housing Successor Agency are outside the review of the Oversight Board, which was created pursuant to Cal. Health and Safety Code §34179. Actions of the City as well, acting under its own Charter and statutory authority, are not subject to Oversight Board review, either.

The proposed source of funding for the Housing Successor Agency in the current 2012-2013 year is the repayment by the Agency of the loan made by the Low- and Moderate-Income Housing Fund to the Agency to make the Special Education Revenue Augmentation Fund (SERAF) payments to the County in the 2009-2010 and 2010-2011 fiscal years. Upon the adoption of AB 1X 26, the State had originally taken the position

that the loans were not recognized obligations, but the legal opinions over the past several months, even at the State, are that they are legal loans that should be paid. The recently enacted Budget Trailer Bill AB 1484 gives more legal certainty, too, to SERAF repayments. Therefore, the SERAF payment to be made to the Housing Successor Agency from the June, 2012 property tax distribution was included on the Successor Agency's Recognized Obligation Payment Schedule (ROPS) and distributed to the Housing Successor Agency.

The State Department of Finance recently completed its review of the City's ROPS, and allowed the SERAF payment of over \$1,000,000 to the Housing Successor Agency in June, 2012. The Oversight Board also approved the two amended ROPS at a Special Meeting held May 30, 2012, for the current six month period and the next six month period, for transmittal to the State and County.

The only additional contingency is that, as with the prior actions of the Oversight Board, under AB 1X 26, the County Auditor-Controller's Office was required to engage an external auditor (the firm of Brown Armstrong). Based on the facts noted above, Staff believes that the SERAF payment made to Housing Successor Agencies is settled at the State level. The auditors have a statutory deadline imposed by the California Supreme Court of July 15, 2012 to complete their reviews so the final status would be known by then.

This action would authorize the funding through a Participation Agreement with Jewish Family Services, with the provision that if the SERAF loan is challenged by the auditor this agreement would be terminated. No payments will be made until after the audit is received. The Participation Agreement is different from the Agency's typical Owner Participation Agreement because JFSSD is not the owner of the property, though their lease with the County allows them to receive funds to pay for the renovation of the property. Therefore, while JFSSD agrees to provide the units at Very Low Income rents, their lease is renewed yearly with the County and the covenants are not recorded for the typical 55 years.

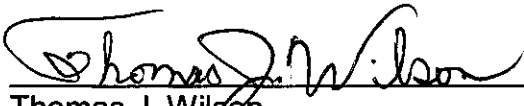
FISCAL IMPACT:

This action will help preserve this long-standing housing resource within the community as well as foster a permanent supportive housing' model which is aligned with the County's 10 Year Plan to End Homelessness, adopted in November 2007, and the Coachella Valley Association of Governments' Strategic Plan to End Homelessness, created in July 2007 as well as subsequently amended in February 2009 and revised September 2010.

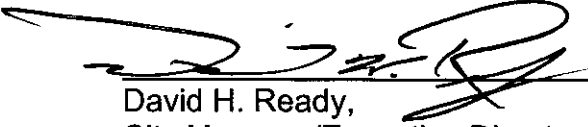
The City's Housing Successor Agency's participation is \$80,000, in the form of a grant to JFSSD. Since all of the units currently are, and would continue to be, restricted to low-and very-low income residents, the per-unit subsidy would be \$8,000.



John Raymond, Director
Community and Economic Development



Thomas J. Wilson
Assistant City Manager



David H. Ready,
City Manager/Executive Director

Attachments:

Participation Agreement
Proposed Operational Plan

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Palm Springs
3200 Tahquitz Canyon Way, P.O. Box 2743
Palm Springs, Ca. 92263
Attention: Executive Director

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Agreement is recorded at the request and for the benefit of the City of Palm Springs acting solely in its capacity as the Housing Successor Agency of the former Community Redevelopment Agency and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

THE CITY OF PALM SPRINGS

By: _____

Its: City Manager

Dated: _____

PARTICIPATION AGREEMENT

by and between

City of Palm Springs,
acting solely in its capacity as the Housing Successor Agency
of the former Community Redevelopment Agency

and

Jewish Family Services of San Diego (JFSSD)

for

Nightengale Manor, 2951 Anza Road
Residential Project
Palm Springs, CA 92262

ATTACHMENTS

1. Exhibit A: Legal Description of Property
2. Exhibit B: Schedule of Performance/Payment Schedule
3. Exhibit C: Budget/Financial Plan
4. Exhibit D: Certificate of Completion
5. Exhibit E: Basic Design
6. Exhibit F: Affordability Restrictions.

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT ("Agreement") is entered as of the Effective Date (defined in this Agreement), between the City of Palm Springs, acting solely in its capacity as the Housing Successor Agency of the former Community Redevelopment Agency, ("City") and Jewish Family Services of San Diego (JFSSD) ("Operator").

RECITALS

The parties enter this Agreement based on the following facts, understandings, and intentions:

A. The Palm Springs Community Redevelopment Agency ("Agency") was a public body, corporate and politic, organized and existing under the California Community Redevelopment Law (Cal. Health & Safety Code §33000 et seq.)

C. The Agency administered the Low and Moderate Income Housing Fund established pursuant to Cal. H.&S. C. Sections 33334.2 et seq.

B. To the extent provided in or allowed by the Law including Cal. H.&S.C. Sections 33334.2 and 33449, as provided by joint resolutions of the Palm Springs City Council and the City, findings and determinations pursuant to Health and Safety Code Section 33334.2.(g), the Plan and limited to the terms and conditions therein, the City may make improvements upon and/or construct and improve structures in order to provide housing for persons and families of low or moderate income, by variously (1) allowing the use of Housing Set Aside Funds outside the Project Areas and (2) placing a priority on the use of the Housing Set Aside Funds from the Project Areas to be used either within or adjacent to the Project Areas.

C. On December 29, 2011, in *California Redevelopment Association v. Matosantos*, Cal. Supreme Court Case No. S194861, the California Supreme Court upheld AB26X1, which dissolves all redevelopment agencies in the State of California, and struck down AB27X1, which allowed redevelopment agencies to remain in existence if such agency opted in to the "Voluntary Alternative Redevelopment Program" ("VARP").

B. The City of Palm Springs is a municipal corporation and charter city under the Constitution of the State of California.

Pursuant to Cal. Health & Safety Code §34176, the City could either opt to retain the housing assets and functions previously performed by the Palm Springs Community Redevelopment Agency or, by default, allow those assets and functions to be assigned to and assumed by the Palm Springs Housing Authority.

K. On January 4, 2012, the City Council of the City of Palm Springs approved a resolution expressing its intention to have the City of Palm Springs assume all rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of the Palm Springs Community Redevelopment Agency.

E. Operator is the lessee of certain real property described in Exhibit "A" attached hereto and incorporated herein (the "Property"), including improvements located thereon which shall be improved by Operator as contemplated by this Agreement and known as Nightengale Manor located at 2951 Anza Road, Palm Springs, California (the "Project"). The Property and Project are located within the territorial jurisdiction of the City.

F. Operator proposes to acquire and renovate a residential rental project on the Property consisting of ten (10) residential units. All of the residential units (the "Affordable Units") are to be rented and preserved as Affordable Rental Housing.

G Operator agrees to undertake improvements in accordance with the combined Schedule of Performance described in Exhibit B attached hereto and incorporated herein (the "Schedule of Performance").

H. To the extent Housing Set Aside Funds will exceed 50 percent of the cost of producing the Affordable Units, the City has determined based on substantial evidence, that the use of the Funds is necessary because the City or Operator of the Affordable Units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity. The Project is not feasible and cannot be completed and restricted to the affordable rental housing purposes and uses provided under Law and this Agreement absent the financial support of the City.

I. The Property and associated on site and off-site improvements are collectively referred to in this Agreement as the "Improvements" or the "Project," all of which will directly benefit the Property and the area, cannot otherwise be reasonably paid for or financed, and are necessary to eliminate blight.

J. City is willing to assist Operator's reconstruction of the Affordable Units by making available to Operator as a grant of certain Housing Funds in the amount of \$80,000 (the "Grant") upon the terms and conditions specified this Agreement.

K. The Grant shall be paid in accordance with the schedule set out in Exhibit B to the Agreement. The Grant and performance of the affordability and other covenants and restrictions set forth in this Agreement shall be evidenced by this Agreement and the Restrictions set forth.

L. The Project has been environmentally assessed under the California Environmental Quality Act (CEQA), resulting in a Categorical Exemption. Based on the review, City staff determined that the project is consistent with all of the criteria specified

for an exemption to the California Environmental Quality Act (CEQA) in accordance with Section 15301/Class 1 of the CEQA Guidelines for existing facilities.

M. The Operator and the City have determined that this Agreement is not subject to Article XXXIV of the California Constitution.

AGREEMENT

1. **DEFINITIONS.** Besides definitions contained elsewhere in this Agreement, the definitions in this Section will govern the construction, meaning, application and interpretation of the various terms used in this Agreement.
 - 1.1 "ADA" means the Americans with Disabilities Act of 1990.
 - 1.2 "Affordability Period" means a period of _____ years commencing from the date City records the Certificate of Completion.
 - 1.3 "Affordable Rental Housing" or Affordable Units means the Units available at affordable rent, as defined by Cal. H.&S.C. Section 50052.5 (4), to persons and families of low and moderate income, as defined in Cal. H.&S.C. Section 50093 of Code, consistent with Recital F above which requirements shall be enforceable by covenants running with the land. As used in this Agreement, the term "Affordable Low Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of sixty percent (60%) of the Riverside County Median Income adjusted for the family size appropriate for the Unit and the term "Affordable Moderate Income Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, which is currently thirty percent (30%) of one-hundred-ten percent (110%) of the Riverside County Median Income adjusted for the family size appropriate for the Unit.
 - 1.4 "City" means the Community Redevelopment Agency of the City of Palm Springs, a public body, corporate and politic, organized and existing under the Law, and any assignee of or successor to its rights, powers and responsibilities.
 - 1.5 "Agreement" means this Operator Participation Agreement.
 - 1.6 "Budget" means the Budget/Financial Plan for the Project attached hereto and incorporated herein as Exhibit "C" (the "Budget").

- 1.7 "Certificate of Completion" means that Certificate issued in the form attached as Exhibit "D" to Operator by City evidencing completion of the Project for purposes of this Agreement.
- 1.8 "Conditions Precedent of City" means the conditions precedent to the effectiveness of this Agreement against the City.
- 1.9 "Day" whether or not capitalized, means a calendar day, unless stated otherwise.
- 1.10 "Restrictions" means the affordability restrictions contained in this Agreement and Exhibit F thereto, containing all conditions, covenants, and restrictions required by the Law, any other applicable laws and regulations, the Plan, and this Agreement, running with the Property and the Affordable Units thereon and burdening such for the Affordability Period.
- 1.11 "Default" means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.
- 1.12 "Director" means the Executive Director of the Community Redevelopment Agency or Housing Successor Agency.
- 1.13 "Entitlements" mean all permits and fees that the City, County of Riverside, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.
- 1.14 "Effective Date" means the date of complete execution of the Agreement following City Council approval thereof.
- 1.15 "Environmental Laws" means any federal, state, or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials or waste including, without limitation, any state or federal lien or "super lien" law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.
- 1.16 "Funding Source" means the Grant and other funding sources secured by Operator to construct the Improvements.
- 1.17 "Financing Plan" means the Budget including sources and uses of funds sufficient for Operator to complete the Improvements according to the Schedule of Performance.
- 1.18 Reserved.

- 1.19 "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated biphenyls, (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (i) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), or (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.*); provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential rental housing or associated buildings and grounds, or typically used in household activities, in a manner typical of other residential rental housing developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Sections 25249.8 *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine.
- 1.20 "Household" means one or more persons occupying an Affordable Unit.
- 1.21 "Housing Set-Aside Funds" means those California Health and Safety Code Section 33334.2 monies held and administered by City a portion of which shall be made available as the Grant to Operator for eligible costs and expenses incurred by Operator in constructing the Improvements in such amounts, and upon such terms and conditions specified in this Agreement.
- 1.22 "Improvements" mean the construction of the Affordable Units and other units that Operator will complete on the Property as part of the Project, including associated fencing, and landscaping improvements.

- 1.23 "Law" means the Community Redevelopment Law of the State (California Health and Safety Code Sections 33000 *et seq.*).
- 1.24 "Grant" means the principal sum of \$80,000 provided by City to Operator as a Grant, upon the terms and conditions set forth in this Agreement.
- 1.25 "Grant Documents" are collectively this Agreement and all exhibits and attachments thereto any deed of trust given as security, as they may be amended, modified or restated from time to time.
- 1.26 "Material Change" means a change, modification, revision or alteration to the Grant Documents that significantly deviates from those previously approved by the City, provided that fully funded change(s) which do not result in a change in the number or type (i.e. residential, affordable) of Units and/or an increase in the total Grant funding provided in this Agreement shall not constitute Material Change(s).
- 1.27 "Operator" means a Jewish Family Services of San Diego (JFSSD), a California 501 (c)(3) non-profit corporation.
- 1.28 Reserved.
- 1.29 "Project" means the rehabilitation of 10 residential Units on the Property, of which all Units shall be Low Income Housing.
- 1.30 Reserved.
- 1.31 "Project Completion Date" means the date that City shall have determined the Project has reached completion in accordance with the plans and specifications in the Schedule of Performance, as evidenced by City's issuance of a Certificate of Completion.
- 1.32 "Property" means the real property described in Exhibit "A".
- 1.33 Reserved.
- 1.34 "Release of Restrictions" means a release of those covenants, conditions and restrictions contained in this Agreement.
- 1.35 "Schedule of Performance" means the schedule attached as Exhibit "B," setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may revise the Schedule of Performance from time to time on mutual written agreement of Operator and City, but any delay or extension of the Completion Date is subject to the requirements in this Agreement.

1.36 "Security Financing Interest" means a security interest which Operator grants in the Property and the Improvements thereon before the City issues and records a Release of Restrictions.

1.36 "Unit" mean a residential unit constituting the Project.

2. CONDITIONS PRECEDENT TO CITY'S OBLIGATION TO PERFORM UNDER THIS AGREEMENT. The following are conditions precedent to City's obligation to perform under this Agreement. Until each and all of the conditions are satisfied, City is not obligated to take any action, or provide any funding under this Agreement. City, in writing by its authorized representative, may waive any condition or agree to extend the time for satisfaction of any condition set forth in this Section 2. City may terminate this Agreement as provided herein for the failure of a condition.

2.1 Reserved.

2.2 Operator has entered into, and provided City copies of agreements with any and all funding sources and the general contractor for the Project. All such funding source agreements shall contain a provision whereby the party(ies) to each such agreement, other than Operator, agree to make reasonable efforts to (i) notify City immediately of any event of default by Operator under such agreement; (ii) notify City immediately of termination or cancellation of such agreement; and (iii) provide City, upon City's request, an estoppel certificate certifying that such agreement is in full force and effect and Operator is not in default under such agreement.

2.3 Operator has submitted evidence that the combined monies from the Funding Sources are not less than the greater of a total development cost of \$80,000 or the amount which City determines is necessary to complete the Project. If City determines that said funds are not sufficient to complete the Project, Operator may satisfy this condition as agreed to by Operator and City in writing.

2.4 Operator will submit its Financing Plan to the City for review and acceptance provided that the purpose of City's review is solely to confirm Operator has sufficient funds available to complete the Improvements and maintain Project as this Agreement requires.

After City accepts the Financing Plan, Operator will not make any Material Change in the Financing Plan without first submitting such change to City for review and acceptance, which shall not be unreasonably withheld, delayed or conditioned.

- 2.5 Operator, at Operator's expense, shall have investigated and determined all environmental, soil, seismic, and other surface and subsurface conditions of the Property and the suitability of such conditions for the Project. Operator's responsibility and due diligence includes, but is not limited to, determining the presence of Hazardous Materials. Both Operator and City will promptly give the other copies of all reports and test results. Operator will indemnify, defend, and hold City harmless from any damages or claims arising out of Operator's inspections and tests.
- 2.6 Should Operator's property assessment/inspection reveal any Hazardous Materials or environmental conditions requiring remediation, Operator will promptly notify City. Not later than ten (10) days from and after such notice, Operator shall, at its sole cost and expense, commence to make required submittals, develop required remedial action plans, and thereafter pursue remediation activities as to such Hazardous Materials or environmental conditions and to diligently prosecute such to completion as required by applicable federal, state and local law and in a manner and according a reasonable time frame agreeable to City. Without limiting the foregoing, any remediation will be performed pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction and will be performed according to applicable environmental laws and governmental requirements.
- 2.7 Operator shall not be in default of this Agreement and all representations and warranties of Operator contained herein shall be true and correct in all material respects.
- 2.7.1 Operator will have signed and delivered all documents required hereunder.
- 2.7.2 Operator will have received all land use and development approvals, variances, permits and the like required by this Agreement.
- 2.8 Operator will have provided proof of insurance as required by this Agreement.
- 2.9 This Agreement shall have been recorded with the Riverside County Recorder's Office.

3. OPERATOR OBLIGATIONS AFTER SATISFACTION OF CONDITIONS PRECEDENT. The following obligations of Operator will run with the land and survive this Agreement:

- 3.1 Operator will take all reasonable precautions to prevent the release into the environment of any Hazardous Materials in, on or under the Property in violation of applicable laws or regulations. Operator will comply with all

governmental requirements with respect to Hazardous Materials. In addition, Operator shall install and use equipment and implement and follow procedures that are consistent with reasonable standards for the disclosure, storage, use, removal and disposal of Hazardous Materials.

- 3.2 Operator will notify the City and give City a copy of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Property including, without limitation, notices of violation, notices to comply, citations, inquiries, cleanup or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any governmental regulation relating to Hazardous Materials. Within 3 days after each incident, Operator will report to City any unusual or potentially important incidents respecting the environmental condition of the Property.

If a release of any Hazardous Materials into the environment occurs, Operator will, as soon as possible after the release, furnish City with a copy of any reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Operator will furnish City with a copy of any other environmental entitlements or inquiries relating to or affecting the Property including, without limitation, all permit applications, permits and reports, even reports and other matters.

- 3.3 From the Effective Date of this Agreement, Operator shall indemnify, hold harmless and defend City and each of their officers, officials, employees, agents and volunteers from any and all claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), arising out of (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to any use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property. This indemnity will include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination leak, spill, release or other adverse effect on the environment. Operator's obligations under the preceding sentence shall apply regardless of whether City or any of their officers, officials, employees, agents or volunteers are negligent, but shall not apply to any

claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense caused solely by the gross negligence, or caused by the willful misconduct, of City, City or any of their officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

- 3.4 The status and qualifications of Operator are of particular concern to City. From the Effective Date of this Agreement until the Restrictions expire, no voluntary or involuntary successor-in-interest of Operator will acquire any rights or powers under this Agreement, provided that the parties acknowledge the Operator shall hold the Affordable Units for rental as Affordable Rental Housing as provided in this Agreement.

4. DEVELOPMENT OF THE PROPERTY.

- 4.1 Except as set forth in this Agreement, before Operator begins constructing the Improvements or undertakes any other work of improvement on the Property, Operator, at its own cost and expense, will secure all land use and other entitlements, permits, and approvals that City or any other governmental City with jurisdiction over the Project requires for construction of the Project. Without waiver or limitation, Operator will secure and pay all costs, charges and fees associated with, the following:

4.1.1 All permits and fees that the City, County of Riverside, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.

4.1.2 ADA/Barriers to the Disabled. The Project shall comply with all applicable federal, state and local accessibility requirements. For purposes of this Agreement the number of accessible dwelling units shall be [zero (0)] unless a greater number of units shall be required by law, whereupon such greater number of units shall apply.

- 4.2 Basic Design. Operator has submitted a general or basic concept drawing to City, which City has approved, and a copy of which is attached as Exhibit "E" (the "Basic Design"). Operator will complete the Improvements on the Property in one phase, according to the Basic Design, and the plans, drawings, and documents that Operator submits to City. Operator shall carry out construction of the Project including the Improvements in accordance with all applicable local, state and federal laws, codes, ordinances and regulations, including without limitation all applicable state and federal labor standards.
- 4.3 Books and Records. Operator shall make available for examination at reasonable intervals and during normal business hours, all books,

accounts, reports, files and other papers or property with respect to all matters covered by this Agreement, and shall permit City to audit, examine and make excerpts or transcripts from such records. City may audit any conditions relating to this Agreement at City's expense, unless such audit shows a materially significant discrepancy in information reported by Operator to City in which case Operator shall bear the cost of such audit. Operator shall also reasonably cooperate with and assist the City in City's compliance with any applicable audit requirements of the California Redevelopment Law including California Health and Safety Code Sections 33080 and 33080.1. This section shall survive for a period of four years after the expiration or termination of this Agreement.

4.4 Audit. Operator shall be accountable to City for all Grant funds disbursed to Operator pursuant to this Agreement. Operator will cooperate fully with City and the State in connection with any interim or final audit relating to the Project that may be performed. Operator will maintain accurate and current books and records for the Project using generally accepted accounting principles. Operator agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with Grant funds and to keep all invoices, receipts and other documents related to expenditures financed with Grant funds for not less than four (4) years after the fiscal year in which such expenditures are incurred. For purposes of this section, "books, records and documents" include, without limitation, plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, purchase orders, invoices, Grant documents, computer printouts, correspondence, memoranda and electronically stored versions of the foregoing. This section shall survive for a period of four years after the expiration or termination of this Agreement.

4.5 Permits.

4.5.1 Project Completion. City, acting through and in the discretion of its Director, may extend the completion date of the Project for that period of time that City, in its reasonable discretion, determines necessary to overcome any delay if and to the extent such delay is due to a cause which is beyond Operator's reasonable control, and if Operator could not, with reasonable diligence, have foreseen and avoided such cause for delay. Such causes include, without limitation, acts of God, unusually severe weather or flood, war, terrorism, riot or act of the public enemy, labor disputes, unavoidable inability to secure labor, materials, supplies, tools or transportation, or acts or omissions of any governmental authority having jurisdiction. City will not extend the completion date for acts or omissions occurring through the fault of Operator, or for acts of City permitted or contemplated by this

Agreement. An extension of time as provided in this subsection will be Operator's sole remedy for any delays in the Schedule of Performance the Project completion date.

As a condition precedent to any extension requested by Operator, Operator will give the City notice within ten (10) days after any cause for delay occurs, stating the cause and the additional time Operator anticipates needed to complete the Project. Any extension by City must be in writing and signed by the Director or the Director's designee, which approval shall not be unreasonably withheld, delayed or conditioned.

- 4.6 Subject to the terms of this Agreement, the Grant shall be disbursed to Operator according to the Schedule of Performance. All Grant funds shall be used solely for costs of the Project and Improvements.
- 4.7 Certificate of Completion. Operator will notify City when Operator deems the Project complete. Within ten (10) business days after such notice, City will inspect the Improvements. When City reasonably determines Operator has completed the Improvements as required in this Agreement, the Plan, and the Law, City will furnish Operator with the Certificate of Completion. City will not unreasonably delay, condition or refuse to issue the Certificate of Completion. The recorded Certificate of Completion will be a conclusive determination that Operator has satisfactorily completed the Improvements required under this Agreement. Any parties then owning or subsequently purchasing, leasing or otherwise acquiring any interest in the Property will not (because of that Operatorship, purchase, lease or acquisition) after the recording, incur any obligation or liability under this Agreement for constructing the Improvements, but will take such interest in the Property subject to the continuing covenants set forth in this Agreement.

4.7.1 If City determines not to furnish the Certificate of Completion, in accordance with Section 4.7 above, City will give Operator a written notice stating why City has decided not to issue the Certificate of Completion, or why it is delaying the issuance, and the reasonable actions that, in City's opinion, Operator must take before City can issue the Certificate of Completion. City's failure to give the notice within ten (10) days, however, will not cause the Operator to be entitled to the Certificate of Completion. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

4.7.2 The following are conditions precedent to City issuing the Certificate of Completion, and each submission will be in form and substance satisfactory to the Director: Evidence that the time to file

all mechanics' liens or material men's liens has expired and any such liens recorded against the Property or Improvements have been released or, if not released, sufficiently bonded (i.e. 150%) against as required by law.

- 4.8 To the extent economically feasible, consistent with the requirements of any permitted encumbrance, or as otherwise approved by City or provided in the Agreement, if any building or improvement on the Property is damaged or destroyed by an insurable cause, Operator shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the Basic Design for the Project. Such work or repair shall commence within ninety (90) days after the insurance proceeds are made available to Operator and shall be complete within one (1) year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Operator shall make up the deficiency.
- 4.9 Inspections. Operator shall permit, facilitate and require its contractors to permit and facilitate observation and inspection of the Project by City during reasonable business hours and upon reasonable notice for the purpose of determining compliance with this Agreement.
- 4.10 If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, or businesses, Operator shall comply with all applicable local, state (CRL) and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. Operator shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.
- 4.11 Reporting Requirements. Operator shall submit to City the following reports:
- 4.11.1 Annual Reports. Annually, beginning in the year following City's issuance of the Certificate of Completion, and continuing until the expiration of this Agreement, on such dates as are agreeable between the parties and consistent with all federal and state reporting requirements applicable to the Project, Operator shall submit an annual report to City, in a form approved by City. Such annual report shall include for each of the Affordable Units: the rent, the annual income and the family size of the Household occupying the Affordable Unit. Such annual report shall also state the date the tenancy commenced for each Affordable Unit, certification from an officer of Operator that the

Affordable Unit is in compliance with the Affordable Rental Housing requirements, and such other information the City may be required by Law to obtain. Operator shall provide any additional information reasonably requested by the City provided such information is directly related to Operator's compliance with this Agreement.

4.11.2 Annual Proof of Insurance. Annually, beginning in the year following City's issuance of the Certificate of Completion, and continuing until the expiration of the Agreement, Operator shall submit proof of insurance as required by this Agreement.

4.12 All Leases used to rent the Affordable Units are subject to the following:

4.12.1 Annual Income Certification and Reporting. Operator shall include in leases for all Affordable Units provisions which authorize Operator to immediately terminate the tenancy of any Household one or more of whose members misrepresented any fact material to the Household's qualification as a Household for low- to moderate-income family. Each such lease shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for low to moderate income family such Household's rent may be subject to increase to the amount payable by tenant under federal, state or local law, except that, consonant with the Law, tenants of the Affordable Units that have been allocated to low income housing tax credits by a housing credit City pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42.

4.12.2 The leases for the Affordable Units shall provide that if the Project is subject to state or federal rules governing low income housing tax credits, the provision of those rules regarding continued occupancy by, and increases in rent for, Households whose incomes exceed the eligible income limitation shall apply in place of the provisions set forth in subsection 4.11.1 above.

4.13 With respect to the Project, Operator shall comply with the following:

4.13.1 Except to any extent otherwise provided in this Agreement, Operator is specifically responsible for all management functions with respect to the Affordable Units including, without limitation, the selection of tenants, certification and re-certification of Household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and

security. City shall have no responsibility for management of the Affordable Units of the Project.

- 4.14 Operator covenants and agrees the Affordable Units shall constitute Affordable Rental Housing during the entire Affordability Period. If Operator fails to comply the requirement to lease the Affordable Units only to qualified Households during the Affordability period, City shall be entitled to enjoin Operator from leasing the Affordable Units in the Project, as Operator acknowledges that damages are not an adequate remedy at law for such breach.

5. INDEMNITY; INSURANCE

- 5.1 Operator shall indemnify, hold harmless and defend City, City and each of their officers, officials, employees, agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, City, Operator, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Operator's performance of this Agreement. Operator's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City, City or any of their officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

Throughout the life of this Agreement, the Operator shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with (an) insurance company(ies) either (1) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (2) authorized by the City's Risk Manager or his/her designee. The following policies of insurance are required:

5.2.1 Until the Certificate of Completion is recorded, Builders Risk (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

5.2.2. Following the recording of the Certificate of Completion, Fire and Extended Coverage Insurance against loss or damage to the project by fire and lightning, with extended coverage for vandalism and malicious mischief

and sprinkler system leakage. Such extended coverage insurance will, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the replacement cost (without deduction for depreciation) of the project with no coinsurance penalty provisions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Operator shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the term of this Agreement, Operator shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The Builders Risk (Course of Construction) and Fire and Extended Coverage insurance policies shall be endorsed to name City as a loss payee.

Operator shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of this Agreement.

If at any time Operator fails to maintain the required insurance in full force and effect, Operator shall immediately discontinue all work under this Agreement until City receives notice that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Operator's failure to maintain any required insurance shall be sufficient cause for City to terminate this Agreement.

The fact that insurance is obtained by Operator shall not be deemed to release or diminish the liability of Operator, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City, City and each of their officials, officers, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Operator. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Operator.

Upon request of City, Operator shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

- 5.3 Operator will obtain and deliver payment and performance bonds issued by an insurance company admitted in California in good standing as a surety and meeting the criteria for Operator's other insurance under this Agreement, each bond in an amount at least equal to 100% of Operator's estimated construction costs, provided that the City hereby waives any requirement for said bonds at all time during which Operator is in full compliance with this Agreement and the Project remains fully funded.
- 5.4 Until City issues the Certificate of Completion City will have access to the Property, after reasonable notice to the Operator (except in emergencies), without charge or fee, during normal construction hours, for purposes of assuring compliance with this Agreement. City representatives will comply with all safety rules while on the Project or the Property.
- 5.5 Operator will design and construct the Improvements, and after that, prior to any allowable transfer or sale thereof, Operator will maintain the Property according to all applicable laws including, without limitation, all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, all provisions of the Palm Springs Municipal Code and all applicable access requirements. City makes no representation about which, if any, of such laws, ordinances, regulations or standards apply to development of the Project.

Operator acknowledges that Operator, not City, is responsible for determining applicability of and compliance with all local, state, and federal laws including, but not limited to, any applicable provisions of the California Labor Code, Public Contract Code, and Government Code. City makes no express or implied representation as to the applicability or inapplicability of any such laws to this Agreement or to the parties' respective rights or obligations hereunder including, but not limited to, payment of prevailing wages, competitive bidding, subcontractor listing, or similar or different matters. Operator further acknowledges that City shall not be liable or responsible at law or in equity for any failure by Operator to comply with any such laws, regardless of whether City knew or should have known of the need for such compliance, or whether City failed to notify Operator of the need for such compliance.

- 5.6 Operator will take reasonable efforts to not permit any lien or stop notice to be filed against the Property, provided Operator may reasonably determine to contest any such lien or stop notice. If a claim of lien or stop notice is recorded against the Property or Improvements, Operator, within

30 days after recordation of a claim of lien or stop notice or within 5 days after City's demand, whichever first occurs, will do the following:

5.6.1 Pay and discharge the same; or

5.6.2 Effect the release of such lien by recording and delivering to City a surety bond in sufficient form and amount (i.e. 150%), or otherwise; or

5.6.3 Give City other assurance which City, in its sole discretion, deems satisfactory to protect the City from the effect of the lien or bonded stop notice.

6. SECURITY FINANCING AND RIGHTS OF HOLDERS.

6.1 Notwithstanding any other provision of this Agreement, Operator may not grant a security interest in the Property before the City issues and records a Certificate of Completion, without the written consent of City, provided that City hereby approves the recommended security interest of Operator's financial institutions, including their respective successors or assigns, as described in the Financing Plan.

7. CONTINUING OPERATOR OBLIGATIONS

7.1 In its performance of this Agreement, Operator covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person, including contractors, subcontractors, bidders and vendors, on account of race, color, religion, ancestry, national origin, sex, sexual preference, age, pregnancy, childbirth or related medical condition, medical condition (e.g., cancer related) or physical or mental disability, and in compliance with all applicable federal, state and local laws, regulations and rules including without limitation Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Operator will allow City representatives access to its employment records related to this Agreement during regular business

hours and upon reasonable notice to verify compliance with these provisions when so requested by the City.

- 7.2 If applicable, Operator will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Operator's right to contest in good faith any such taxes. Operator will remove any levy or attachment on the Property or any part of it, or assure the satisfaction of the levy or attachment within a reasonable time. Operator will notify City prior to applying for or receiving any exemption from the payment of property taxes or assessments on any interest in or to the Property or the Improvements. Operator further agrees that the prior consent of City shall be required if the basis for such exemption is other than for qualified property held by a nonprofit entity that has been determined to be exempt from federal and state income taxation, which consent shall not be unreasonably withheld.

8. **COVENANTS AND RESTRICTIONS.** The following covenants shall run with the Operator's Lease with the Housing Authority of the County of Riverside, and Operator's successors in interest to the Property for the periods stated, and shall be fully binding for the benefit of the Plan community and City without regard to technical classification or designation, legal or otherwise.

- 8.1 Operator covenants for itself, its successors, assigns, and every successor in interest to the Property or any part of it that, after closing of any applicable escrow, during construction, and after completing the Improvements, the Operator shall devote the Affordable Units on the Property to the uses specified in this Agreement for the Affordability Period. All uses of the Affordable Units including, without limitation, all activities Operator undertakes pursuant to this Agreement, shall conform with this Agreement and the Law. Without waiver or limitation, each of the Affordable Units to be constructed pursuant to this Agreement shall be maintained as Affordable Rental Housing pursuant to this Agreement and the Restrictions.

- 8.2 Operator and those taking under Operator will maintain the Property and all Improvements on site in reasonably good-condition and repair (and, as to landscaping, if any, in a healthy condition), all according to the Basic Design and related plans, as-amended from time to time. Operator and those taking under Operator shall: (i) maintain all on-site Improvements according to all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the Improvements free from graffiti, (iii) keep the Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to the on-site

Improvements; and (v) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials.

City will give Operator written notice of any breach of this Section 8.2. Within 10 days from receipt of such notice, City and Operator will meet and confer, and agree to corrective actions and a schedule of performance for such corrective actions. Operator must cure the default within the agreed schedule or within (a) 10 days after the City's notice for any default involving landscaping, graffiti, debris, waste material, or general maintenance on the Property, (b) 30 days after City's notice for any default involving the Improvements. If Operator does not cure the default within the agreed schedule, City, without obligation to, may enter the Property, cure the default, and protect, maintain, and preserve the Improvements and landscaping.

- 8.3 During the Affordability Period Operator covenants to use and operate the Affordable Units on the Property as Affordable Rental Housing pursuant to this Agreement.
- 8.4 Operator covenants for itself and any successors in interest and all persons claiming by, through or under them, in perpetuity, that there shall be no discrimination against or segregation of any person or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Affordable Units, nor shall Operator itself or any person claiming under or through Operator establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Affordable Units.
- 8.5 All deeds, leases, or contracts concerning the Affordable Units 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 because of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees,

subtenants, sublessees or vendees in the land 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, because of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry 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 concerning 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 because of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee 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 concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

- 8.6 City is the beneficiary of the covenants running with the land for itself and for protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants are provided, without regard to whether City has been, remains, or is an Operator of any land or interest in the Affordable Units on the Property. City may exercise all rights and remedies, and maintain any actions or suits at law or in equity or other proceedings to enforce the covenants for itself or any other beneficiaries.

9. **DEFAULTS AND REMEDIES**

- 9.1 Subject to the extensions of time permitted under this Agreement, either party's failure to perform any material action or material covenant as

required by this Agreement, following notice and failure to cure, is a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of, and the cure demanded. Except as otherwise expressly provided in this Agreement, the noticing party shall not begin any proceeding against the other party until the other party is given an opportunity to cure the Default. The other party will have 30 calendar days after receiving the notice to cure the Default, or, if the party cannot reasonably cure the Default within such 30 days, the other party must begin to cure within the 30 days and diligently pursue the cure to completion, whereupon there shall be no event of Default.

- 9.2 Subject to first giving the notice and opportunity to cure, a party may begin an action at law to enforce, or in equity to seek specific performance of, the terms of this Agreement, or to cure, correct, or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. A party must bring any legal action in the Superior Court of the County of Riverside, State of California, or in the District of the United States District Court serving Riverside County.
- 9.3 If Operator begins any legal action against City, it shall serve process on the City by personal service on the Director, or in any other manner the law permits. If City begins any legal action against the Operator, it will serve process on the Operator by personal service on Operator, Operator's Agent or in any other manner the law permits.
- 9.4 Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and a party's exercise of one or more rights or remedies will not preclude the party's exercise, at the same or different times, of any other rights or remedies for the same or any other Default of the other party.
- 9.5 A party's failure or delay in asserting any right or remedy will not be a waiver of any Default or of any right or remedy, and will not deprive the party of its right to begin and maintain any action or proceeding to protect, assert or enforce any right or remedy.
- 9.6 The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

10. GENERAL PROVISIONS

- 10.1 Any notice, demand, or other communication permitted or required under this Agreement will be in writing and given by personal delivery, or by first-

class U.S. mail, postage prepaid, to a party at its respective address below:

To City:

Executive Director
City of Palm Springs
3200 Tahquitz Canyon Way
P.O. Box 2743
Palm Springs, CA 92263
Attention: Executive Director

With a Copy to:

WOODRUFF, SPRADLIN & SMART, APC
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626
Attention: Douglas C. Holland, Esq.

To Operator:

Jewish Family Services of San Diego County
8804 Balboa Avenue
San Diego, CA 92123
Office: (858) 637-3020
Fax: (858)637-3021

Attn: Michael Hopkins, Chief Executive Officer
Joel Craddock, Interim Chief Program Officer

A party may change its address for notices, demands and communications by giving notice of the new address as provided in this section. Any written notice, demand or communication shall be deemed received immediately if delivered personally, and shall be deemed received on the third day after it is postmarked if delivered by regular, registered or certified mail, or on the date of receipt, if return receipt is requested and available to confirm the date.

- 10.2 All of the terms, covenants and conditions of this Agreement shall be binding upon the Operator and its permitted successors and assigns. Whenever the term "Operator" is used in this Agreement, such term shall include Operator's successors and assigns as permitted under this Agreement.
- 10.3 The City may assign or transfer any of its interests, rights, or obligations hereunder at any time to any public City without the consent of the Operator.

- 10.4 No member, official or employee of the City shall be personally liable to the Operator, or any successor in interest to Operator, for any Default or breach by the City.
- 10.5 The relationship between the City and the Operator is that of Housing Successor Agency and redeveloper respectively, as permitted by law, and not that of a partnership or joint venture. City and Operator shall not be deemed or construed for any purpose to be the agent of the other.
- 10.6 Whenever this Agreement references an action or approval required or permitted by the City, the Director or his or her designee is authorized to act for the City as agent of the City unless this Agreement, the Law, Constitutional and/or local law provide otherwise, or the context otherwise requires.
- 10.7 This Agreement may be signed in multiple counterparts which, when signed by all parties, will be one binding agreement. The parties will sign three copies of this Agreement, each of which is deemed to be original.
- 10.8 This Agreement, includes the exhibits and attachments referenced and incorporated in it. This Agreement contains the entire agreement between the parties relating to the transaction contemplated by this Agreement and supersedes all prior or contemporaneous agreements, understanding, representation and statements, whether oral or written.
- 10.9 If either party begins a lawsuit or arbitration proceeding, in law or equity, to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees, court costs, and legal expenses as determined by the court or tribunal having jurisdiction.
- 10.10 Any waiver, alteration, change or modification of or to this Agreement, to be effective, must be in writing, and signed by each party.
- 10.11 If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances is held invalid or unenforceable, the remainder of this Agreement and its application to persons or circumstances, other than those about whom or which it is held invalid or unenforceable, shall not be affected, and shall remain valid and enforceable to the fullest extent permitted by law.
- 10.12 Each party represents and warrants to the other that (a) each has read this Agreement, and (b) is signing this Agreement with full knowledge of any rights and obligations each may have, and (c) each has received independent legal advice from their respective legal counsel as to the

matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel, and (d) has signed this Agreement without relying on any agreement, promise, statement or representation by or for the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

- 10.13 No member, official or employee of City has or shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. Operator represents and warrants that it has not paid or given, and will not pay or give, to any third party any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys.
- 10.14 The parties will execute such other and further documents, and will take any other steps, necessary, helpful, or appropriate to carry out the provisions of this Agreement.
- 10.15 No contractor, subcontractor, mechanic, material man, laborer, vendor, or other person hired or retained by with Operator shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, rather each such person shall be deemed to have agreed (a) that they shall look to Operator as their sole source of recovery if not paid, and (b) except as otherwise agreed to by City and any such person in writing, they may not enter any claim or bring any such action against City under any circumstances. Except as provided by law, or as otherwise agreed to in writing between City and such person, each such person shall be deemed to have waived in writing all right to seek redress from City under any circumstances whatsoever.
- 10.16 Operator hereby covenants and warrants that it is a duly authorized and existing California limited liability company, in good standing; that it shall remain in good standing; that it has the full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement; that the execution and delivery of this Agreement were duly authorized by proper action of the Operator and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions of the Operator's part contemplated by this Agreement, except as have been obtained and are in full force and effect; and that this Agreement constitutes the valid, binding and enforceable obligation of the Operator.

10.17 In the event of any conflict between the body of this Agreement and any exhibit or attachment to it, the terms and conditions of the body of this Agreement will control.

///
///
///

IN WITNESS WHEREOF, City and Operator have signed this Agreement on the respective dates set forth below.

“City”

Dated: _____

the City of Palm Springs, acting solely in its capacity as the Housing Successor Agency of the Community Redevelopment Agency of the City of Palm Springs

By: _____
David Ready, City Manager

APPROVED AS TO FORM:

ATTEST:

By: _____
Douglas Holland
City Counsel

By: _____
James Thompson
City Secretary

“Operator”

Jewish Family Services of San Diego (JFSSD)

Dated: _____

By: _____

Its

Dated: _____

By: _____

Its

(Two notarized signatures by Operator are required.)

Attachments:

- Exhibit A: Legal Description of Property
- Exhibit B: Schedule of Performance
- Exhibit C: Budget/Financial Plan
- Exhibit D: Certificate of Completion
- Exhibit F: Affordability Restrictions

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, CITY OF PALM SPRINGS, AND IS DESCRIBED AS FOLLOWS:

EXHIBIT "B"
SCHEDULE OF PERFORMANCE

<u>Items Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>

EXHIBIT "C"

Nightengale Manor Renovation Project	
Jewish Family Service of San Diego, DBA Desert SOS	
Labor and materials to install and/or replace cabinets, countertops, sinks for Unit #1	\$ 2,714.00
Same as above for Unit #2	\$ 1,888.00
Same as above for Unit #3	\$ 1,888.00
Office Unit #4 - no structural modifications required	\$ -
Unit #5 - Community Room - no structural modifications required	\$ -
Labor and materials to install and/or replace cabinets, countertops, sinks for Unit #6	\$ 1,888.00
Same as above for Unit #7	\$ 1,888.00
Same as above for Unit #8	\$ 2,183.00
Same as above for Unit #10	\$ 1,888.00
Same as above for Unit #11	\$ 1,830.00
Same as above for Unit #12	\$ 2,124.00
Storage Unit #13 - no structural modifications required	\$ -
Labor and materials to install and/or replace cabinets, countertops, sinks for Unit #14	\$ 2,124.00
Same as above for Unit #15	\$ 2,183.00
Unit # 9 Demo store room & portion of kitchen. Construct ADA bathroom and ramp at entry. Widen two doorways and close off one	\$ 10,502.00
Replace two pressure regulators on West side	\$ 436.00
Install TV and telephone cable to 14 units	\$ 5,782.00
Replace 14 in-wall A/C heatpump units (does not include add'l wiring if required)	\$ 10,738.00
Replace 24 locks and deadbolt combinations	\$ 2,832.00
Install 3 locks on sliding glass doors	\$ 212.00
Check window screens and repair as needed	\$ 500.00
Paint or touch-up interior walls of all units (one color) and repair flooring as necessary	\$ 7,718.00
Remove playground equipment	\$ 802.00
Re-roof approx. 70' X 12' section due to wind damage; 4 layers to match existing	\$ 2,945.00
Professional Cleaning of interior and exterior	\$ 1,500.00
Repair electrical panel, replacing copper wiring removed as a result of vandalism	\$ 3,000.00
Subtotal - Labor and Materials	\$ 69,565.00
Administrative Costs (project oversight, invoicing, payment) @ 15% of direct costs	\$ 10,434.75
TOTAL PROJECT COST	\$ 79,999.75

EXHIBIT "D"
Certificate of Completion

CERTIFICATE OF COMPLETION

**RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:**

City of Palm Springs
3200 Tahquitz Canyon Way
P.O. Box 2743
Palm Springs, CA 92263
Attention: City Manager

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Certificate of Completion is recorded at the request and for the benefit of the Community Redevelopment Agency of the City of Palm Springs and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

City of Palm Springs, a California Charter City

By: _____
David H. Ready, Esq., Ph.D.
Its: City Manager
Dated: _____

Certificate of Completion

RECITALS:

A. By a Participation Agreement (the "Agreement") dated [_____], 2012 between Jewish Family Services of San Diego, a California Public Benefit Corporation ("Operator") and the City of Palm Springs, ("City"), Operator agreed to rehabilitate certain residential units on the premises legally described in Attachment "A" hereto (the "Property") and preserve the Affordable Units, as defined in the Agreement as rental housing for Low-Income Households with the assistance of City housing set aside funds while meeting the Affordable Housing, income targeting and other requirements of the Community Redevelopment Law set forth at California Health and Safety Code Sections 33000 et seq. for a _____ year Affordability Period according to the terms and conditions of the Agreement.

B. The Agreement was recorded on [_____], 2012 in the Official Records of Riverside County, California as Instrument No. _____.

C. Under the terms of the Agreement, after Operator completes the construction on the Property, Operator may ask City to record a Certificate of Completion.

D. Operator has asked City to furnish Operator with a recordable Certificate of Completion.

E. City's issuance of this Certificate of Completion is conclusive evidence that Operator has completed the construction on the Property as set forth in the Agreement.

NOW THEREFORE:

1. City certifies that Operator commenced the construction work on the Project on [_____], 20__, and completed the construction work on the Project on _____, 20__, and has done so in full compliance with the Agreement.

2. This Certificate of Completion is not evidence of Operator's compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any

mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project.

3. This Certificate of Completion is not a notice of completion as referred to in California Civil Code section 3093.

4. Nothing contained herein modifies any provision of the Agreement.

IN WITNESS WHEREOF, the City has executed this Certificate of Completion as of this ___ day of _____, 2012.

The City of Palm Springs, acting
Solely in its capacity as the Housing
Successor Agency to the
Community Redevelopment Agency

By: _____
David H. Ready, Esq., Ph.D.
Executive Director

Operator hereby consents to recording this Certificate of Completion against the Property described herein.

Dated: _____, 2012

Jewish Family Services of San Diego,
a 501(c)(3) non-profit corporation

By: _____

THE ABOVE PARTIES ARE TO SIGN THIS INSTRUMENT BEFORE A NOTARY PUBLIC.

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY

By: _____

By: _____

Dated: _____

Dated: _____

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Palm Springs, Riverside County, California, described as follows:

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, CITY OF PALM SPRINGS, AND IS DESCRIBED AS FOLLOWS:

EXHIBIT "F"

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF PALM SPRINGS
3200 Tahquitz Canyon Way, P.O. Box 2743
Palm Springs, CA 92263
Attn: Executive Director

(Space Above This Line for Recorder's Office Use Only)

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this ____ day of _____, _____, by and between the THE CITY OF PALM SPRINGS, a public body, corporate and politic ("City"), and Jewish Family Services of San Diego, a 501(c)(3) non-profit corporation("Operator").

RECITALS:

A. Pursuant to an Participation Agreement by and between City and Operator dated _____, 2012 (the "AGREEMENT"), City has provided to Operator financial assistance in the amount of approximately Eighty Thousand Dollars (\$80,000.00) in Grant funds (the "City Assistance"), for the purpose of assisting Operator in the rehabilitation of a residential apartment complex thereon wherein one hundred percent of the units shall be rented to low income households, on that certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Site").

B. Pursuant to the AGREEMENT, Operator has agreed to rehabilitate and maintain a rental apartment housing project consisting of ten (10) total residential units (hereinafter referred to collectively as the "Project") on the Site. The Project is also referred to in the Agreement as the "Project," and is further described in the Scope of Development attached to the AGREEMENT.

C. The City of Palm Springs have fee or easement interests in various streets, sidewalks and other property within the City and are responsible for the planning and development of land within the City in such a manner so as to provide for the health, safety and welfare of the residents of the City.

D. City and Operator now desire to place restrictions upon the use and operation of the Project, in order to ensure that the Project shall be operated continuously as a rental apartment housing project with the units available for rental by low income persons for the term of this Agreement.

A G R E E M E N T:

NOW, THEREFORE, the Operator and City declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of the City, the residents of the City of Palm Springs, and every person renting a dwelling unit on the Site.

AFFORDABILITY RESTRICTIONS RUNNING WITH LAND

In addition to the covenants and conditions contained in the Agreement, the following California Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.) affordability requirements shall be imposed upon the 10 Affordable Units on the Property funded under the Agreement and shall bind the Operator and all purchasers of the Property and their successors for a _____ year period.

The Affordable Units on the Property are held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Exhibit, all of which are in furtherance of the Project, the City's Community Redevelopment Law and Plan Area obligations including City's obligations set forth at California Health & Safety Code sections 33334.2 et seq and 33413 (a) with respect to Housing Set Aside Funds and replacement dwelling units at affordable rent within the jurisdiction of the City. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any

right, title or interest in the Affordable Units upon the Property or any part thereof, will inure to the benefit of the City, and will be enforceable by it. Any purchaser under a contract of sale or other transferee of an interest covering any right, title or interest in any part of the Affordable Units upon the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenants, and limitations set forth in this Exhibit for the period of _____ years running from and after recordation of City's Certificate of Completion constituting the Affordability Period.

1. Restrictions. The following covenants and restrictions ("Restrictions") on the use and enjoyment of the Affordable Units upon the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of the City and shall run with the Affordable Units upon the Property and be binding on any future Operators of the Property and inure to the benefit of and be enforceable by City. These covenants and restrictions are as follows:

a. From the date of recordation of City's Certificate of Completion until the expiration of the Affordability Period the twenty three (10) Affordable Units funded under the Agreement are to be used as Low Income Affordable Rental Housing as provided for in the Agreement. Operator agrees to file a recordable document setting forth the project Completion Date and the Affordability Period as and when determined by the City. Unless otherwise provided in the Agreement, the term "Affordable Rental Housing" shall include without limitation compliance with the following requirements:

Nondiscrimination. There shall be no discrimination against nor segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or handicap in the sale, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall Operator or any person claiming under the Operator, establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of Operators or vendees of the Property.

Principal Residence. Each of the Affordable Units upon the Property shall be leased only to natural persons, who shall occupy such as a principal residence.

Income Requirements. Each of the 10 Units constituting Low Income Affordable Rental Housing upon the Property may be leased only to (a) natural person(s) whose annual household income at the time of initial occupancy is not greater than sixty percent (60%) of the most recent annual median income calculated and published by HUD for the Riverside-San Bernardino Metropolitan Statistical Area applicable to such household's size, and at an affordable price consistent with the applicable California Redevelopment Law.

Injunctive Relief and Recapture. Should any of the 10 Affordable Units constituting Low Income Affordable Rental Housing upon the Property not continue to be, at the time of initial occupancy, the principal residence of a Household that qualifies as a low-income household, during the period of Affordability, such Unit(s) shall be made available for subsequent lease only to Households that qualify as a very low-income for use as the Household's principal residence.

2. Enforcement of Restrictions. Without waiver or limitation, the City shall be entitled to injunctive or other equitable relief against any violation or attempted violation of the Restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof.

3. Acceptance and Ratification. All present and future Operators of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the above Restrictions. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Restrictions, as such may be amended or supplemented from time to time, is accepted and ratified by such future Operators, tenant or occupant, and such Restrictions shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

4. Benefit. This Exhibit and the Restrictions therein shall run with and bind the Property for a term commencing on the date the Agreement to which this Exhibit is attached is recorded in the Office of the Recorder of the County of Riverside, State of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of City and/or any other person entitled to enforce these Restrictions shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

5. Costs and Attorney's Fees. In any proceeding arising because of failure of Operator or any future Operator of the Property to comply with the Restrictions required by this Exhibit, as may be amended from time to time, City shall be entitled to recover its respective costs and reasonable attorney's fees incurred in connection with such default or failure.

6. Waiver. Neither Operator nor any future Operator of the Property may exempt itself from liability for failure to comply with the Restrictions required in this Exhibit.

7. Severability. The invalidity of the Restrictions or any other covenant, restriction, condition, limitation, or other provision of this Exhibit shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Exhibit and each shall be enforceable to the greatest extent permitted by law.

8. Pronouns. Any reference in this Exhibit and the Restrictions therein to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

9. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Exhibit are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Exhibit or any provision hereof.

10. Capitalized Terms. All capitalized terms used in this Exhibit, unless otherwise defined herein, shall have the meanings assigned to such terms in the Agreement.

11. Amendments. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Riverside.

12. Notice. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

City: City of Palm Springs
3200 Tahquitz Canyon Way P.O. Box 2743
Palm Springs, CA 92263
Attn: Executive Director

Copy to: WOODRUFF, SPRADLIN & SMART, APC
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626
Attention: Douglas C. Holland, Esq.

Operator: Jewish Family Services of San Diego County
8804 Balboa Avenue
San Diego, CA 92123
Office: (858) 637-3020
Fax: (858)637-3021
Attn: Michael Hopkins, Chief Executive Officer
Joel Craddock, Interim Chief Program Officer

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

13. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California.

14. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Operator have executed this Regulatory Agreement and Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

"CITY"

THE CITY OF PALM SPRINGS, a
California Charter City

By: _____
David H. Ready, Esq., Ph.D.
Executive Director

ATTEST:
JAMES THOMPSON

City Clerk

APPROVED AS TO FORM:
DOUGLAS C. HOLLAND

CITY COUNSEL

"OPERATOR"

By: _____

[END OF SIGNATURES]

Attachments:

Exhibit A: Legal Description of Property

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____ personally known to me (or 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 signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____ personally known to me (or 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 signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

///

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Palm Springs, Riverside County, California, described as follows:

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, CITY OF PALM SPRINGS, AND IS DESCRIBED AS FOLLOWS:

Proposed Operational Plan for Nightengale Manor

Submitted by Jewish Family Service of San Diego, dba Desert SOS
June 12, 2012

Jewish Family Service of San Diego (JFSSD), dba Desert SOS, is in a unique position to again assume operations of Nightengale Manor. Having successfully operated the facility previously, coupled with being the operator of the *Desert Vista Permanent Supportive Housing Program*, we are poised to transform the facility into a permanent home for low and extremely low-income individuals. The *Desert Vista* program is both already fully-funded and ideal for relocating some of its residents to the Nightengale facility. On March 1, 2011, JFSSD was awarded a \$650K annual Riverside County of Riverside Department of Public Social Services (DPSS) contract to operate the *Desert Vista Permanent Supportive Housing Program*. *Desert Vista* is a HUD-funded, 40-bed, scattered site program serving disabled individuals. JFSSD was awarded this program based, in part, on the excellent program reviews JFSSD has received for *Desert Horizon*, the 32-bed, HUD-funded transitional living program which JFSSD has operated since December 1, 2007. *Desert Vista* has secure matching funds, as required by HUD. The contract was renewed on March 1, 2013 for one additional year and continued funding is highly likely.

JFSSD has determined that the Nightengale facility can comfortably accommodate 10 of the 40 *Desert Vista* residents. In anticipation of this, JFSSD entered into a lease for the property with the Housing Authority of Riverside County on November 28, 2011. Since that time, JFSSD has maintained the property at our expense.

Due to the current condition of the facility, modifications to the structure will be necessary. These necessary changes include: adding kitchenettes to the units that do not have them; modifying some of the existing kitchenettes; remodeling one of the units to render it ADA compliant; replacing two pressure regulators that were removed due to vandalism; replacing HVAC units; installing new locks, deadbolts, and necessary appliances; painting the facility's interior and some of its exterior; removing of hazardous playground equipment; and thoroughly cleaning (i.e. "deep cleaning") the facility.

The result will be 10 Single Room Occupancy (SRO) units with one individual in each unit, as required by HUD for permanent housing. Residents can stay in the units indefinitely and pay 30% of their adjusted gross income for rent. Rental income is put back into the program to help pay for supportive services. There will be an office on-site that will be staffed during regular business hours. A full array of supportive services will be offered on the premises, including intensive case management. As JFSSD did when operating this facility previously, security and neighborhood relations will be a major focus of staff.

Participants will be assisted with meeting HUD national goals and remain in permanent housing through the following means and activities:

- a. Moderate Demand Housing Model
- b. Participating in the Process of Identifying and Achieving Goals
- c. Developing an Individual Housing Plan
- d. Skill development

Proposed Operational Plan for Nightengale Manor

Adjusting to a Moderate-Demand Model

A moderate demand model will be used to help clients obtain and remain in permanent housing. Within this model, clients will realize that there is a moderate predetermined, standard timeframe. Clients have sufficient time to complete related tasks, develop skills, and achieve the confidence to retain housing.

Participating in the Process of Identifying and Achieving Goals

As soon as it is reasonable within this moderate-demand model, clients will learn about the primary goals of the model through meeting with staff (particularly Employment, Housing, Life Skills and Benefit staff) will assist them with their housing, income and resource goals. This will help promote a sense of autonomy, responsibility, and a sense of having control over and being able to take action to positively influence their lives.

Developing an Individual Housing Plan

Participants will be assisted with remaining in permanent housing by developing an Individualized Housing Plan with the proposed program's staff. Each participant will begin developing an Individualized Housing Plan by completing an assessment tool. The assessment tool will evaluate each participant's current level of readiness and will indicate areas where additional skills are needed to live successfully in permanent housing.

Development of Skills to Maintain Permanent Housing

Staff will assist clients in identifying their needs and monitor performance goals. The goals that will be measured for success within the plan will include employment (if client is employable), income, money management, medical and mental health care (as needed), crisis/peer counseling, substance abuse treatment (if needed), accessing mainstream resources, and other life skills training.

The Desert-SOS staff is trained to provide counseling and instruction focusing on tenants successfully realizing HUD's National goals:

- To help participants obtain and remain in permanent housing
- To help participants increase skills and/or income
- To help participants achieve greater self-determination

The Facility

In anticipation of this project, JFSSD called for bids from a number of licensed contractors obtained from a list of contractors who have done work for the City of Palm Springs. The successful bidder is Chris W. Foster, Inc., General Building Contractor. Mr. Foster's business is located in Palm Springs and he has walked the property multiple times to assure a complete bid. His bid includes the latest roof damage which JFSSD temporarily repaired until renovation work could begin. Mr. Foster's company carries all of the requisite liability and insurance coverage. He was the only contractor who presented a full bid and was also the lowest cost.

The facility will house 10 residents and will have a community room for community and case management meetings, storage for necessary supplies, a laundry area and an on-site office. The office will be staffed during regular business hours with on-call staff available during off hours. Two existing units will be combined to make one large, fully ADA-compliant unit which will be wheelchair accessible.

Proposed Operational Plan for Nightengale Manor

A detailed budget is included detailing the renovations required to bring the facility to HUD standards. Depending on availability of funds, JFSSD anticipates a 60-day construction period and occupancy on or around September 1, 2012.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ACTING SOLELY IN ITS CAPACITY AS THE HOUSING SUCCESSOR AGENCY TO THE CITY OF PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY, AMENDING THE BUDGET FOR THE 2012-13 FISCAL YEAR.

WHEREAS, Resolution No. 23147 approving the budget for the Fiscal Year 2012-13 was adopted on June 6, 2012; and

WHEREAS, the City Manager has recommended, and the City Council desires to approve, certain amendments to said budget.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, ACTING SOLELY IN ITS CAPACITY AS THE HOUSING SUCCESSOR AGENCY TO THE CITY OF PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY, DOES HEREBY RESOLVE, that the Director of Finance is authorized to record inter-fund cash transfers as required in accordance with this Resolution, and that Resolution No. 23147, adopting the Fiscal Year 2012-13 budget for the Housing Successor Agency is hereby amended as follows:

SECTION 1. ADDITIONS

Fund	Activity	Account	Amount
874			\$80,000.00

Purpose: Establish funding for Nightengale Manor renovation.

SECTION 2. SOURCE

Fund	Activity	Account	Amount
Fund Balance (SERAF Repayment)			\$80,000.00

ADOPTED THIS _____ DAY OF _____, 2012.

David H. Ready, City Manager

ATTEST:

James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

James Thompson, City Clerk
City of Palm Springs, California