

AGENDA

APCHA Board **Special Meeting**

Tuesday, July 18, 2023

Zoom Meeting



12:30 **Call to Order, Chairperson Carson Schmitz**

ROLL CALL

12:30 – 12:45 Approval of Resolution 6 (Series of 2023), Approving a Settlement Agreement with Highlands Villas, LLC and the Aspen Music Festival and School

Topic: Special Meeting

Time: Jul 18, 2023 12:30 PM Mountain Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/82837654064?pwd=bnZVbDh0Y0s0SHlZcU9CbDJuQmxPZz09>

Meeting ID: 828 3765 4064

Passcode: APCHA0718

Dial by your location

• +1 669 444 9171 US

Meeting ID: 828 3765 4064

Passcode: 196526775

Find your local number: <https://us02web.zoom.us/u/kn5e96J48>

Adjourn

NEXT REGULAR MEETING: AUGUST 2, 2023, In-Person and/or via Zoom

NOTE: Times are approximate. Agenda items may be heard prior or after the estimated times shown.



MEMORANDUM

TO: APCHA Board of Directors

FROM: Matthew Gillen, Executive Director

MEETING DATE: July 18, 2023

SUBJECT: Approval of Amended Agreement

RECOMMENDATION: APCHA Staff is recommending that the Board make and approve the following motion:

“I move to approve Resolution No. 6 (Series of 2023), Approving a Settlement Agreement with Highlands Villas, LLC and the Aspen Music Festival and School.”



Resolution No. 6
(Series of 2023)

**A RESOLUTION OF THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY BOARD
APPROVING A SETTLEMENT AGREEMENT WITH HIGHLANDS VILLAS, LLC AND THE ASPEN MUSIC
FESTIVAL AND SCHOOL**

RECITALS

1. On July 21, 2022, APCHA issued a Notice of Violation (“NOV”) to Highlands Villas, LLC (“HV”) based upon the breach of the Deed Restriction applicable to six dormitory-style units located at the Aspen Highlands Village (“the Units”).
2. The Deed Restriction gives the Aspen Music Festival and School (“AMFS”) a priority for leasing the Units in June, July, and August of each year.
3. On July 21, 2022, APCHA issued a Notice of Violation (“NOV”) to HV. HV appealed the NOV, and on January 20, 2023, the APCHA Hearing Officer issued Findings of Fact, Conclusions of Law and Ruling affirming the NOV.
4. HV appealed the Hearing Officer’s decision to the APCHA Board. On June 21, 2023, the APCHA Board affirmed the decision of the Hearing Officer.
5. HV is entitled to appeal the APCHA Board’s decision to Pitkin County District Court pursuant to CRCP 106 (a)(4).
6. APCHA, HV, and AMFS desire to avoid further litigation regarding this matter, and accordingly they have entered into the Agreement attached hereto as Exhibit A.
7. The APCHA Board has determined that it is in the best interests of APCHA and the affordable housing program to approve this Agreement on the terms and conditions stated therein.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY that the APCHA Board of Directors hereby approves the Agreement among APCHA, Highlands Villas, LLC, and the Aspen Music Festival and School, attached hereto as Exhibit A.



ADOPTED AND APPROVED THIS 18th DAY OF JULY 2023 at the Aspen/Pitkin County Housing Authority Special Meeting held July 18, 2023.

Carson Schmitz, Chairperson

ATTEST:

Matthew Gillen, Secretary



EXHIBIT A

AGREEMENT

This Agreement is entered into this 18th day of July 2023 by and among Aspen Music Festival and School (“AMFS”) and Highlands Villas, LLC (“HV”) and Aspen/Pitkin County Housing Authority, a multi-jurisdictional housing authority existing under C.R.S. § 29-1-204.5 (“APCHA”) (collectively “Parties”).

Recitals

WHEREAS, the Parties are currently involved in disputes arising from a deed restriction recorded in the records of Pitkin County, Colorado on January 12, 2001 at Reception No. 450494 (“Deed Restriction”); and

WHEREAS, on July 21, 2022, APCHA issued a Notice of Violation to HV for breach of the Deed Restriction (“NOV”). HV disputed the NOV. On October 13, 2022, a hearing was held before the APCHA hearing officer to resolve the dispute. On January 20, 2023, the hearing officer issued Findings of Fact, Conclusions of Law and Ruling (“Ruling”) denying HV’s request to overturn the NOV, and ordering HV to refund to AMFS Forty-eight Thousand Eight Hundred Thirty and 00/100 Dollars (\$48,830.00). HV appealed the Ruling to the Board of APCHA. On June 21, 2023, the Board of APCHA voted unanimously to uphold the hearing officer’s Ruling; and

WHEREAS, HV has indicated its intent to appeal the Board of APCHA’s decision to affirm the Ruling; and

WHEREAS, the Parties desire to avoid further expense to AMFS, HV, and APCHA, and therefore have decided to enter into the following agreement regarding the NOV.

Agreement

1. AMFS and HV will enter into a 10-year lease for summer seasonal use of some or all of the following properties: Units 4203, 4208, 4209, 4306, 4307 and 4308 at 133 Prospector, Aspen, CO 81611. The lease will be in the form of the lease signed by the parties for the year 2022, except that the lease shall indicate that the units will be occupied by AMFS only for the period of June 1 to August 31 of each year of the 10-year term. The Lease shall include a provision that allows AMFS to notify HV in writing by March 25 each year which units it will rent for that upcoming summer. (“Lease”). The written notice delivered by AMFS shall constitute an amendment to the Lease that effectively releases from the Lease for that summer any units that AMFS has not opted to rent. For the avoidance of doubt, the Lease will not require AMFS to rent any units at all, provided that AMFS provides timely written notice. If the units AMFS rents in any summer season will not have as many persons as there are beds in the unit (as set forth in Attachment 1), then AMFS and HV shall participate in good faith discussions about changing the units to be occupied and possibly releasing an additional unit to HV for rental to others. The third sentence of Paragraph 3 of the Lease shall be revised to state: “MAA may request the possibility of adding additional beds to a unit for additional rent.” After the number of units to be rented has been so established, the lease rate for the units to be rented that summer shall be set by APCHA in



accordance with the Deed Restriction. For any units that were leased by HV through May 31st of that year, the lease shall allow HV to conduct cleaning and turnover activities to deliver the leased units clean and in good repair and order during the first 12 days of June. For the summer seasonal period of June 1 through August 31 of each year during the 10-year period, the units shall be occupied by AMFS students, faculty, or staff, selected by AMFS without any input or interference from HV.

2. AMFS agrees to make 4 complimentary tickets available to HV, upon request, for any of its summer events for the summers 2023-2033. Tickets for each event can be requested by HV through Jennifer Elliot, Senior VP for AMFS (or her successor) and will not include special events, benefits or operas.

3. AMFS and APCHA agree to waive and forgo the repayment of rent awarded by APCHA from the NOV totaling \$48,830. HV agrees not to appeal the decision of the APCHA Board. APCHA agrees to waive the request for the payment of penalties imposed upon HV by the APCHA Board.

4. If within the 10-year term of the Lease, HV sells any of the deed restricted dorm units, the Lease shall remain in place, will survive the closing on the sale, and shall remain valid and enforceable. HV agrees that it shall disclose the Lease to any Buyer. AMFS agrees to record the fully executed Agreement with the Pitkin County Clerk and Recorder's office to provide record notice to all interested parties.

5. The Deed Restriction remains in effect.

6. The terms of this Agreement and the lease are entered into for the convenience of the Parties, and shall not be used to interpret or modify the Deed Restriction in any way.

7. In the event of any dispute regarding this Agreement, the prevailing party shall be entitled to reimbursement from the other party of its attorneys' fees and costs.

IN WITNESS WHEREOF, the Parties agree to the terms of this Agreement.

Aspen/Pitkin County Housing Authority

By: _____
Carson Schmitz, APCHA Board Chair

Highlands Villas, LLC
a Colorado limited liability company

By: _____
Kevin Joseph

Matthew Gillen, Exec. Director

Music Associates of Aspen, Inc.
a Colorado non-profit corporation

By: _____
Jennifer Brown Elliot

Attachment 1

4203	4 beds
4208	8 beds
4209	8 beds
4306	7 beds
4307	6 beds
4308	4 beds