

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

Contract Number

23-1025

SAP Number

Community Development and Housing Department

Department Contract Representative
Telephone Number

Carrie Harmon

(909) 382-3983

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Desert Haven HPI, LLC

Lee McDougal

(909) 332-6390

N/A

N/A

N/A

N/A

N/A

Briefly describe the general nature of the contract: Approval of this item will approve the Assignment and Assumption Agreement (CalHFA Development No. 19-083-M (SNHP Loan Agreement)), previously approved by the Board of Supervisors on September 14, 2021 (Item No. 15) as Agreement NO. 21-655. The various funding agencies worked together to approve the terms of the SNHP Loan Agreement, however, due to delays caused by the COVID-19 pandemic, and because the process took longer than anticipated, CalHFA is requesting the updated SNHP Loan Agreement be executed by the Board because the previous Agreement was not executed by CalHFA.

FOR COUNTY USE ONLY

Approved as to Legal Form

► Suzanne Bryant
Suzanne Bryant, Deputy County Counsel

Date 9-18-2023

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

►

Date

9/15/23

No fee for recording pursuant to
Government Code Section 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

California Housing Finance Agency
Office of General Counsel
500 Capitol Mall, Suite 1400, MS 1440
Sacramento, CA 95814

**SNHP ASSIGNMENT AND ASSUMPTION AGREEMENT
(SNHP Loan and Related Loan Documents)**

CalHFA Development No. 19-083-M

This Assignment and Assumption Agreement (the “*Agreement*”) is entered into as of September 26, 2023, by and among the **California Housing Finance Agency**, a public instrumentality and political subdivision of the State of California (the “*Agency*” or “*Assignor*”) and **The County of San Bernardino**, a political subdivision of the State of California (“*Assignee*”), and **Desert Haven Victorville, LP**, a California limited partnership (the “*Borrower*”).

RECITALS

A. Pursuant to Chapter 6.3 of Part 3 of Division 31 of the California Health & Safety Code, the Agency has authority to provide for the financing of special needs housing, and the Agency participation in the SNHP constitutes authorized financing for special needs housing.

B. WHEREAS, the Agency made a permanent loan (the “*SNHP Loan*”) pursuant to the SNHP Housing Program to Borrower to finance a multifamily residential rental housing project on real property located in the City of Victorville, County of San Bernardino, California and more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the “*Development*”). The SNHP Loan is evidenced by a promissory note from the Borrower to the Agency in the face amount of Two Million One Hundred Seventy-Three Thousand Six Hundred Sixty-Nine and No/100s Dollars (\$2,173,669.00), titled “California Housing Finance Agency, SNHP Promissory Note, CalHFA Development No. 19-083-M (Permanent Financing/Residual Receipts)” (the “*SNHP Promissory Note*”) and secured by a deed of trust. The deed of trust is being executed by Borrower, as trustor, to Fidelity National Title Company as trustee, in favor of the Agency, as beneficiary, and is titled “California Housing Finance Agency, SNHP Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing, CalHFA Development No. 19-083-M” dated August 1, 2023 (the “*SNHP Deed of Trust*”) recorded substantially concurrently herewith in the Official Records of

San Bernardino County. The Development (defined below) is also regulated and encumbered by a regulatory agreement executed by Borrower and the Agency titled "California Housing Finance Agency, SNHP Regulatory Agreement, CalHFA Development No. 19-083-M" dated as of August 1, 2023 (the "***SNHP Regulatory Agreement***") recorded substantially concurrently herewith in the Official Records. Unless otherwise noted, references to instruments recorded in "***Official Records***" refer to instruments recorded in the Office of the County Recorder of the County of San Bernardino.

The SNHP Regulatory Agreement, SNHP Promissory Note, SNHP Deed of Trust and related unrecorded documents shall hereafter be collectively referred to herein as the "***SNHP Loan Documents***";

C. WHEREAS, the Agency has, with the written approval of the County, determined that under the particular circumstances of this Development, an assignment to the Assignee of all rights and obligations pursuant to the SNHP Loan Documents and related obligations pursuant to the SNHP Housing Program with respect to the Development is appropriate.

D. WHEREAS, this assignment and assumption shall include all of the Agency's obligations related to all SNHP post-closing requirements and all ongoing monitoring and servicing obligations for the Development under the SNHP Loan Documents and the SNHP Housing Program with respect to the Development.

E. WHEREAS, the Assignor and Assignee are entering into this Agreement in order to effectuate the assignment by Assignor and the acceptance and assumption by the Assignee, of all of Assignor's rights and obligations under the SNHP Loan Documents and the SNHP Housing Program with respect to the Development.

NOW THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of Assignor's right, title, and interest in and obligations under the SNHP Loan Documents and the SNHP Housing Program with respect to the Development. Assignor acknowledges that the Servicing Fee (as such term is defined in the SNHP Regulatory Agreement) will be paid by Borrower to Assignee concurrent with SNHP Loan closing, and any future annual payments of the Servicing Fee made by Borrower shall be made to Assignee.

2. Acceptance of Assignment. Assignee accepts the above assignment of Assignor's right, title and interest in, and assumes all rights and obligations under, the SNHP Loan Documents and SNHP Housing Program with respect to the Development, and agrees to perform all of Assignor's obligations and covenants under the SNHP Loan Documents and SNHP Housing Program with respect to the Development as if Assignee were the original signatory thereto. Assignee acknowledges and agrees that upon execution of this Agreement,

Agency shall have no further rights nor obligations under the SNHP Loan Documents and SNHP Housing Program with respect to the Development.

3. Representations.

(a) Assignee represents and warrants to Assignor that the execution and delivery by Assignee of this Agreement, the consummation of the transaction contemplated by this Agreement, and the performance and compliance by Assignee with the terms of this Agreement and the SNHP Loan Documents have been duly authorized by all necessary action on the part of Assignee. This Agreement has been duly executed and delivered by Assignee and constitutes a legal, valid and binding obligation of Assignee enforceable against Assignee in accordance with its terms.

(b) Assignor represents and warrants that it has not previously assigned, pledged, hypothecated or otherwise transferred any of its rights or obligations under the SNHP Loan Documents.

4. Reporting and Other SNHP Housing Program Requirements. Assignee hereby covenants and agrees to comply with all reporting and other requirements of the SNHP Housing Program as required by the County.

5. Indemnity.

(a) Indemnification by Borrower.

(i) Indemnification of Assignor by Borrower. To the extent permissible by law, the Borrower shall indemnify, defend (with counsel reasonably chosen by the Assignor at the Assignor's option), and hold the Assignor, and their employees, officers, agents, and board members (the "**Agency Indemnitees**") harmless against all claims, losses, liabilities, judgments, and costs, including without limitation, reasonable legal fees, which arise out of or in connection with this Agreement, the SNHP Loan, including without limitation the underwriting, due diligence, lien priority, title insurance, inspections, closing and post-closing activities related to the SNHP Loan, the SNHP Loan Documents, the ownership or occupancy of or construction on or in connection with the Development (including, without limitation, rehabilitation) by the Borrower or the Borrower's contractors, subcontractors, agents, employees, or tenants, including claims resulting from the Borrower's failure to comply with Article XXXIV of the California Constitution, federal, state and local Fair Housing laws regarding discrimination in rental housing, handicapped accessibility, prevailing wage (California Labor Code Section 1720 et seq.) and/or Davis Bacon (40 U.S.C. 276(a) et seq.) (as applicable), and the relocation of persons displaced by the Development.

(ii) Indemnification of Assignee by Borrower. The Borrower shall indemnify, defend (with counsel reasonably chosen by the Assignee at the Assignee's option), and hold the Assignee, and their employees, officers, agents, and board members (the "**Assignee Indemnitees**") harmless against all claims, losses, liabilities, judgments, and costs, including

without limitation, reasonable legal fees, which arise out of or in connection with this Agreement, the SNHP Loan, including without limitation the underwriting, due diligence, lien priority, title insurance, inspections, closing and post-closing activities related to the SNHP Loan, the SNHP Loan Documents, the ownership or occupancy of or construction on or in connection with the Development (including, without limitation, rehabilitation) by the Borrower or the Borrower's contractors, subcontractors, agents, employees, or tenants, including claims resulting from the Borrower's failure to comply with Article XXXIV of the California Constitution, federal, state and local Fair Housing laws regarding discrimination in rental housing, handicapped accessibility, prevailing wage (California Labor Code Section 1720 et seq.) and/or Davis Bacon (40 U.S.C. 276(a) et seq.) (as applicable), and the relocation of persons displaced by the Development. Notwithstanding anything to the contrary contained in this subsection, Borrower shall have no duty to indemnify the Assignee Indemnitees to the extent any claim or liability arises from the gross negligence or willful misconduct of any Assignee Indemnitee.

(b) Indemnification of Agency by Assignee. To the extent permissible by law, the Assignee shall indemnify, defend (with counsel reasonably chosen by the Agency, at the Agency's option), and hold the Agency Indemnitees harmless against all claims, losses, liabilities, judgments, and costs, including without limitation, reasonable legal fees, which arise out of or in connection with this Agreement, the SNHP Loan, including without limitation the underwriting, due diligence, lien priority, title insurance, inspections, closing and post-closing activities related to the SNHP Loan, the SNHP Loan Documents, the ownership or occupancy of or construction on or in connection with the Development (including, without limitation, rehabilitation) by the Borrower or the Borrower's contractors, subcontractors, agents, employees, or tenants, including claims resulting from the Borrower's failure to comply with Article XXXIV of the California Constitution, federal, state and local Fair Housing laws regarding discrimination in rental housing, handicapped accessibility, prevailing wage (California Labor Code Section 1720 et seq.) and/or Davis Bacon (40 U.S.C. 276(a) et seq.) (as applicable), and the relocation of persons displaced by the Development. The Assignee agrees that the Assignee, and not the Agency, is responsible for ensuring compliance with all such laws.

6. Remedies. In the event that the Assignee breaches any representation or warranty or fails to perform any of its obligations under this Agreement, the Assignor shall have all rights and remedies at law or in equity, including the right to seek specific performance, injunctive relief, or such other equitable relief as it may deem appropriate; provided, however, any actions by the Assignor hereunder is consistent with federal and State laws and regulations. Nothing herein shall be deemed to limit the Assignor's remedies at equity or in law, it being understood and agreed that the remedies available to the Assignor in the event that the Assignee breaches any representation or warranty or fails to perform any of its obligations are cumulative and not exclusive of any other remedies.

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. Waiver by Agency. No waiver by the Agency of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach thereof or default hereunder.

9. Amendments; Consents and Waivers; Entire Agreement. No modification, amendment or waiver of any provision of this Agreement shall be effective unless it shall be in writing and signed by each of the parties hereto. Any waiver or consent shall be effective only in the specific instance and for the purpose for which given. This Agreement embodies the entire agreement of Assignor and Assignee with respect to the assignment and assumption of the SNHP Loan and the SNHP Loan Documents and supersedes all prior agreements and understandings between the parties relating to the subject hereof.

10. Intentionally Omitted.

11. California Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

12. Invalidity. Any provision of the Agreement which is determined by a court to be invalid or unenforceable shall be deemed severed herefrom, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof.

13. No Inference. The parties hereto acknowledge and agree that this Agreement is the product of negotiation between Assignor and Assignee and that the language and terms of this Agreement shall not be interpreted or construed in favor of or against any one party by reason thereof.

14. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute one and the same instrument.

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Document continues on next page

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ASSIGNEE:

THE COUNTY OF SAN BERNARDINO,
a political subdivision of the State of California

By: *Dawn Rowe*
Dawn Rowe
Chairman of the Board of Supervisors

Approved as to Legal Form:

Tom Bunton
County Counsel

By: *Suzanne Bryant*
Suzanne Bryant
Deputy County Counsel

ACKNOWLEDGEMENT

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

State of California)
) ss.
County of San Bernardino)

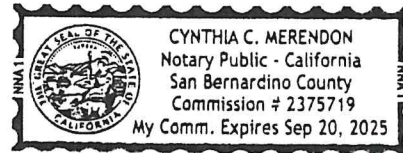
On September 27, 2023 before me, Cynthia C. Merendon, a
Notary Public, personally appeared Dawn Rowe

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

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.


Signature _____ (Seal)



BORROWER:

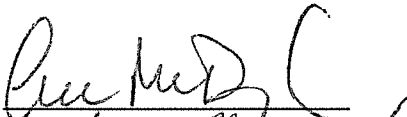
DESERT HAVEN VICTORVILLE, LP, a
California limited partnership

By: **Desert Haven HPI, LLC**, a California
limited liability company

Its: General Partner

By: **Housing Partners I, Incorporated**,
a California nonprofit public benefit
corporation

Its: Sole Member

By: 
Name: Lee M. Poulgas
Title: President

ACKNOWLEDGEMENT

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

State of California)
) ss.
County of San Bernardino)

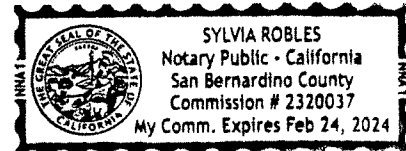
On September 19, 2023 before me, Sylvia Robles, a
Notary Public, personally appeared Lee McDugal

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

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Sylvia Robles
Signature (Seal)



AGENCY:

CALIFORNIA HOUSING FINANCE AGENCY,
a public instrumentality and political subdivision
of the State of California

By: _____
Name: _____
Title: _____

EXHIBIT A

Legal Description

The land referred to in this Commitment is situated in the City of Victorville, County of San Bernardino, State of California, and is described as follows:

PARCEL NO. 1:

PARCEL 3 OF PARCEL MAP NO. 3998, IN THE CITY OF VICTORVILLE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 37 OF PARCEL MAPS, PAGES 34 AND 35, RECORDS OF SAID COUNTY.

PARCEL NO. 2:

AN EASEMENT FOR INGRESS AND EGRESS TO BE USED IN COMMON WITH OTHERS OVER AND ACROSS ALL THAT PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 6 NORTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO GOVERNMENT SURVEY, LYING EASTERLY OF THE EASTERLY LINE OF STODDARD WELLS ROAD, 88.00 FEET WIDE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF STODDARD WELLS ROAD, 88.00 FEET WIDE, WITH THE SOUTH LINE OF SAID SECTION 34; THENCE NORTH 22° 22' 03" WEST, ALONG SAID CENTER LINE OF STODDARD WELLS ROAD, A DISTANCE OF 179.03 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT BEING ON A LINE PARALLEL WITH AND DISTANT 165.50 FEET NORTH OF SAID SOUTH LINE OF SECTION 34; THENCE SOUTH 89° 57' 00" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 457.29 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 50.00 FEET NORTHWESTERLY MEASURE AT RIGHT ANGLES FROM THE NORTHWESTERLY LINE OF STATE HIGHWAY 31, AS CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED SEPTEMBER 28, 1956 IN BOOK 4050, PAGE 272, OFFICIAL RECORDS; THENCE NORTH 28° 11' 40" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 7.56 FEET; THENCE NORTH 23° 13' 00" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 402.82 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 542.50 FEET NORTH OF SAID SOUTH LINE OF SECTION 34; THENCE SOUTH 66° 47' 00" EAST, 50.00 FEET TO SAID NORTHWESTERLY LINE OF STATE HIGHWAY 31; THENCE SOUTH 23° 13' 00" WEST, ALONG SAID NORTHWESTERLY LINE, A DISTANCE OF 404.99 FEET; THENCE SOUTH 28° 11' 40" WEST ALONG SAID NORTHWESTERLY LINE, A DISTANCE OF 39.69 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 115.50 FEET NORTH OF SAID SOUTH LINE OF SECTION 34; THENCE NORTH 89° 57' 00" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 466.61 FEET TO THE CENTER LINE OF SAID STODDARD WELLS ROAD; THENCE NORTH 22° 22' 03" WEST, ALONG SAID CENTER LINE, A DISTANCE OF 54.09 FEET TO THE TRUE POINT OF BEGINNING.

APN: 0472-181-68-0-000

ACKNOWLEDGEMENT

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

State of California)
) ss.
County of _____)

On _____ before me, _____, a
Notary Public, personally appeared _____

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

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)